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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

TELECOMMUNICATIONS (INTERCEPTION - CARRIERS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Attorney-General,  
the Honourable Michael Duffy, MP)

## TELECOMMUNICATIONS (INTERCEPTION - CARRIERS) BILL 1992

### OUTLINE

#### **Purpose of Bill**

The purpose of the Bill is to remedy a problem created with respect to the definition of "carrier" appearing in the Telecommunications (Interception) Act 1979 ("the Interception Act") inserted by the Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991 ("the Transitional Act"). From the commencement of that definition in the Interception Act on 1 July 1991 until the coming into force of licences issued to carriers under section 57 of the Telecommunications Act 1991, the corporations subject to those licences (Telecom, OTC and AUSSAT) did not fall within the Interception Act's definition of "carrier". As a result, there is some doubt about the authority conferred by warrants under the Interception Act to intercept communications during that period. Accordingly, the Bill will have the effect of -

- continuing in operation during the relevant period the definitions of "carrier" and an associated term that were in force immediately prior to the relevant period; and
- applying the new definition of "carrier" immediately after the relevant period.

#### **Financial Impact Statement**

The Bill will have no financial impact.

## NOTES ON CLAUSES

### Clause 1 - Short title

### Clause 2 - Commencement

2. The Bill commences when it receives Royal Assent.

### Clause 3 - Definitions of "carrier" and "Corporation" in subsection 5(1) of the *Telecommunications (Interception) Act 1979*

3. Subclause 3(1) provides that, notwithstanding section 25 of the Transitional Act, under which certain amendments were made to the Interception Act, including the deletion of that Act's definition of "Corporation" and the insertion of a new definition of "carrier", the definitions of "carrier" and "Corporation" that were in force on 30 June 1991 (that is, immediately before the commencement of section 25 of the Transitional Act) are taken to have continued in operation until immediately before the "licensing time", which is defined in subclause 3(3).

4. Subclause 3(2) provides that, notwithstanding subsection 2(2) of the Transitional Act, which provided for the commencement on 1 July 1991 of provisions of that Act including section 25, the new definition of "carrier" inserted in the Interception Act under section 25 of the Transitional Act is taken to have commenced at the licensing time rather than on 1 July 1991.

5. Subclause 3(3) defines "licensing time" for the purposes of interpreting subclauses 3(2) and (3) to mean the latest time when a general telecommunications licence granted under section 57 of the Telecommunications Act 1991 by the Minister administering that Act on 22 November 1991 came into force. Those licences were expressed to come into force on 26 November 1991, but were said to be subject to conditions specified in declarations under section 64 of that Act which take effect when the requirements in section 66 of that Act have been satisfied. That provision requires the Minister making the declaration to publish it in the *Gazette* and give a copy of it to each carrier holding a licence to which the declaration relates. While gazettal of the declarations took place on 26 November 1991, it is not clear on what date the relevant carriers were given copies of the declarations. By expressing the operation of the changes effected by subsections 3(2) and (3) with reference to the definition of "licensing time", the Bill hence provides for the uninterrupted operation of the substantive provisions in the Interception Act relating to the interception of communications.



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