

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT (15/07/2009)

If you have any comments on this exposure draft, they should be sent, by 7 August 2009, to the Attorney General's Department at tslb@ag.gov.au or mailed to:

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Telecommunications (Interception and Access) Amendment Bill 2009

No. , 2009

(Attorney-General)

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A Bill for an Act to amend the *Telecommunications (Interception and Access) Act 1979*, and for related purposes

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1 **A Bill for an Act to amend the *Telecommunications***
2 ***(Interception and Access) Act 1979, and for related***
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Telecommunications (Interception*
7 *and Access) Amendment Act 2009*.

8 **2 Commencement**

9 This Act commences on the day after it receives the Royal Assent.

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3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Telecommunications (Interception and Access) Act 1979

1 Subsection 5(1)

Insert:

appropriately used, in relation to a computer network, has the meaning given by section 6AAA.

1A Subsection 5(1)

Insert:

network protection duties, in relation to a computer network, means duties relating to:

- (a) the operation, protection or maintenance of the network; or
- (b) ensuring that the network is appropriately used by persons provided with access to the network.

1B Subsection 5(1)

Insert:

responsible person for a computer network means:

- (a) if an individual operates the network, or the network is operated on behalf of an individual—that individual; or
- (b) if a body (whether or not a body corporate) operates the network, or the network is operated on behalf of a body (whether or not a body corporate):
 - (i) the head (however described) of the body, or a person acting as that head; or
 - (ii) if a position is nominated by that head, or the person acting as that head, for the purposes of this subparagraph—the person who holds, or is acting in, the position.

2 Subsection 5F(1)

Omit “(1)”.

3 Subsections 5F(2) and (3)

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Schedule 1 Amendments

1 Repeal the subsections.

2 **4 Subsection 5G(1)**

3 Omit “(1)”.

4 **5 Subsections 5G(2), (3) and (4)**

5 Repeal the subsections.

6 **6 After section 6**

7 Insert:

8 **6AAA When a computer network is appropriately used**

9 For the purposes of this Act, a computer network is *appropriately*
10 *used* by a person (the *user*) provided with access to the network if:

- 11 (a) the user has undertaken, in writing, to use the network in
12 accordance with any conditions specified, in writing, by the
13 person or body who operates the network, or on whose behalf
14 the network is operated; and
15 (b) those conditions are reasonable; and
16 (c) the user complies with those conditions when using the
17 network.

18 **7 At the end of paragraph 6E(2)(b)**

19 Add “or 63D”.

20 **8 After paragraph 7(2)(aa)**

21 Insert:

- 22 (aaa) the interception of a communication by a person if:
23 (i) the person is authorised, in writing, by the responsible
24 person for a computer network to engage in network
25 protection duties in relation to the network; and
26 (ii) it is reasonably necessary for the person to intercept the
27 communication in order to perform those duties
28 effectively; or

29 **9 Subsection 7(2A)**

30 Omit “and (aa)”, substitute “, (aa) and (aaa)”.

1 **10 After subsection 7(2A)**

2 Insert:

- 3 (3) Paragraph (2)(aaa) does not apply to a voice communication in the
4 form of speech (including a communication that involves a
5 recorded or synthetic voice).

6 **11 After section 63B**

7 Insert:

8 **63C Dealing in information by persons engaged in network**
9 **protection duties**

10 *Communication and use for network protection purposes*

- 11 (1) Subject to subsection (4), a person engaged in network protection
12 duties in relation to a computer network may, in performing those
13 duties, communicate or make use of, or cause to be communicated,
14 lawfully intercepted information that was obtained by intercepting
15 a communication under paragraph 7(2)(aaa).

16 *Communication of lawfully intercepted information to responsible*
17 *person etc*

- 18 (2) Subject to subsection (4), a person engaged in network protection
19 duties in relation to a computer network may communicate, or
20 cause to be communicated, to the following persons lawfully
21 intercepted information that was obtained by intercepting a
22 communication under paragraph 7(2)(aaa):
23 (a) the responsible person for the network;
24 (b) another person if the information is reasonably necessary to
25 enable the other person to perform the other person's network
26 protection duties in relation to the network.

27 *Communication and use for disciplinary etc. purposes*

- 28 (3) Subject to subsections (4) and (5), a person engaged in network
29 protection duties in relation to a computer network may
30 communicate or make use of, or cause to be communicated,
31 lawfully intercepted information that was obtained by intercepting
32 a communication under paragraph 7(2)(aaa) if the communication
33 or use is for the purpose of:

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Schedule 1 Amendments

- 1 (a) determining whether disciplinary action should be taken in
2 relation to a use of the network by another person provided
3 with access to the network; or
4 (b) taking disciplinary action in relation to a use of the network
5 by such a person in a case where the use is not an appropriate
6 use of the network by that person; or
7 (c) reviewing a decision to take such disciplinary action.

8 Note: See section 6AAA for when a computer network is appropriately used
9 by a person provided with access to the network.

10 *Limits on communication and use of lawfully intercepted* 11 *information*

- 12 (4) A person must not communicate or make use of, or cause to be
13 communicated, lawfully intercepted information under
14 subsection (1), (2) or (3) if the information was obtained by
15 converting a communication intercepted under paragraph 7(2)(aaa)
16 into a voice communication in the form of speech (including a
17 communication that involves a recorded or synthetic voice).
- 18 (5) A person must not communicate or make use of, or cause to be
19 communicated, lawfully intercepted information for a purpose
20 referred to in subsection (3) of this section if the person would
21 contravene another law of the Commonwealth, or a law of a State
22 or Territory, in doing so.

23 **63D Responsible person for a computer network may communicate** 24 **information to an agency**

25 The responsible person for a computer network may communicate
26 lawfully intercepted information (other than foreign intelligence
27 information) to an officer of an agency if:

- 28 (a) the information was communicated to the responsible person
29 under paragraph 63C(2)(a); and
30 (b) the responsible person suspects, on reasonable grounds, that
31 the information is relevant to determining whether another
32 person has committed a prescribed offence.

33 **12 Section 72**

34 After “section 63B,” insert “63C, 63D,”.

35 **12A Section 73**

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1 Before “A person”, insert “(1)”.

2 **12B Section 73**

3 Omit “A person”, substitute “Subject to subsections (2) and (3), a
4 person”.

5 **13 Section 73**

6 After “subsection 63B(2)”, insert “or 63C(2) or (3)”.

7 **14 Section 73**

8 Omit “this section”, substitute “this subsection”.

9 **15 At the end of section 73**

10 Add:

11 (2) If a person to whom information has been communicated in
12 accordance with subsection 63C(3) communicates the information
13 to another person (the *recipient*) under subsection (1) of this
14 section, the recipient must not communicate, use, or make a record
15 of, the information under subsection (1) of this section if the
16 recipient would contravene another law of the Commonwealth, or a
17 law of a State or Territory, by doing so.

18 (3) If the recipient communicates that information to a third person
19 under subsection (1) of this section, the third person must not
20 communicate, use, or make a record of, the information under that
21 subsection if the third person would contravene another law of the
22 Commonwealth, or a law of a State or Territory, by doing so.

23 **16 At the end of Part 2-6**

24 Add:

25 **79A Responsible person for a computer network must ensure**
26 **restricted records are destroyed**

27 (1) This section applies if:
28 (a) a restricted record is a record of a communication that was
29 intercepted under paragraph 7(2)(aaa); and
30 (b) the restricted record is in the possession of:
31 (i) the responsible person for the computer network
32 concerned; or

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Schedule 1 Amendments

- 1 (ii) the individual or body (whether or not a body corporate)
2 who operates the network, or on whose behalf the
3 network is operated; or
4 (iii) a person engaged in network protection duties in
5 relation to the network.
- 6 (2) The responsible person must cause the restricted record to be
7 destroyed as soon as practicable after becoming satisfied that the
8 restricted record is not likely to be required for any of the
9 following purposes:
- 10 (a) enabling a person to perform the person's network protection
11 duties in relation to the network;
- 12 (b) determining whether disciplinary action should be taken in
13 relation to a use of the network by a person provided with
14 access to the network;
- 15 (c) taking disciplinary action in relation to a use of the network
16 by such a person in a case where the use is not an appropriate
17 use of the network by the person;
- 18 (d) reviewing a decision to take such disciplinary action.