

Surveillance Devices Regulations 1999

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THE TEXT OF THE LEGISLATION FOLLOWS

Surveillance Devices Regulations 1999

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Surveillance Devices Regulations 1999

1. Citation

These regulations may be cited as the *Surveillance Devices Regulations 1999*.

2. Commencement

These regulations come into operation on the day on which the *Surveillance Devices Act 1998* comes into operation.

3. Forms

- (1) A warrant issued under section 13, 14, 17, 19 or 22 of the Act is to be in the form of Form 1 in Schedule 1, or such other form as the Judge or Magistrate approves.
- (2) An application for emergency authorization under section 21 of the Act is to be in the form of Form 2 in Schedule 1.
- (3) An emergency authorization issued under section 21 of the Act is to be in the form of Form 3 in Schedule 1.
- (4) An application to a magistrate for a tracking device warrant or a tracking device (maintenance/ retrieval) warrant is to be in the form of Form 4 in Schedule 1.

[Regulation 3 amended in Gazette 8 February 2000 p.458.]

4. Law enforcement officers

Fisheries officers (as defined in the *Fish Resources Management Act 1994*) employed in the Serious Offences Unit of the Department (as defined in that Act) are a prescribed class of persons for the purposes of paragraph (d) of the definition of “law enforcement officer” in section 3(1) of the Act.

[Regulation 4 inserted in Gazette 23 Sep 2005 p. 4363.]

5. Commonwealth agencies, instrumentalities and bodies

The following Commonwealth agencies, instrumentalities and bodies are prescribed for the purposes of section 4(2) of the Act —

- (a) Australian Security Intelligence Organization continued by section 6 of the *Australian Security Intelligence Organization Act 1979* of the Commonwealth;
- (b) Australian Federal Police established by section 6 of the *Australian Federal Police Act 1979* of the Commonwealth;
- (c) Australian Customs Service referred to in the *Customs Act 1901* of the Commonwealth;
- (d) Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974* of the Commonwealth;
- (e) the department of the Commonwealth public service responsible for administering the *Migration Act 1958* of the Commonwealth; and
- (f) each of the armed forces of the Commonwealth.

6. Use of tracking devices without a warrant

- (1) For the purposes of section 7(2)(d) of the Act the following circumstances are prescribed, that is, where a tracking device is attached, installed, used or maintained, or caused to be attached, installed, used or maintained —

-
- (a) by an emergency service to locate the person who is, or object that is, the subject of a search operation;
 - (b) by the person in charge of a hospital or nursing home in relation to a vulnerable patient to enable the person in charge to locate the vulnerable patient if he or she gets lost or goes missing;
 - (c) by the superintendent of a prison in relation to a prisoner to enable the superintendent to locate the prisoner if he or she escapes from legal custody;
 - (d) by a researcher in relation to an object the geographical location of which is relevant to research being carried out by that person; or
 - (e) for the purposes of section 32(1)(b), 52(2)(a) or 62(2)(a) of the *Sentence Administration Act 1995*.
- (2) For the purposes of section 7(2)(d) of the Act the following circumstance is prescribed — where a person uses, or causes to be used, a tracking device in relation to an object that —
- (a) was in the person’s possession or under the person’s control when the device was attached or installed;
 - (b) is no longer in the person’s possession or under the person’s control; and
 - (c) the person reasonably believes to have been stolen.
- (3) As soon as practicable after a tracking device is attached, installed or used in relation to a vulnerable patient in circumstances described in subregulation (1)(b) the person in charge of the hospital or nursing home must give written notice of the attachment, installation or use to —
- (a) if a guardian has been appointed for the patient under the *Guardianship and Administration Act 1990*, the guardian; or
 - (b) otherwise —
 - (i) the patient’s next of kin; or
 - (ii) if the patient’s next of kin is not known, the Public Advocate under the *Guardianship and*

Administration Act 1990.

(4) In this regulation —

“emergency service” means —

- (a) the police force of the State or of another State or a Territory;
- (b) the Fire and Emergency Services Authority of Western Australia established by the *Fire and Emergency Services Authority of Western Australia Act 1998* or an equivalent authority of another State or a Territory; or
- (c) a voluntary or community rescue organisation;

“hospital” has the same meaning as in the *Hospitals and Health Services Act 1927*;

“nursing home” means a facility at which an approved provider (as defined in the *Aged Care Act 1997* of the Commonwealth) provides residential care (as defined in that Act);

“prison” has the same meaning as in the *Prisons Act 1981*;

“researcher” means —

- (a) a member of the staff of, or a student at, a school, college, university or other educational or training institution; or
- (b) a member of the staff of, or person working for, a government agency, instrumentality or body;

“superintendent” has the same meaning as in the *Prisons Act 1981*;

“vulnerable patient” means a hospital patient or nursing home resident who, in the opinion of the person in charge of the hospital or nursing home —

- (a) is likely, due to illness, lack of awareness or other incapacity, to leave the hospital or nursing home without having due regard to his or her health and safety;

- (b) being under a legal obligation to remain in the hospital or nursing home, is likely to attempt to leave; or
- (c) is likely to be taken away from the hospital or nursing home without the consent of the patient or the person in charge.

7. Storage and destruction of Part 5 records

- (1) The Commissioner of Police, the Anti-Corruption Commission and the Australian Crime Commission must —
 - (a) keep every Part 5 record in a secure place in accordance with section 41(1)(a) of the Act as if it were a record obtained under a warrant; and
 - (b) destroy a Part 5 record when it would be required to do so under section 41(1)(b) of the Act if the Part 5 record were a record obtained under a warrant.
- (2) The Commissioner of Police, the Anti-Corruption Commission and the Australian Crime Commission must keep such records concerning Part 5 records as are necessary to enable documents and information to be identified and obligations under this Act to be complied with.
- (3) In this regulation —
“Part 5 record” means a record or report delivered to the police force, the Anti-Corruption Commission or the Australian Crime Commission in accordance with an order under section 31(3)(b) of the Act.

[Section 7 amended by No. 74 of 2004 s. 73(2).]

8. Annual reports

- (1) The information relating to applications for warrants and extensions of warrants required by section 43 of the Act to be contained in an annual report is to include the number of such applications that were —
 - (a) withdrawn;

- (b) made by the applicant on behalf of another law enforcement officer; and
 - (c) made by means other than filing a written application at the court.
- (2) The information relating to applications for emergency authorizations required by section 43 of the Act to be contained in an annual report is to include the number of such applications that were withdrawn.

9. Unlawful possession of surveillance information

- (1) A person who is unlawfully in possession of surveillance information commits an offence.

Penalty: \$5 000

- (2) It is lawful for a person to be in possession of surveillance information only if —
- (a) the person is a law enforcement officer and has possession of the surveillance information in the course of his or her duty;
 - (b) the person is assisting a law enforcement officer in the exercise of the officer's duty and has possession of the surveillance information in the course of providing that assistance;
 - (c) the surveillance information was obtained in accordance with Part 5 of the Act; or
 - (d) the surveillance information was obtained by the person —
 - (i) from a person who was lawfully in possession of that information; and
 - (ii) in circumstances where the publication or communication of the surveillance information to the person was not an offence under section 9 of the Act.
- (3) In this regulation —

“surveillance information” means a report or record of a private conversation or private activity of a person, or of the geographical location of a person or object, that was obtained, directly or indirectly, through the use of a surveillance device.

Schedule 1 — Forms

[r. 3]

No.	Form	Section of Act
1	Warrant	13, 14, 17, 19 and 22
2	Application for emergency authorization	21
3	Emergency authorization	21
4	Application for — <ul style="list-style-type: none">• tracking device warrant• tracking device (maintenance/retrieval) warrant	15 and 19

Surveillance Devices Act 1998, ss. 13, 14, 17, 19 and 22
Warrant

Supreme Court Judge
 Magistrate
 At.....

Strike out any parts of this form that are not applicable

Person to whom warrant is issued	Name _____
	<input type="checkbox"/> Member of police force
	<input type="checkbox"/> Anti-Corruption Commission officer
	<input type="checkbox"/> Member of staff of Australian Crime Commission
	<input type="checkbox"/> Warrant issued on behalf of another law enforcement officer (Name) _____
Person, object or premises under surveillance	<input type="checkbox"/> Person _____
	<input type="checkbox"/> Unknown person
	<input type="checkbox"/> Object _____
	<input type="checkbox"/> Premises _____
Offence	Offence _____
	Act or Regulations _____
	Section or regulation no. _____

Authority to use surveillance device	This warrant authorizes you —
	<input type="checkbox"/> to attach or install, use, maintain and retrieve a — <ul style="list-style-type: none"> <input type="checkbox"/> listening device <input type="checkbox"/> optical surveillance device <input type="checkbox"/> tracking device <input type="checkbox"/> in relation to a tracking device attached to, or installed in, a vehicle, to — <ul style="list-style-type: none"> <input type="checkbox"/> maintain the device <input type="checkbox"/> retrieve the device <input type="checkbox"/> maintain and retrieve the device <input type="checkbox"/> to retrieve a — <ul style="list-style-type: none"> <input type="checkbox"/> listening device <input type="checkbox"/> optical surveillance device <input type="checkbox"/> tracking device attached or installed under an emergency authorization
	The surveillance device may be attached or installed, used or maintained —
	<input type="checkbox"/> in, on or at the premises under surveillance <input type="checkbox"/> in or on the object under surveillance <input type="checkbox"/> in respect of the private conversations, private activities or geographical location of the person under surveillance, at premises where the person is reasonably believed to be or is likely to be
	<input type="checkbox"/> Where practicable the surveillance device should be retrieved or rendered inoperable during the period that the warrant is in force

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Schedule 1 Forms

Authority to enter premises	<p>This warrant authorizes you to enter, by force if necessary —</p> <ul style="list-style-type: none"> <input type="checkbox"/> (specified premises) _____ <input type="checkbox"/> _____ <input type="checkbox"/> any premises where the object or person under surveillance is reasonably believed to be or is likely to be and any premises adjoining or providing access to those premises <input type="checkbox"/> any premises where the vehicle on or in which the device is attached or installed may for the time being be <input type="checkbox"/> any premises where the surveillance device to be retrieved may for the time being be
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Authority to use electricity supply	<p><input type="checkbox"/> This warrant authorizes you to connect the surveillance device to an electricity supply system and to use electricity from that system to operate the device</p>
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Authority to remove vehicle	<p><input type="checkbox"/> This warrant authorizes you to temporarily remove this vehicle from this premises for the purpose of —</p> <ul style="list-style-type: none"> <input type="checkbox"/> attaching <input type="checkbox"/> installing <input type="checkbox"/> maintaining <input type="checkbox"/> retrieving <p>a tracking device</p> <p>Vehicle _____</p> <p>Premises _____</p> <p>You must return the vehicle to the premises when the device has been attached, installed, maintained or retrieved</p>
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Period of warrant	<p>___/___/___ to ___/___/___, being _____ days</p> <p>The warrant may be used at any time of the day or night</p>
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Conditions	<p>This warrant is subject to these conditions</p>
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Issue of warrant	Signature
	Judge / Magistrate
	Date
	Time

Surveillance Devices Act 1998, s. 21
Application for emergency authorization

Strike out any parts of this form that are not applicable

Applicant	Name _____
	Business address _____
	Postcode _____
	Phone no. _____
	<input type="checkbox"/> Member of police force <input type="checkbox"/> Anti-Corruption Commission officer <input type="checkbox"/> Member of staff of Australian Crime Commission

Person, object or premises under surveillance	<input type="checkbox"/> Person _____
	<input type="checkbox"/> Unknown person _____
	<input type="checkbox"/> Object _____
	<input type="checkbox"/> Premises _____

Action for which authorization is required	Authorization is required to —
	<input type="checkbox"/> attach or install <input type="checkbox"/> use <input type="checkbox"/> maintain <input type="checkbox"/> a listening device to record, monitor, or listen to a private conversation <input type="checkbox"/> an optical surveillance device to record visually or observe a private activity <input type="checkbox"/> a tracking device to determine the geographical location of a person or object
	in relation to the —
	<input type="checkbox"/> premises under surveillance <input type="checkbox"/> object under surveillance <input type="checkbox"/> person under surveillance
	<input type="checkbox"/> retrieve — <input type="checkbox"/> a listening device <input type="checkbox"/> an optical surveillance device <input type="checkbox"/> a tracking device

Grounds	Imminent threat
	<input type="checkbox"/> Threat of serious violence to a person Name _____
	<input type="checkbox"/> Threat of substantial damage to property Description _____

Grounds cont.	Drug offence or ACC scheduled offence
	<input type="checkbox"/> Indictable drug offence Relevant section of <i>Misuse of Drugs Act 1981</i> — <input type="checkbox"/> 6(1) <input type="checkbox"/> 7(1) <input type="checkbox"/> 33(1)(a) <input type="checkbox"/> 33(2)(a)
	<input type="checkbox"/> External indictable drug offence External law _____ Corresponding section of <i>Misuse of Drugs Act 1981</i> — <input type="checkbox"/> 6(1) <input type="checkbox"/> 7(1) <input type="checkbox"/> 33(1)(a) <input type="checkbox"/> 33(2)(a)
	<input type="checkbox"/> ACC Scheduled offence Offence _____ Relevant Act _____ section _____
	The offence — <input type="checkbox"/> has been committed <input type="checkbox"/> may have been committed <input type="checkbox"/> is being committed <input type="checkbox"/> is about to be committed <input type="checkbox"/> is likely to be committed Date offence committed or expected to be committed _____
	The use of the surveillance device is immediately necessary for the purpose of — <input type="checkbox"/> dealing with the threat <input type="checkbox"/> investigating the offence <input type="checkbox"/> enabling evidence to be obtained of — <input type="checkbox"/> the commission of the offence <input type="checkbox"/> the identity of the offender <input type="checkbox"/> the location of the offender
These factors make the circumstances serious _____ _____ _____	
These factors make the matter urgent _____ _____ _____	
Reasons an application under section 15 or 16 for a warrant is not practicable _____ _____ _____	

Surveillance Devices Act 1998, s. 21
Emergency authorization

Strike out any parts of this form that are not applicable

Authorized person	Name
	<input type="checkbox"/> Commissioner of Police <input type="checkbox"/> Deputy Commissioner of Police <input type="checkbox"/> Assistant Commissioner of Police <input type="checkbox"/> Anti-Corruption Commission officer authorized by — <input type="checkbox"/> Chairman of the Anti-Corruption Commission <input type="checkbox"/> 2 members of the Anti-Corruption Commission <input type="checkbox"/> Person authorized by Chair of Board of Australian Crime Commission

Person to whom authorization is issued	Name
	<input type="checkbox"/> Member of the police force <input type="checkbox"/> Anti-Corruption Commission officer <input type="checkbox"/> Member of staff of Australian Crime Commission

Person, object or premises under surveillance	<input type="checkbox"/> Person _____
	<input type="checkbox"/> Unknown person _____
	<input type="checkbox"/> Object _____
	<input type="checkbox"/> Premises _____

Authorization to use surveillance device	This authorization authorizes you to —
	<input type="checkbox"/> attach or install <input type="checkbox"/> use <input type="checkbox"/> maintain
	<input type="checkbox"/> a listening device to record, monitor, or listen to a private conversation
	<input type="checkbox"/> an optical surveillance device to record visually or observe a private activity
	<input type="checkbox"/> a tracking device to determine the geographical location of a person or object
	in relation to the —
	<input type="checkbox"/> premises under surveillance
	<input type="checkbox"/> object under surveillance
	<input type="checkbox"/> person under surveillance
	<input type="checkbox"/> retrieve —
<input type="checkbox"/> a listening device	
<input type="checkbox"/> an optical surveillance device	
<input type="checkbox"/> a tracking device	

	Signature
	Date
	Time

<p><i>Surveillance Devices Act 1998, ss. 15 and 19</i></p> <p>Application for —</p> <ul style="list-style-type: none"> • tracking device warrant • tracking device (maintenance/retrieval) warrant 	
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Strike out any parts of this form that are not applicable

Applicant	Name _____
	Business address _____
	Postcode _____
	Phone no. _____
	<input type="checkbox"/> Member of police force <input type="checkbox"/> Anti-Corruption Commission officer <input type="checkbox"/> Member of staff of Australian Crime Commission <input type="checkbox"/> Application is made on behalf of another law enforcement officer (Name) _____

Person, object or premises under surveillance	<input type="checkbox"/> Person (see note 1) _____
	<input type="checkbox"/> Unknown person _____
	<input type="checkbox"/> Object _____
	<input type="checkbox"/> Premises _____

Nature of warrant	<input type="checkbox"/> Tracking device warrant (s. 13)
	<input type="checkbox"/> Tracking device (maintenance/retrieval) warrant (s. 14) to —
	<input type="checkbox"/> maintain a tracking device
	<input type="checkbox"/> retrieve a tracking device
	<input type="checkbox"/> maintain and retrieve a tracking device
<input type="checkbox"/> New warrant <input type="checkbox"/> Extension of current warrant	

Period of warrant	Period for which warrant is required _____ days
	Reason this period is required _____ _____

Grounds	Tracking device warrant (s. 13)
	Offence _____
	Act or Regulations _____
	Section or regulation no. _____

	<p>The offence —</p> <p><input type="checkbox"/> has been committed <input type="checkbox"/> may have been committed</p> <p><input type="checkbox"/> is being committed <input type="checkbox"/> is about to be committed</p> <p><input type="checkbox"/> is likely to be committed</p> <p>Date offence committed or expected to be committed _____</p> <p>The use of a surveillance device would be likely to —</p> <p><input type="checkbox"/> assist an investigation into the offence</p> <p><input type="checkbox"/> enable evidence to be obtained of —</p> <p><input type="checkbox"/> the commission of the offence</p> <p><input type="checkbox"/> the identity of the offender</p> <p><input type="checkbox"/> the location of the offender</p> <p>Tracking device (maintenance/retrieval) warrant (s. 14)</p> <p>Vehicle _____</p> <p>Location when device installed _____</p> <p>Current location _____</p> <p>Person who installed device _____</p> <p><input type="checkbox"/> Member of police force</p> <p><input type="checkbox"/> Anti-Corruption Commission officer</p> <p><input type="checkbox"/> Member of staff of National Crime Authority</p> <p><input type="checkbox"/> Member of prescribed class of persons</p> <p>Specify class _____</p>
<p>Entry to premises</p>	<p>Entry, by force if necessary, is required to —</p> <p><input type="checkbox"/> (specified premises) _____</p> <p>_____</p> <p><input type="checkbox"/> any premises where the object or person under surveillance is reasonably believed to be or is likely to be and any premises adjoining or providing access to those premises</p> <p><input type="checkbox"/> any premises where the vehicle on or in which the device is attached or installed may for the time being be</p> <p><input type="checkbox"/> any premises where the surveillance device to be retrieved may for the time being be</p>
<p>Use of electricity supply</p>	<p><input type="checkbox"/> Authority is required to connect the surveillance device to an electricity supply system and use electricity from that system to operate the device</p>

Surveillance Devices Regulations 1999

Schedule 1 Forms

Removal of vehicle	<input type="checkbox"/> Authority is required to temporarily remove a vehicle from a premises for the purpose of —
	<input type="checkbox"/> attaching <input type="checkbox"/> installing <input type="checkbox"/> maintaining <input type="checkbox"/> retrieving
	a tracking device
	Vehicle _____
	Premises _____

Signature of applicant	_____	Date
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Note 1 — Identification of person under surveillance
The person under surveillance may be identified by a numerical reference identifying the relevant law enforcement agency and the year in which the application is made.
For example —WAPS 1/1999 (for the first application in 1999 by a member of the WA police force)

Note 2 — Lodging of Application for warrant
The application is to be lodged with the Magistrate.
An application must be accompanied by —
• an “Authorization of surveillance”; and
• an affidavit containing a “Statement of facts in support of application for warrant” in accordance with *Surveillance Devices Act 1998*, s. 15(3)(a), (b), (c) and (f).
An application should also be accompanied by a draft warrant in the form of the warrant being sought.

[Schedule 1 amended in Gazette 8 February 2000 pp.458-60; amended by No. 74 of 2004 s. 73(3) and (4).]

Notes

- ¹ This is a compilation of the *Surveillance Devices Regulations 1999* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Surveillance Devices Regulations 1999</i>	18 Nov 1999 p. 5769-86	22 Nov 1999 (see r. 2 and <i>Gazette</i> 22 Nov 1999 p. 5843)
<i>Surveillance Devices Amendment Regulations 1999</i>	8 Feb 2000 p. 457-60	8 Feb 2000
<i>Australian Crime Commission (Western Australia) Act 2004</i> s. 73 assented on 8 Dec 2004		1 Feb 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Surveillance Devices Amendment Regulations 2005</i>	23 Sep 2005 p. 4363	23 Sep 2005