

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.