



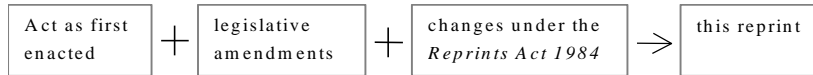
Western Australia

# **Surveillance Devices Act 1998**

**Reprint 2: The Act as at 8 December 2006**

## Guide for using this reprint

### What the reprint includes



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## Surveillance Devices Act 1998

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**Defined Terms**



Reprinted under the  
*Reprints Act 1984* as  
at 8 December 2006

Western Australia

## Surveillance Devices Act 1998

**An Act to regulate the use of listening devices in respect of private conversations, optical surveillance devices in respect of private activities, and tracking devices in respect of the location of persons and objects, to repeal and replace the *Listening Devices Act 1978*<sup>2</sup>, to amend the *Evidence Act 1906*<sup>3</sup> with regard to transcripts of recordings, and for connected purposes.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Surveillance Devices Act 1998*<sup>1</sup>.

### 2. Commencement

This Act comes into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

### 3. Interpretation

(1) In this Act, unless the contrary intention appears —

“**Attorney General**” means the Attorney General of the State or, where there is a vacancy in the office of Attorney General, the Minister for Justice of the State;

“**Australian Crime Commission**” means the Australian Crime Commission established by the *Australian Crime Commission Act 2002* of the Commonwealth;

“**authorised person**” means —

- (a) in the case of the police force of the State —
  - (i) the Commissioner of Police;
  - (ii) a Deputy Commissioner of Police; and
  - (iii) an Assistant Commissioner of Police;
- (aa) in the case of the Corruption and Crime Commission, an officer of the Corruption and Crime Commission authorised for that purpose by the Commission;
- (b) in the case of a designated Commission, a person authorised for the purpose by the designated Commission; and
- (c) in the case of the Australian Crime Commission, a person authorised for the purpose by the Chair of the Board of the Australian Crime Commission;

“**building**” includes any structure;



**“Chief Magistrate”** means the Chief Magistrate of the Magistrates Court;

**“composite emergency authorisation”** means an emergency authorisation issued under Division 2 of Part 4 in respect of more than one kind of surveillance device or a surveillance device that has more than one kind of function;

**“composite warrant”** means a warrant issued under section 13(10) or 22(4) in respect of more than one kind of surveillance device or a surveillance device that has more than one kind of function;

**“connected device”** means an instrument, apparatus, or equipment that is not a surveillance device but is ancillary to the use or installation of a surveillance device and is capable of being used directly or indirectly in connection with, as the result of, or for the purposes of the commission of an offence under this Act;

**“Corruption and Crime Commission”** has the meaning given to “Commission” in section 3 of the *Corruption and Crime Commission Act 2003*;

**“designated Commission”** means a Royal Commission under the *Royal Commissions Act 1968* to which, by the terms of appointment or in an instrument made by the Governor, this Act is expressly declared to apply;

**“emergency authorisation”** means an authorisation issued by an authorised person to a member of the police force of the State, an officer of the Corruption and Crime Commission, an officer of a designated Commission or a member of the staff of the Australian Crime Commission under section 21;

**“external indictable drug offence”** means an offence under the law of a State (other than Western Australia) or a Territory that corresponds to an offence of a kind referred to in the definition of “indictable drug offence”;

**“indictable drug offence”** means an offence under section 6(1), 7(1), 33(1)(a), 33(2)(a) or 33(3)(a) of the *Misuse of Drugs Act 1981*;

**“law enforcement officer”** means —

- (a) a member of the police force of the State or of another State or a Territory;
- (aa) an officer of the Corruption and Crime Commission;
- (b) an officer of a designated Commission;
- (c) a member of the staff of the Australian Crime Commission who is a member of the Australian Federal Police or of the police force of a State or Territory;
- (d) a person who is a member of such other class of persons as is prescribed, being persons who are officers or employees of a department, authority or agency of the State or of another State or a Territory;

**“listen to”** includes hear;

**“listening device”** means any instrument, apparatus, equipment, or other device capable of being used to record, monitor or listen to a private conversation or words spoken to or by any person in private conversation, but does not include a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and permit that person to hear only sounds ordinarily audible to the human ear;

**“listening device warrant”** means a warrant issued under Part 4 by a judge to authorise the installation, use, maintenance, and retrieval of a listening device;

**“maintain”**, in relation to a surveillance device, includes adjust, repair, reposition, and service;

**“member of the staff of the Australian Crime Commission”** has the meaning given to the term “member of the staff of the ACC” in section 4(1) of the *Australian Crime*

*Commission Act 2002* of the Commonwealth as extended by section 3(3) of the *Australian Crime Commission (Western Australia) Act 2004*;

**“officer of a designated Commission”** means —

- (a) a person appointed by the Attorney General to assist a designated Commission; or
- (b) any other person appointed, employed, seconded or engaged to assist a designated Commission;

**“officer of the Corruption and Crime Commission”** has the meaning given to “officer of the Commission” in section 3 of the *Corruption and Crime Commission Act 2003*;

**“optical surveillance device”** means any instrument, apparatus, equipment, or other device capable of being used to record visually or observe a private activity, but does not include spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment;

**“optical surveillance device warrant”** means a warrant issued under Part 4 by a judge to authorise the installation, use, maintenance, and retrieval of an optical surveillance device;

**“party”** means —

- (a) in relation to a private conversation —
  - (i) a person by or to whom words are spoken in the course of the conversation; or
  - (ii) a person who, with the express or implied consent of any of the persons by or to whom words are spoken in the course of the conversation, records, monitors or listens to those words;

and

- (b) in relation to a private activity —
  - (i) a person who takes part in the activity; or

- (ii) a person who, with the express or implied consent of any of the persons taking part in the activity, observes or records the activity;

**“premises”** includes all or part of any land, building, aircraft or vehicle, and any place whether built on or not;

**“principal party”** means —

- (a) in relation to a private conversation, a person by or to whom words are spoken in the course of the conversation; and
- (b) in relation to a private activity, a person who takes part in the activity;

**“private activity”** means any activity carried on in circumstances that may reasonably be taken to indicate that any of the parties to the activity desires it to be observed only by themselves, but does not include an activity carried on in any circumstances in which the parties to the activity ought reasonably to expect that the activity may be observed;

**“private conversation”** means any conversation carried on in circumstances that may reasonably be taken to indicate that any of the parties to the conversation desires it to be listened to only by themselves, but does not include a conversation carried on in any circumstances in which the parties to the conversation ought reasonably to expect that the conversation may be overheard;

**“record”**, in relation to a private conversation, includes a statement prepared from such a record and **“to record”** includes visual and sound recording;

**“report”**, in relation to a private conversation, includes a report of the substance, meaning or purport of the conversation;

**“surveillance device”** means a listening device, an optical surveillance device or a tracking device;

**“surveillance device (retrieval) warrant”** means a warrant issued under section 22 by a judge to authorise the retrieval of a surveillance device that has been attached or installed in accordance with an emergency authorisation issued under section 21;

**“tracking device”** means any instrument, apparatus, equipment, or other device capable of being used to determine the geographical location of a person or object;

**“tracking device (maintenance/retrieval) warrant”** means a warrant issued under section 14 to authorise the maintenance or retrieval or the maintenance and retrieval of a tracking device or devices that have been attached or installed on a vehicle situated in a public place by a person referred to in section 7(2)(a);

**“tracking device warrant”** means a warrant issued under Part 4 to authorise the attachment, installation, use, maintenance and retrieval of a tracking device;

**“vehicle”** includes a vessel;

**“warrant”** means a warrant issued under Part 4.

- (2) An instrument, apparatus, equipment, or other device is to be regarded for the purposes of this Act as a listening device, an optical surveillance device, a tracking device, or more than one of those devices, if it is capable of performing the function of such a device or devices as described in the definitions in subsection (1).
- (3) For the purposes of a designated Commission this Act operates as if —
- (a) a reference in section 5(3)(b) or 6(3)(b)(ii) to a suspected criminal offence included a reference to suspected misconduct;
  - (b) a reference in section 13(1)(a) or (b), (2)(a) or (8)(a) or 17(1)(a) or (b) to an offence included a reference to an act of misconduct; and

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(c) a reference in section 13(1)(b), (2)(a) or (8)(a) or 17(1)(b) to a suspected offence included a reference to suspected misconduct.

(4) In subsection (3) —

**“misconduct”** has the meaning given to that term by section 4 of the *Corruption and Crime Commission Act 2003*.

*[Section 3 amended by No. 78 of 2003 s. 74; No. 59 of 2004 s. 141; No. 62 of 2004 s. 9(3); No. 74 of 2004 s. 72(2); No. 30 of 2006 s. 16.]*

**4. Application**

(1) Subject to subsection (2), this Act binds the Crown in right of the State and, so far as the legislative power of the Parliament provides, in all its other capacities.

(2) This Act does not apply to the activities and operations of a prescribed Commonwealth agency, instrumentality or body.

**4A. State police working for Australian Crime Commission**

A power under this Act may be exercised in a person’s capacity as a member of the police force of the State even if the person is also a member of the staff of the Australian Crime Commission.

*[Section 4A inserted by No. 35 of 2001 s. 4; amended by No. 74 of 2004 s. 72(3).]*

**[4B.** *Expired 16 Apr 2004<sup>4</sup>.*]

**Part 2 — Regulation of installation and use of surveillance devices**

**5. Regulation of use, installation and maintenance of listening devices**

- (1) Subject to subsections (2) and (3), a person shall not install, use, or maintain, or cause to be installed, used, or maintained, a listening device —
- (a) to record, monitor, or listen to a private conversation to which that person is not a party; or
  - (b) to record a private conversation to which that person is a party.

**Penalty:**

- (a) for an individual: \$5 000 or imprisonment for 12 months, or both;
  - (b) for a body corporate: \$50 000.
- (2) Subsection (1) does not apply to —
- (a) the installation, use, or maintenance of a listening device in accordance with a listening device warrant issued under Part 4;
  - (b) the installation, use, or maintenance of a listening device in accordance with an emergency authorisation issued under Part 4;
  - (c) the installation, use, or maintenance of a listening device in accordance with a law of the Commonwealth;
  - (d) the use of a listening device in accordance with Part 5; or
  - (e) the use of a listening device resulting in the unintentional hearing of a private conversation.

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- (3) Subsection (1)(b) does not apply to the installation, use, or maintenance of a listening device by or on behalf of a person who is a party to a private conversation if —
- (a) that installation, use or maintenance is carried out in the course of that person’s duty as a law enforcement officer;
  - (b) that installation, use or maintenance is carried out by that person as instructed or authorised by a law enforcement officer in the course of an investigation into a suspected criminal offence;
  - (c) each principal party to the private conversation consents expressly or impliedly to that installation, use, or maintenance; or
  - (d) a principal party to the private conversation consents expressly or impliedly to that installation, use, or maintenance and the installation, use, or maintenance is reasonably necessary for the protection of the lawful interests of that principal party.

**6. Regulation of use, installation and maintenance of optical surveillance devices**

- (1) Subject to subsections (2) and (3), a person shall not install, use, or maintain, or cause to be installed, used, or maintained, an optical surveillance device —
- (a) to record visually or observe a private activity to which that person is not a party; or
  - (b) to record visually a private activity to which that person is a party.

**Penalty:**

- (a) for an individual: \$5 000 or imprisonment for 12 months, or both;
- (b) for a body corporate: \$50 000.



- (2) Subsection (1) does not apply to —
- (a) the installation, use, or maintenance of an optical surveillance device in accordance with a warrant issued under Part 4;
  - (b) the installation, use, or maintenance of an optical surveillance device in accordance with an emergency authorisation issued under Part 4;
  - (c) the installation, use, or maintenance of an optical surveillance device in accordance with a law of the Commonwealth;
  - (d) the use of an optical surveillance device in accordance with Part 5; or
  - (e) the use of an optical surveillance device resulting in the unintentional recording or observation of a private activity.
- (3) Subsection (1)(b) does not apply to the installation, use, or maintenance of an optical surveillance device by or on behalf of a person who is a party to a private activity if —
- (a) each principal party to the private activity consents expressly or impliedly to that installation, use, or maintenance; or
  - (b) a principal party to the private activity consents expressly or impliedly to that installation, use, or maintenance and the installation, use, or maintenance is —
    - (i) carried out in the course of that person's duty as a law enforcement officer;
    - (ii) carried out by that person as instructed or authorised by a law enforcement officer in the course of an investigation into a suspected criminal offence; or
    - (iii) reasonably necessary for the protection of the lawful interests of that principal party.

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**7. Regulation of use, installation and maintenance of tracking devices**

- (1) Subject to subsections (2) and (3), a person shall not attach, install, use, or maintain, or cause to be attached, installed, used, or maintained, a tracking device to determine the geographical location of a person or object without the express or implied consent of that person or, in the case of a device used or intended to be used to determine the location of an object, without the express or implied consent of the person in possession or having control of that object.

Penalty:

- (a) for an individual: \$5 000 or imprisonment for 12 months, or both;
  - (b) for a body corporate: \$50 000.
- (2) Subsection (1) does not apply to —
- (a) the attachment, installation or maintenance by a law enforcement officer of a tracking device on a vehicle that is situated in a public place nor the use of a tracking device that has been so attached or installed where the attachment, installation, maintenance, or use is carried out by a person in the course of that person's duty as a law enforcement officer;
  - (b) the attachment, installation, use, or maintenance of a tracking device in accordance with a warrant issued under Part 4;
  - (c) the attachment, installation, use, or maintenance of a tracking device in accordance with an emergency authorisation granted under Part 4;
  - (d) the attachment, installation, use or maintenance of a tracking device in prescribed circumstances; or
  - (e) the attachment, installation, use, or maintenance of a tracking device in accordance with a law of the Commonwealth.

- (3) Subsection (1) does not apply to the use of a tracking device by a person in the course of that person's duty as a law enforcement officer where the device has not been attached or installed or caused to be attached or installed by that person or by a person acting on behalf of that person.

**8. Technical assistance**

If a law enforcement officer is authorised by or under this Act to install, attach, use, maintain or retrieve a surveillance device that authorisation extends to any person who provides practical assistance or technical expertise to the law enforcement officer in that installation, attachment, use, maintenance or retrieval.

**Part 3 — Restriction on publication or communication  
of private conversations and activities**

**9. Prohibition of publication or communication of private  
conversations or activities**

- (1) Subject to subsection (2), a person shall not knowingly publish or communicate a private conversation, or a report or record of a private conversation, or a record of a private activity that has come to the person's knowledge as a direct or indirect result of the use of a listening device or an optical surveillance device.

Penalty:

- (a) for an individual: \$5 000 or imprisonment for 12 months, or both;
  - (b) for a body corporate: \$50 000.
- (2) Subsection (1) does not apply —
- (a) where the publication or communication is made —
    - (i) to a party to the private conversation or the private activity;
    - (ii) with the express or implied consent of each principal party to the private conversation or private activity;
    - (iii) to any person or persons authorised for the purpose by the Commissioner of Police, the Corruption and Crime Commission or the Chair of the Board of the Australian Crime Commission;
    - (iiia) to a designated Commission or to any person or persons authorised for the purpose by a designated Commission;
    - (iv) by a law enforcement officer to the Director of Public Prosecutions of the State or of the Commonwealth or an authorised representative

of the Director of Public Prosecutions of the State or of the Commonwealth;

- (v) in the course of the duty of the person making the publication or communication;
  - (vi) for the protection of the lawful interests of the person making the publication or communication;
  - (vii) in the case of the use of a listening device or an optical surveillance device in the circumstances referred to in section 5(3)(d) or 6(3)(b)(iii), as the case requires, in the course of reasonable action taken to protect the lawful interests of the principal party to the conversation or activity who consented to the use of the device;
  - (viii) in accordance with Part 5; or
  - (ix) in the course of any legal proceedings;
- (b) where the publication or communication is made to a member of the police force of the State or of another State or a Territory in connection with —
- (i) an indictable drug offence or an external indictable drug offence; or
  - (ii) any other indictable matter of such seriousness as to warrant the publication or communication;

or

- (c) where the person making the publication or communication believes on reasonable grounds that it was necessary to make that publication or communication in connection with an imminent threat of serious violence to persons or of substantial damage to property.

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- (3) Subsection (2) only provides a defence if the publication or communication —
- (a) is not more than is reasonably necessary —
    - (i) in the public interest;
    - (ii) in the performance of a duty of the person making the publication or communication; or
    - (iii) for the protection of the lawful interests of the person making the publication or communication;
  - (b) is made to a person who has, or is believed on reasonable grounds by the person making the publication or communication to have, such an interest in the private conversation or activity as to make the publication or communication reasonable under the circumstances in which it is made;
  - (c) is made by a person who used the listening device to record, monitor or listen to that conversation or an optical surveillance device to record or observe that private activity in accordance with a warrant or an emergency authorisation issued under Part 4; or
  - (d) is made by an authorised person employed in connection with the security of the Commonwealth under an Act of the Commonwealth relating to the security of the Commonwealth.

*[Section 9 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(4); No. 30 of 2006 s. 17.]*

**10. Admissibility in criminal proceedings of information inadvertently obtained**

- (1) Where a private conversation or a private activity has inadvertently or unexpectedly come to the knowledge of a person as a direct or indirect result of the use of a listening

device or an optical surveillance device in accordance with a warrant or an emergency authorisation issued under Part 4 —

- (a) evidence of the conversation or activity; and
- (b) evidence obtained as a consequence of the conversation or activity so coming to the knowledge of that person,

may be given by that person in any criminal proceeding even if the warrant or emergency authorisation was not issued for the purpose of allowing that evidence to be obtained.

- (2) Subsection (1) does not render any evidence admissible if the application upon which the warrant or emergency authorisation was issued was not, in the opinion of the court, made in good faith.

**11. Presumption as to evidence obtained under warrant or emergency authorisation**

Where evidence of a private conversation or a private activity that is alleged to have been obtained as a direct or indirect result of the use of a listening device or an optical surveillance device under a warrant or an emergency authorisation is given by a member of the police force of the State, an officer of the Corruption and Crime Commission, an officer of a designated Commission or a member of the staff of the Australian Crime Commission in any civil or criminal proceeding, it shall be presumed in that proceeding unless the contrary is proved that —

- (a) the application upon which that warrant or emergency authorisation was issued was made in good faith; and
- (b) the evidence was properly obtained under and in accordance with that warrant or emergency authorisation.

*[Section 11 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(3); No. 30 of 2006 s. 18.]*

## **Part 4 — Warrants and emergency authorisations**

### **Division 1 — Judicial warrants**

#### **12. Interpretation of “court”**

In this Part other than in section 17(6) or 23(2) —

“**court**” means —

- (a) in relation to all matters concerning a listening device warrant or an optical surveillance device warrant to authorise the surveillance of a private conversation or a private activity and in relation to all matters concerning a surveillance device (retrieval) warrant, a judge; and
- (b) in relation to all matters concerning a tracking device warrant or a tracking device (maintenance/retrieval) warrant, a judge or a magistrate.

#### **13. Warrants for use etc. of surveillance devices**

- (1) A court may issue a listening device warrant, an optical surveillance device warrant or a tracking device warrant, if the court is satisfied, upon an application made in accordance with section 15, that there are reasonable grounds for believing that —
  - (a) an offence has been or may have been, is being or is about to be, or is likely to be, committed; and
  - (b) the use of a listening device, an optical surveillance device, or a tracking device would be likely to assist an investigation into that offence or suspected offence, or to enable evidence to be obtained of the commission of that offence, or the identity or location of the offender.



- (2) When considering an application for a listening device warrant, an optical surveillance device warrant or a tracking device warrant, the court must have regard to —
- (a) the nature of the offence or suspected offence in respect of which the warrant is sought;
  - (b) the extent to which the privacy of any person is likely to be affected by the use of a surveillance device under the warrant;
  - (c) the extent to which evidence or information is likely to be obtained by methods of investigation not involving the use of a surveillance device;
  - (d) the intelligence value and the evidentiary value of any information sought to be obtained;
  - (e) any other warrants sought or issued under this Act or the *Listening Devices Act 1978*<sup>5</sup> in connection with the same matter; and
  - (f) the public interest.
- (3) A court, when issuing a warrant under this Division, may authorise the use of a surveillance device in, on or at specified premises, and when doing so, the court shall by the warrant authorise —
- (a) the installation, maintenance, and retrieval of the device; and
  - (b) the entry, by force if necessary, into or onto the specified premises, or other specified premises adjoining or providing access to the specified premises, for any of the purposes referred to in paragraph (a).
- (4) A court, when issuing a warrant under this Division, may authorise the use of a surveillance device in or on a specified object, and when doing so, the court shall by the warrant authorise —
- (a) the installation, maintenance, and retrieval of the device; and

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**Part 4** Warrants and emergency authorisations

**Division 1** Judicial warrants

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- (b) the entry, by force if necessary, into or onto premises where the object is reasonably believed to be or is likely to be or other premises adjoining or providing access to those premises, for any of the purposes referred to in paragraph (a).
- (5) A court, when issuing a warrant under this Division, may authorise the use of a surveillance device in respect of the private conversations, private activities or geographical location of a specified person or a person whose identity is unknown and when doing so, the court shall by the warrant authorise —
  - (a) the installation, maintenance, and retrieval of the device into or onto premises where the person is reasonably believed to be or likely to be; and
  - (b) the entry, by force if necessary, into or onto premises referred to in paragraph (a), or other premises adjoining or providing access to those premises, for any of the purposes referred to in paragraph (a).
- (6) A court, when issuing a warrant under this Division, may authorise the connection of a surveillance device to an electricity supply system and the use of electricity from that system to operate the device.
- (7) A court, when issuing a tracking device warrant, may authorise the temporary removal of a vehicle from specified premises for the purpose of the attachment, installation, maintenance or retrieval of a tracking device and the return of the vehicle to those premises.
- (8) A warrant issued under this Division must specify —
  - (a) except in the case of a tracking device (maintenance/retrieval) warrant, the offence or suspected offence in respect of which the warrant is issued;
  - (b) where practicable in the case of a listening device warrant or an optical surveillance device warrant, the name of any person whose conversation or activity may

be monitored, recorded, listened to, or observed by the use of the listening device or optical surveillance device in accordance with the warrant;

- (c) where practicable in the case of a listening device warrant or an optical surveillance device warrant and except in the case of a warrant issued under subsection (5) in respect of a specified person or a person whose identity is unknown, the location of the premises in, on or at which a device is to be installed and conversations or activities monitored, recorded, listened to or observed by the use of the listening device or optical surveillance device in accordance with the warrant;
- (d) where practicable in the case of a tracking device warrant, the name of any person or a brief description of any object whose geographical location is sought to be determined by the tracking device;
- (e) in the case of a warrant issued under subsection (4), a brief description of the object in or on which a surveillance device may be used;
- (f) the period that the warrant is to be in force, being in every case a period not longer than 90 days;
- (g) that the warrant may be used at any time of the day or night within the period that it is in force;
- (h) except in the case of a tracking device (maintenance/retrieval) warrant, that where practicable the surveillance device should be retrieved or rendered inoperable during the period that the warrant is in force;
- (i) the name of the person to whom the warrant is issued, and, where the warrant is obtained on behalf of another person, the name of that other person; and
- (j) any conditions or restrictions subject to which premises may be entered or a surveillance device may be used under the warrant.

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- (9) A warrant under this Division authorises action in accordance with its authority by the person to whom it is issued, any other person on whose behalf it was obtained and any other person who is properly engaged in the investigation.
- (10) A court may issue one composite warrant having effect in accordance with its terms in respect of more than one kind of surveillance device or a surveillance device that has more than one kind of function so long as the court has the requisite jurisdiction in respect of each element of the warrant.
- (11) A warrant under this Division that refers to a surveillance device is to be taken to refer to such number of surveillance devices as the person to whom the warrant is issued reasonably believes to be necessary for the purposes of the investigation.
- (12) A court may issue a warrant under this Division subject to such conditions or restrictions as the court considers necessary in the public interest.

**14. Warrants for maintenance and retrieval of certain tracking devices**

- (1) A court may issue a tracking device (maintenance/retrieval) warrant, if the court is satisfied, upon an application made in accordance with section 15, that —
  - (a) a tracking device or devices has or have been attached or installed on a vehicle that was situated in a public place where the attachment or installation was carried out by a person in the course of that person's duty as a law enforcement officer; and
  - (b) the vehicle is no longer situated in a public place.
- (2) A court, when issuing a tracking device (maintenance/retrieval) warrant, may authorise the maintenance or retrieval or the maintenance and retrieval of a tracking device or devices which has or have been attached or installed on a specified vehicle, and when doing so, the court may by the warrant authorise the entry,

by force if necessary, into or onto specified premises or other premises where the specified vehicle may for the time being be.

- (3) A court, when issuing a tracking device (maintenance/retrieval) warrant, may authorise the temporary removal of a vehicle from specified premises for the purpose of the maintenance or retrieval or the maintenance and retrieval of a tracking device and the return of the vehicle to those premises.

**15. Applications for warrants**

- (1) An application for a warrant may be made by —
- (a) a member of the police force of the State;
  - (aa) an officer of the Corruption and Crime Commission;
  - (b) in the case of a designated Commission, a person authorised by the designated Commission; or
  - (c) a member of the staff of the Australian Crime Commission.
- (2) An application may be made to obtain a warrant on behalf of another law enforcement officer.
- (3) Subject to section 16, an application for a warrant is required to be in writing and —
- (a) in the case of an application by a member of the police force of the State, is required to attach an authorisation of the Commissioner of Police, a Deputy Commissioner of Police or an Assistant Commissioner of Police for the action proposed;
  - (aa) in the case of an application by an officer of the Corruption and Crime Commission, is required to attach an authorisation of the Corruption and Crime Commission for the action proposed;
  - (b) in the case of an application by an officer of a designated Commission, is required to attach an authorisation of the

- designated Commission or a person delegated by the designated Commission for the action proposed;
- (c) in the case of an application by a member of the staff of the Australian Crime Commission, is required to attach an authorisation of the Chair of the Board of the Australian Crime Commission or a person delegated by the Chair of the Board of the Australian Crime Commission for the action proposed;
  - (d) in the case of an application referred to in subsection (2), is required to specify the name of the other law enforcement officer on whose behalf the warrant is requested;
  - (e) is required to specify the nature of the warrant requested and set out the grounds on which the application is based;
  - (f) is required to include an affidavit of —
    - (i) the member of the police force of the State, an officer of the Corruption and Crime Commission, an officer of a designated Commission or member of the staff of the Australian Crime Commission in charge of the investigation; or
    - (ii) in the case of an application referred to in subsection (2), the law enforcement officer on whose behalf the warrant is requested,deposing to the facts required by the court to enable the court to deal with the application in accordance with section 13 or 14;
  - (g) is required to specify a period not longer than 90 days for which it is requested that the warrant be in force and give reasons for that specification;
  - (h) may request that the warrant authorise entry, by force if necessary, into or onto specified premises;

- (i) may request that the warrant authorise the use of a surveillance device in respect of the private conversations or private activities or geographical location of a specified person or a person whose identity is unknown and request that the warrant authorise entry into or onto any premises where the person is reasonably believed to be or likely to be or premises adjoining or providing access to those premises; and
  - (j) may request that the warrant authorise the use of a surveillance device in or on a specified object and request that the warrant authorise entry, by force if necessary, into or onto premises where the object is reasonably believed to be or is likely to be or other premises adjoining or providing access to those premises.
- (4) A court may require further information to be given, orally or by affidavit, in relation to an application for a warrant.

*[Section 15 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(3) and (4); No. 30 of 2006 s. 19.]*

**16. Radio/telephone applications for warrants**

- (1) Where it is impractical for a person who is entitled to apply for a warrant under section 15 to do so in person in accordance with that section, that person may apply to a court for a warrant by means of a radio, telephone, video recording, facsimile transmission or any other communication device.
- (2) The court must not issue a warrant following an application under this section if the court is satisfied that it would be practical in the circumstances for an application to be made and dealt with in accordance with section 15.
- (3) An application under this section is required, so far as is practicable in the circumstances, to contain the same information and take the same form as an application under section 15, but the affidavit referred to in that section may be

prepared and sworn after the application is made so long as it is sent to the court as required by section 17(3).

- (4) A person who is entitled to apply for a warrant under this Act may cause an application to be transmitted to the court under this section on his or her behalf by a member of the police force of the State, an officer of the Corruption and Crime Commission, an officer of a designated Commission or a member of the staff of the Australian Crime Commission.

*[Section 16 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(3); No. 30 of 2006 s. 20.]*

**17. Warrants issued following radio/telephone applications**

- (1) A court may issue a listening device warrant, an optical surveillance device warrant or a tracking device warrant such as might have been issued by a court if the application had been made under section 15 if the court is satisfied by an application made in accordance with section 16 that there are reasonable grounds for believing that —
- (a) an offence has been or may have been, is being or is about to be, or is likely to be, committed; and
  - (b) the immediate use of a listening device, an optical surveillance device, or a tracking device is necessary for the purpose of an investigation into that offence or suspected offence, or of enabling evidence to be obtained of the commission of that offence or the identity or location of the offender.
- (2) Where a court issues a warrant under this section —
- (a) the court must complete and sign the warrant;
  - (b) the court must inform the applicant of the terms of the warrant signed by the court;



- (c) the applicant must complete, in duplicate, a form of warrant in the terms furnished by the court and write on it the name of the judge or magistrate who issued it and the date on which and the time at which it was issued; and
- (d) the court must cause a written record to be made of —
  - (i) the name of the applicant;
  - (ii) the name of the member of the police force of the State, officer of the Corruption and Crime Commission, the officer of a designated Commission or the member of the staff of the Australian Crime Commission who transmitted the application to the court;
  - (iii) details of the application; and
  - (iv) the date and time the warrant is granted.
- (3) Where a court issues a warrant under this section, the applicant must, not later than the day after the expiry of the warrant, forward to the court that issued the warrant the form of warrant prepared by the applicant and the information prepared and affidavit sworn in connection with the application.
- (4) On receiving the documents referred to in subsection (3), the court must compare the copy of the form of warrant forwarded under that subsection with the warrant signed by the court and if satisfied they are identical in substance, must note this fact on the warrant signed by the court.
- (5) A form of warrant completed in accordance with subsection (2) by the applicant is authority for the use it authorises if it accords with the terms of the warrant signed by the court.
- (6) Where it is necessary for a court in any proceeding to be satisfied that the use, installation, maintenance, or retrieval of a surveillance device was authorised by a warrant issued under this section and the warrant signed by the court is not produced in evidence, the court shall assume, unless the contrary is

proved, that the use, installation, maintenance, or retrieval was not authorised by the warrant.

*[Section 17 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(3); No. 30 of 2006 s. 21.]*

**18. Restriction on further radio/telephone applications**

Where an application under section 16 has been refused, neither the applicant nor any other person who believes or has reasonable cause to believe that an application has been made in respect of the same matter, may make a further application under that section in respect of the same matter unless that applicant or other person satisfies a court that additional material information or evidence has been received since the time of the original application and is available.

**18A. Enhanced powers concerning surveillance devices**

- (1) In this section —  
“**section 5 offence**” has the meaning given by section 5 of the *Corruption and Crime Commission Act 2003*.
- (2) This section has effect if —
  - (a) a police officer applies under section 15 or 16 for a warrant and the offence concerned is a section 5 offence;  
or
  - (b) an officer of the Corruption and Crime Commission applies under section 15 or 16 for a warrant.
- (3) The effects of this section are that —
  - (a) instead of the court having to be satisfied that there are reasonable grounds for believing anything described in section 13(1)(a) or 17(1)(a), it is sufficient that the court be satisfied that there are reasonable grounds for suspecting it;
  - (b) in the case of an application referred to in subsection (2)(a) the court to which the application is

made is to regard the fact that the offence concerned is a section 5 offence as justifying investigative powers in addition to those that it might otherwise regard as being in the public interest;

- (c) in the case of an application referred to in subsection (2)(b), the court to which the application is made is to regard the fact that the application is made by the Corruption and Crime Commission or an officer of the Corruption and Crime Commission as justifying investigative powers in addition to those that it might otherwise regard as being in the public interest; and
- (d) anything that the warrant may authorise to be done if there is a reasonable belief as to any matter may be authorised by the warrant to be done also if there is a reasonable suspicion as to the matter.

*[Section 18A inserted by No. 78 of 2003 s. 74(1).]*

**19. Extension of warrants**

- (1) A person who is authorised under section 15 to apply for a warrant may apply to a court for an extension of the period that a warrant is to be in force.
- (2) An application for an extension under this section must be made —
  - (a) in the manner provided by section 15 in respect of an application for the issue of a warrant, but subject to any necessary modifications; and
  - (b) on or before the date the warrant is to expire.
- (3) If a court extends the period that a warrant is to be in force, the court must endorse on the warrant the date on which the extended warrant is to expire.
- (4) A warrant may be extended for a period not longer than 90 days, but nothing in this section prevents another application or

applications being made under this section for a further extension or extensions.

### **Division 2 — Emergency authorisations**

#### **20. Emergency use of surveillance devices**

A member of the police force of the State, an officer of the Corruption and Crime Commission, an officer of a designated Commission or a member of the staff of the Australian Crime Commission may —

- (a) install, use, or maintain, or cause to be installed, used, or maintained, a listening device to record, monitor, or listen to a private conversation to which that person is not a party;
- (b) install, use, or maintain, or cause to be installed, used, or maintained, an optical surveillance device to record visually or observe a private activity to which that person is not a party;
- (c) attach, install, use, or maintain, or cause to be attached, installed, used, or maintained, a tracking device to determine the geographical location of a person or object;
- (d) retrieve, or cause to be retrieved, a surveillance device;
- (e) enter, by force if necessary, into or onto specified premises, or other specified premises adjoining or providing access to the specified premises, for any of the purposes referred to in paragraphs (a) to (d);
- (f) enter, by force if necessary, into or onto premises where a specified person is reasonably believed to be or likely to be, or other premises adjoining or providing access to those premises, for any of the purposes referred to in paragraphs (a) to (d);
- (g) enter, by force if necessary, into or onto premises where a specified object is reasonably believed to be or likely

to be, or other premises adjoining or providing access to those premises, for any of the purposes referred to in paragraphs (a) to (d);

- (h) connect a surveillance device to an electricity supply system and use electricity from that system to operate the device; or
- (i) temporarily remove a vehicle from premises for the purpose of the attachment, installation, maintenance or retrieval of a tracking device and return the vehicle to those premises,

if an authorised person authorises the member of the police force, the officer of the Corruption and Crime Commission, the officer of a designated Commission or the member of the staff of the Australian Crime Commission to take such action in accordance with an emergency authorisation issued under section 21.

*[Section 20 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(3); No. 30 of 2006 s. 22.]*

## **21. Emergency authorisations**

- (1) An authorised person may issue an emergency authorisation under this section if satisfied by an application made in that behalf that there are reasonable grounds for believing —
  - (a) that an imminent threat of serious violence to a person or of substantial damage to property exists;
  - (b) that —
    - (i) an indictable drug offence or an external indictable drug offence has been or may have been, is being or is about to be, or is likely to be, committed;
    - (ii) the use of a listening device, an optical surveillance device, or a tracking device is immediately necessary for the purpose of dealing

with that threat or investigating that offence or suspected offence, or of enabling evidence to be obtained of the commission of that offence, or the identity or location of the offender;

- (iii) the circumstances are so serious and the matter is of such urgency that the use of the device in the course of the duty of the applicant is warranted; and
- (iv) an application under section 15 or 16 is not practicable;

or

(c) that —

*[(i) deleted]*

- (ia) an offence punishable by 2 or more year's imprisonment has been or may have been, is being or is about to be, or is likely to be, committed;
- (ii) the use of a listening device, an optical surveillance device, or a tracking device is immediately necessary for the purpose of dealing with that threat or investigating that offence or suspected offence, or of enabling evidence to be obtained of the commission of that offence, or the identity or location of the offender;
- (iii) the circumstances are so serious and the matter is of such urgency that the use of the device in the course of the duty of the applicant is warranted; and
- (iv) an application under section 15 or 16 is not practicable.

- (2) An authorised person may issue an emergency authorisation under this section if satisfied by an application made in that behalf that there are reasonable grounds for believing that —
- (a) retrieval of a listening device, an optical surveillance device, or a tracking device is immediately necessary in order that an investigation into an indictable drug offence or an external indictable drug offence is not jeopardized;
  - (b) the circumstances are so serious and the matter is of such urgency that the retrieval of the device in the course of the duty of the applicant is warranted; and
  - (c) an application under section 22 is not practicable.
- (3) An application under subsection (1) or (2) may be made either orally or in writing or by means of a radio, telephone, video recording, facsimile transmission or any other communication device.
- (4) A person to whom an emergency authorisation has been issued under subsection (1) must deliver without delay a written report to a judge —
- (a) stating whether a surveillance device was used under the authorisation;
  - (b) if a surveillance device was so used —
    - (i) giving particulars of the use and the period during which it was used;
    - (ii) specifying the name, if known, of any person whose private conversation was monitored, recorded or listened to or whose private activity was observed or recorded;
    - (iii) specifying the name, if known, of any person whose geographical location was monitored by use of a tracking device;

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- (iv) containing particulars of any premises where the device was installed or any place at which the device was used;
  - (v) containing particulars of any specified object in or on which the device was installed or any premises where the object was located when the device was installed;
  - (vi) containing particulars of the general use made or to be made of any evidence or information obtained by use of the device; and
  - (vii) containing particulars of any previous use of a surveillance device in connection with the matter or offence or suspected offence in respect of which the emergency authorisation was granted.
- (5) A person to whom an emergency authorisation has been issued under subsection (2) must deliver without delay a written report to a judge —
- (a) stating whether a surveillance device was retrieved under the authorisation; and
  - (b) if a surveillance device was so retrieved, giving particulars of the retrieval.
- (6) Subject to necessary modifications, the provisions of section 13(8)(f), (g), (i) and (j), (9), (11) and (12) apply to emergency authorisations in the same manner as they apply to warrants.
- (7) An authorised person may issue one composite emergency authorisation having effect in accordance with its terms in respect of the attachment, installation, use or maintenance of more than one kind of surveillance device or a surveillance device that has more than one kind of function.
- (8) Where a report is given to a judge under subsection (4), the judge may direct that any record of evidence or information



obtained by the use of the surveillance device to which the report relates be brought before the judge.

- (9) A record of evidence or information brought before a judge under subsection (8) must be kept in the custody of the Supreme Court and the judge may order that it be returned, or made available to any person, or destroyed.
- (10) On consideration of a report under this section, a judge may direct that use of the surveillance device cease immediately.

*[Section 21 amended by No. 78 of 2003 s. 74.]*

**22. Retrieval of surveillance devices installed under emergency authorisations**

- (1) A court may issue a surveillance device (retrieval) warrant, if the court is satisfied, upon an application made in accordance with section 15, that a surveillance device has been attached or installed in accordance with an emergency authorisation issued under section 21(1).
- (2) A surveillance device (retrieval) warrant authorises the retrieval of a surveillance device which has been attached or installed in accordance with an emergency authorisation issued under section 21(1) and when issuing such a warrant the court may by the warrant authorise the entry, by force if necessary, into or onto specified premises or other premises where the surveillance device may for the time being be.
- (3) Subject to necessary modifications, sections 13(7), (8)(f), (g), (i) and (j), (9), (11) and (12) and 15(1), (3)(a) to (d) and (4) apply to an application for a warrant and to a warrant issued under this section.
- (4) A court may issue one composite warrant having effect in accordance with its terms in respect of the retrieval of more than one kind of surveillance device or a surveillance device that has more than one kind of function.

### **Division 3 — Confidentiality**

#### **23. Confidentiality**

- (1) An application for a warrant under this Part to a court must not be heard in open court.
- (2) The following material must not be made available by a court for search by any person except on the direction of a judge, or in the case of an application made under this Part to a magistrate, of the Chief Magistrate —
  - (a) an application to the court under this Part and any material relating to it including any record of it or of the hearing of it;
  - (b) any orders made on such an application;
  - (c) any warrant issued on such an application;
  - (d) any written report delivered to a judge under section 21(4);
  - (e) any record of evidence or information brought before a judge under section 21(8).
- (3) A direction is not to be given under subsection (2) if, in the opinion of the judge or the Chief Magistrate as the case requires, it could result in the publication of any matter contrary to section 151 of the *Corruption and Crime Commission Act 2003*.

*[Section 23 amended by No. 78 of 2003 s. 74; No. 59 of 2004 s. 141.]*

## Part 5 — Use of surveillance devices in the public interest

### Division 1 — General

#### 24. Interpretation

In this Part —

“**child**” means a person under 18 years of age;

“**mental illness**” has the same meaning as in *The Criminal Code*;

“**mental impairment**” has the same meaning as in *The Criminal Code*;

“**public interest**” includes the interests of national security, public safety, the economic well-being of Australia, the protection of public health and morals and the protection of the rights and freedoms of citizens.

#### 25. Unlawful act

This Part does not apply if in the course of installing or using a listening device or an optical surveillance device an act is done that is unlawful under any law or any Act other than this Act.

### Division 2 — Use of listening devices and optical surveillance devices in the public interest

#### 26. Use of listening devices in the public interest

- (1) A person who is a party to a private conversation may use a listening device to record or monitor the private conversation if a principal party to the private conversation consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the listening device is in the public interest.

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- (2) A person who is acting on behalf of a party to a private conversation may use a listening device to record, monitor or listen to the private conversation if a principal party to the private conversation consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the listening device is in the public interest.
- (3) A person who has under his or her care, supervision or authority a child or a protected person who is a principal party to a private conversation may, on behalf of the child or protected person, use a listening device to record, monitor or listen to the private conversation if there are reasonable grounds for believing that the use of the listening device —
  - (a) will contribute towards the protection of the best interests of the child or protected person; and
  - (b) is in the public interest.
- (4) In this section —  
**“protected person”** means a person who by reason of mental impairment is unable to consent in accordance with subsection (1) or (2) to the use of a listening device.

**27. Use of optical surveillance devices in the public interest**

- (1) A person who is a party to a private activity may use an optical surveillance device to record visually the private activity if a principal party to the private activity consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the optical surveillance device is in the public interest.
- (2) A person who is acting on behalf of a party to a private activity may use an optical surveillance device to record visually or observe the private activity if a principal party to the private activity consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the optical surveillance device is in the public interest.

- (3) A person who has under his or her care, supervision or authority a child or a protected person who is a principal party to a private activity may, on behalf of the child or protected person, use an optical surveillance device to record visually or observe the private activity if there are reasonable grounds for believing that the use of the listening device —
- (a) will contribute towards the protection of the best interests of the child or protected person; and
  - (b) is in the public interest.
- (4) In this section —
- “protected person”** means a person who by reason of mental impairment is unable to consent in accordance with subsection (1) or (2) to the use of an optical surveillance device.

**Division 3 — Emergency use of listening devices and optical surveillance devices in the public interest**

**28. Emergency use of listening devices in the public interest**

A person may use a listening device to record, monitor or listen to a private conversation if at the time of use there are reasonable grounds for believing that the circumstances are so serious and the matter is of such urgency that the use of the listening device is in the public interest.

**29. Emergency use of optical surveillance devices in the public interest**

A person may use an optical surveillance device to record visually or observe a private activity if at the time of use there are reasonable grounds for believing that the circumstances are so serious and the matter is of such urgency that the use of the optical surveillance device is in the public interest.

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**Part 5** Use of surveillance devices in the public interest

**Division 3** Emergency use of listening devices and optical surveillance devices in the public interest

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**30. Report to a judge**

- (1) A person who uses a listening device or an optical surveillance device under section 28 or 29 must deliver without delay a written report to a judge —
  - (a) giving particulars of the device used;
  - (b) giving particulars of the use of the device and the period during which it was used;
  - (c) specifying the name, if known, of any person whose private conversation was recorded, monitored or listened to or whose private activity was observed or visually recorded;
  - (d) specifying the circumstances that caused the person to believe that it was necessary to record, monitor or listen to the private conversation or observe or visually record the private activity; and
  - (e) containing particulars of the general use made or to be made of any evidence or information obtained by use of the device.
- (2) A person who contravenes subsection (1) commits an offence.  
Penalty:
  - (a) for an individual: \$5 000 or imprisonment for 12 months, or both;
  - (b) for a body corporate: \$50 000.
- (3) Where a report is given to a judge under subsection (1), the judge may direct that any record of evidence or information obtained by the use of the surveillance device to which the report relates be brought before the judge.
- (4) A record of evidence or information brought before a judge under subsection (3) must be kept in the custody of the court and the judge may order that it be returned, or made available to any person, or destroyed.

**Division 4 — Publication or communication in the public interest**

**31. Order allowing publication or communication in the public interest**

- (1) A judge may make an order that a person may publish or communicate a private conversation, or a report or record of a private conversation, or a record of a private activity that has come to the person's knowledge as a direct or indirect result of the use of a listening device or an optical surveillance device under Division 2 or 3, if the judge is satisfied, upon application being made in accordance with section 32, that the publication or communication should be made to protect or further the public interest.
- (2) A judge, when making an order under subsection (1), may impose such conditions or restrictions as the judge considers necessary in the circumstances.
- (3) Upon an application made under section 32 a judge may make an order that a report or record of a private conversation, or a record of a private activity —
  - (a) be made available to any person or destroyed;
  - (b) be delivered to —
    - (i) the police force of the State or of another State or a Territory;
    - (ia) the Corruption and Crime Commission;
    - (ib) the Parliamentary Inspector of the Corruption and Crime Commission;
    - (ii) a designated Commission;
    - (iii) the Australian Federal Police; or
    - (iv) the Australian Crime Commission;or

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- (c) be kept in the custody of the court if the judge is satisfied that it is necessary to protect or further the public interest.

*[Section 31 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(3); No. 30 of 2006 s. 23.]*

**32. Application for a publication order**

- (1) An application for an order under section 31 is required —
  - (a) to be in writing;
  - (b) to set out the grounds on which the application is based; and
  - (c) to include an affidavit of the person making the application deposing to the facts required by the judge to enable the judge to deal with the application in accordance with that section.
- (2) Subject to subsection (3), an application for an order under section 31 may be made upon notice or ex parte as the judge thinks fit.
- (3) An application by a law enforcement officer for an order under section 31 is to be made ex parte.
- (4) A judge may require further information to be given, orally or by affidavit, in relation to an application for an order under section 31.

**33. Confidentiality**

- (1) An application under this Part to a judge must not be heard in open court.
- (2) The following material must not be made available by a court for search by any person except on the direction of a judge —
  - (a) an application under this Part and any material relating to it including any record of it or of the hearing of it;
  - (b) any orders made on such an application;



- (c) any written report delivered to a judge under section 30;
  - (d) any record of evidence or information brought before a judge under section 30(3).
- (3) A direction is not to be given under subsection (2) if, in the opinion of the judge, it could result in the publication of any matter contrary to section 151 of the *Corruption and Crime Commission Act 2003*.

*[Section 33 amended by No. 78 of 2003 s. 74.]*

## **Part 6 — Offences and enforcement provisions**

### **34. Possession of surveillance device for unlawful use**

A person shall not possess a surveillance device in the knowledge that it is intended or principally designed for use in contravention of any of section 5, 6 or 7.

Penalty:

- (a) for an individual: \$5 000 or imprisonment for 12 months, or both;
- (b) for a body corporate: \$50 000.

### **35. Unlawful removal or retrieval of surveillance device**

A person shall not, except in accordance with this Act, remove or retrieve a surveillance device that has been lawfully attached or installed in premises, or in or on an object, or on a vehicle in a manner permitted by this Act.

Penalty:

- (a) for an individual: \$5 000 or imprisonment for 12 months, or both;
- (b) for a body corporate: \$50 000.

### **36. Power to search**

- (1) If a member of the police force of the State suspects on reasonable grounds that a person possesses a surveillance device in the knowledge that it is intended or principally designed for use in contravention of any of section 5, 6 or 7, that member of the police force may, under the authority of this section and using such force as may be necessary for the purpose —
  - (a) stop, and search any such person;
  - (b) stop, detain, and search any vehicle that the member of the police force reasonably suspects may contain evidence of an offence under section 34; or

- (c) at any time enter and search any premises that the member of the police force reasonably suspects may contain evidence of an offence under section 34.
- (2) A member of the police force of the State lawfully exercising a power under subsection (1) may seize, remove or detain any surveillance device and any connected device ancillary to the use or installation of that surveillance device if that member of the police force reasonably suspects that the surveillance device has been or is to be used in connection with or for the purposes of an offence under this Act.
- (3) A surveillance device or connected device seized under subsection (2) may be retained until the final determination of any proceeding under this Act relating to it unless it is ordered to be returned or otherwise dealt with under subsection (4).
- (4) A person claiming to have an interest (whether as owner or otherwise) in a surveillance device or connected device seized under subsection (2) may apply to a magistrate for the device to be returned or otherwise dealt with and the magistrate may make such order in the matter as he or she thinks fit.

**37. Report of finding surveillance device**

- (1) Subject to subsection (2), a person who discovers a surveillance device attached or installed in premises, or in or on an object, or on a vehicle shall immediately report its existence and location to the Commissioner of Police or to a member of the police force of the State authorised for the purpose by the Commissioner of Police.

**Penalty:**

- (a) for an individual: \$5 000 or imprisonment for 12 months, or both;
- (b) for a body corporate: \$50 000.

- (2) Subsection (1) does not apply to —
  - (a) an authorised person; or
  - (b) a person referred to in paragraph (a), (aa), (b) or (c) of the definition of “law enforcement officer” in section 3(1).

*[Section 37 amended No. 30 of 2006 s. 24.]*

**38. Time limit for prosecutions**

A proceeding for an offence under this Act is required to be commenced within 2 years after the offence was committed.

**39. Offences by bodies corporate**

- (1) Where a body corporate contravenes a provision of this Act, whether by act or omission, each person who is a director of the body corporate or who is concerned in the management of the body corporate contravenes the same provision unless the person satisfies the court that —
  - (a) the body corporate contravened the provision without the knowledge of the person; and
  - (b) the person —
    - (i) was not in a position to influence the conduct of the body corporate in relation to its contravention of the provision; or
    - (ii) being in such a position, used all due diligence to prevent the contravention by the body corporate.
- (2) A person may be proceeded against and convicted under a provision because of subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.
- (3) Nothing in this section prejudices or affects any liability imposed by this Act on any body corporate by which an offence against this Act is actually committed.

**40. Forfeiture**

- (1) Where a court has convicted a person of an offence against this Act, the court may in addition to any penalty it may impose make either or both of the following orders —
  - (a) an order that any surveillance device or connected device used in connection with or for the purposes of the commission of the offence be forfeited to the State;
  - (b) an order that any report or record of a private conversation or record of a private activity to which the offence relates and which was obtained by the use of a surveillance device to which the offence relates be forfeited to the State.
- (2) Before making an order under this section, the court may require that notice be given to, and may hear, such persons as the court thinks fit.
- (3) Where an order of forfeiture is made under this section any member of the police force of the State, any officer of the Corruption and Crime Commission, any officer of a designated Commission or any member of the staff of the Australian Crime Commission may seize the item forfeited for the purpose of giving effect to the order and for that purpose may enter any premises, by force if necessary.
- (4) The existence or nature of a forfeiture order or the possibility or likelihood of a forfeiture order must not be taken into account by a court when imposing a penalty other than forfeiture for a contravention of this Act.

*[Section 40 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(3); No. 30 of 2006 s. 25.]*

## **Part 7 — Miscellaneous**

### **41. Dealing with records obtained by surveillance devices**

- (1) The Commissioner of Police, the Corruption and Crime Commission, a designated Commission and the Australian Crime Commission —
  - (a) must keep every record or report obtained by use of a surveillance device under a warrant or emergency authorisation issued to a member of the police force of the State, an officer of the Corruption and Crime Commission, an officer of the designated Commission or a member of the staff of the Australian Crime Commission in a secure place, being a place that is not accessible to persons who are not entitled to deal with the record or report; and
  - (b) subject to subsection (2), must destroy any such record or report if satisfied that it is not likely to be required in connection with —
    - (i) the investigation in respect of which the warrant or emergency authorisation was issued or the investigation of another offence;
    - (ii) the making of a decision whether to prosecute for any offence; or
    - (iii) the prosecution of an offence.
- (2) Where a record or report referred to in subsection (1)(a) was obtained by use of a surveillance device under a warrant issued under section 15(2) on behalf of another law enforcement officer the Commissioner of Police, the Corruption and Crime Commission, the designated Commission or the Australian Crime Commission, as the case requires, may only destroy that record or report after consultation with the police force, body, department, authority or agency of which that law enforcement officer is a member, officer or employee.

- (3) The Commissioner of Police, the Corruption and Crime Commission, the Corruption and Crime Commission, a designated Commission and the Australian Crime Commission must keep such records concerning the records and reports obtained by the use of surveillance devices under warrants and emergency authorisations as are necessary to enable documents and information to be identified and obligations under this Act to provide reports to be complied with.

*[Section 41 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(3); No. 30 of 2006 s. 26.]*

**42. Exemption from personal liability**

No civil or criminal proceeding shall lie against a person for or in respect of any act or thing done in good faith under and in accordance with this Act or a warrant or emergency authorisation issued under this Act.

**43. Annual reports**

- (1) The Commissioner of Police must, as soon as practicable after 30 June, but in any event not later than 31 August, in each year, furnish to the Minister a report on behalf of the police force of the State in respect of the year ending on that 30 June, containing information relating to —
- (a) applications for warrants and extensions of warrants, including the number of such applications and the orders made in respect of such applications;
  - (b) applications for emergency authorisations, including the number of such applications and the authorisations issued in respect of such applications; and
  - (c) such other matters relating to the use of surveillance devices and the administration of this Act as the Minister may direct.
- (1a) The Corruption and Crime Commission must, as soon as practicable after 30 June, but in any event not later than

31 August, in each year, furnish to the Attorney General a report on behalf of the Corruption and Crime Commission in respect of the year ending on that 30 June, containing information relating to —

- (a) applications for warrants and extensions of warrants, including the number of such applications and the orders made in respect of such applications;
- (b) applications for emergency authorisations, including the number of such applications and the authorisations issued in respect of such applications; and
- (c) such other matters relating to the use of surveillance devices and the administration of this Act as the Attorney General may direct.

*[(2) repealed]*

- (3) The Chair of the Board of the Australian Crime Commission must, as soon as practicable after 30 June, but in any event not later than 31 August, in each year, furnish to the Minister a report on behalf of the Australian Crime Commission in respect of the year ending on that 30 June, containing information relating to —
  - (a) applications for warrants and extensions of warrants, including the number of such applications and the orders made in respect of such applications;
  - (b) applications for emergency authorisations, including the number of such applications and the authorisations issued in respect of such applications; and
  - (c) such other matters relating to the use of surveillance devices and the administration of this Act as the Minister may direct.
- (4) The Minister or the Attorney General, as the case requires, shall cause a report furnished by the Commissioner of Police, the Corruption and Crime Commission or the Chair of the Board of



the Australian Crime Commission under this section to be laid before each House of Parliament as soon as practicable.

*[Section 43 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(3) and (4).]*

#### **43A. Reports by Royal Commissions**

- (1) A designated Commission may furnish to the Attorney General a report containing information relating to —
  - (a) applications for warrants and extensions of warrants, including the number of such applications and the orders made in respect of such applications;
  - (b) applications for emergency authorisations, including the number of such applications and the authorisations issued in respect of such applications; and
  - (c) such other matters relating to the use of surveillance devices and the administration of this Act as the designated Commission considers appropriate.
- (2) The Attorney General shall cause a report furnished by a designated Commission under subsection (1) to be laid before each House of Parliament as soon as is practicable.

*[Section 43A inserted by No. 30 of 2006 s. 27.]*

#### **44. Regulations**

- (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for achieving the objects and giving effect to the purposes of this Act and in particular —
  - (a) with respect to warrants and proceedings in connection with warrants;
  - (b) with respect to applications for emergency authorisations and proceedings in connection with such authorisations;
  - (c) with respect to proceedings under Part 5;

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- (d) for the control and management of information gained through the use of surveillance devices;
  - (e) for the storage and destruction of records of information and other evidence gained through the use of surveillance devices; and
  - (f) with respect to the provision of information reasonably required to enable the Commissioner of Police, the Corruption and Crime Commission and the Chair of the Board of the Australian Crime Commission to comply with the obligations imposed by section 43 on each of them to furnish an annual report or to enable a designated Commission to furnish a report under section 43A.
- (2) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding \$5 000 for any offence.

*[Section 44 amended by No. 78 of 2003 s. 74; No. 74 of 2004 s. 72(4); No. 30 of 2006 s. 28.]*

*[Part 8 omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]*

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Notes

<sup>1</sup> This reprint is a compilation as at 8 December 2006 of the *Surveillance Devices Act 1998* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Surveillance Devices Act 1998</i>	56 of 1998	11 Jan 1999	22 Nov 1999 (see s. 2 and <i>Gazette</i> 22 Nov 1999 p. 5843)
<i>Acts Amendment (Criminal Investigation) Act 2001</i> s. 4	35 of 2001	7 Jan 2002	14 Jan 2002 (see s. 2)
<i>Royal Commission (Police) Act 2002</i> s. 3(3) <sup>4</sup> & Pt. 8	10 of 2002	28 Jun 2002	Pt. 8: 28 Jun 2002 (see s. 2); s. 3(3): 16 Apr 2004 (see the <i>Royal Commission (Police) Order 2004</i> published in <i>Gazette</i> 16 Apr 2004 p. 1214)
<b>Reprint 1: The <i>Surveillance Devices Act 1998</i> as at 12 Sep 2003</b> (includes amendments listed above except s. 3(3) of the <i>Royal Commission (Police) Act 2002</i> )			
<i>Corruption and Crime Commission Amendment and Repeal Act 2003</i> s. 74 <sup>6</sup>	78 of 2003	22 Dec 2003	s. 74(1): 1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723); s. 74(2): 7 Jul 2004 (see s. 2 and <i>Gazette</i> 6 Jul 2004 p. 2697)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Misuse of Drugs Amendment Act 2004</i> s. 9(3)	62 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 10 Dec 2004 p. 5965)
<i>Australian Crime Commission (Western Australia) Act 2004</i> s. 72	74 of 2004	8 Dec 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Royal Commissions (Powers) Amendment Act 2006</i> Pt. 3	30 of 2006	4 Jul 2006	16 Sep 2006 (see s. 2 and <i>Gazette</i> 15 Sep 2006 p. 3683)
<b>Reprint 2: The <i>Surveillance Devices Act 1998</i> as at 8 Dec 2006</b> (includes amendments listed above)			

- <sup>2</sup> The provision in this Act repealing that Act has been omitted under the *Reprints Act 1984* s. 7(4)(f).
- <sup>3</sup> The provision in this Act amending that Act has been omitted under the *Reprints Act 1984* s. 7(4)(e).
- <sup>4</sup> Section 4B expired on 16 Apr 2004 (see *Royal Commission (Police) Act 2002* s. 3(3) and *Gazette* 16 Apr 2004 p. 1214).
- <sup>5</sup> The *Listening Devices Act 1978* was repealed by this Act. The repealing provision has been omitted under the *Reprints Act 1984* s. 7(4)(f).
- <sup>6</sup> The *Corruption and Crime Commission Amendment and Repeal Act 2003* Sch. 2 cl. 15(16) (which refers to s. 41(3)) is not included because the section it sought to amend was previously amended by Sch. 1 cl. 8(21) of the same Act.

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
Attorney General.....	3(1)
Australian Crime Commission .....	3(1)
authorised person .....	3(1)
building .....	3(1)
Chief Magistrate.....	3(1)
child .....	24
composite emergency authorisation .....	3(1)
composite warrant .....	3(1)
connected device .....	3(1)
Corruption and Crime Commission.....	3(1)
court .....	12
designated Commission.....	3(1)
emergency authorisation.....	3(1)
external indictable drug offence .....	3(1)
indictable drug offence.....	3(1)
law enforcement officer.....	3(1)
listen to.....	3(1)
listening device .....	3(1)
listening device warrant .....	3(1)
maintain.....	3(1)
member of the staff of the Australian Crime Commission .....	3(1)
mental illness.....	24
mental impairment.....	24
misconduct .....	3(4)
officer of a designated Commission .....	3(1)
officer of the Corruption and Crime Commission .....	3(1)
optical surveillance device .....	3(1)
optical surveillance device warrant .....	3(1)
party .....	3(1)
premises .....	3(1)
principal party .....	3(1)
private activity.....	3(1)
private conversation .....	3(1)
protected person .....	26(4), 27(4)
public interest.....	24
record .....	3(1)
report.....	3(1)

**Defined Terms**

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section 5 offence .....	18A(1)
surveillance device .....	3(1)
surveillance device (retrieval) warrant .....	3(1)
to record .....	3(1)
tracking device .....	3(1)
tracking device (maintenance/retrieval) warrant .....	3(1)
tracking device warrant .....	3(1)
vehicle .....	3(1)
warrant .....	3(1)