



Western Australia

Surveillance Devices Act 1998

Surveillance Devices Regulations 1999

As at 15 Dec 2006

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15 December 2006

Western Australia

Surveillance Devices Regulations 1999

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Surveillance Devices Act 1998

Surveillance Devices Regulations 1999

1. Citation

These regulations may be cited as the *Surveillance Devices Regulations 1999*¹.

2. Commencement

These regulations come into operation on the day on which the *Surveillance Devices Act 1998* comes into operation¹.

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 authorisation under section 21 of the Act is to be in the form of Form 2 in Schedule 1, or such other form as the Commissioner of Police approves.
- (3) An emergency authorisation issued under section 21 of the Act is to be in the form of Form 3 in Schedule 1, or such other form as the authorised person issuing the authorisation approves.
- (4) An application to a magistrate for a tracking device warrant or a tracking device (maintenance/retrieval) warrant is to be in the

r. 4

form of Form 4 in Schedule 1, or such other form as the Commissioner of Police approves.

[Regulation 3 amended in Gazette 8 Feb 2000 p. 458; 5 May 2006 p. 1735.]

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 Corruption and Crime 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 Corruption and Crime 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 Corruption and Crime Commission or the

Australian Crime Commission in accordance with an order under section 31(3)(b) of the Act.

[Regulation 7 amended by No. 74 of 2004 s. 73(2); amended in Gazette 5 May 2006 p. 1736.]

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 authorisations 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 authorisation	21
3	Emergency authorisation	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, s. 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"/> Officer of the Corruption and Crime Commission
	<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 authorises you —
	<input type="checkbox"/> to attach or install, use, maintain and retrieve a — <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 — <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 — <input type="checkbox"/> listening device <input type="checkbox"/> optical surveillance device <input type="checkbox"/> tracking device attached or installed under an emergency authorisation
	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

[Form amended by No. 74 of 2004 s. 73(3); amended in Gazette
5 May 2006 p. 1736.]

Surveillance Devices Act 1998, s. 21

Application for emergency authorisation

Strike out any parts of this form that are not applicable

Applicant	Name
	Business address
	Postcode
	Phone no.
	π Member of police force π Officer of the Corruption and Crime Commission π Member of staff of Australian Crime Commission

Person, object or premises under surveillance	π Person _____
	π Unknown person _____
	π Object _____
	π Premises _____

Action for which authorisation is required	Authorisation is required to —
	π attach or install π use π maintain
	π a listening device to record, monitor, or listen to a private conversation
	π an optical surveillance device to record visually or observe a private activity
	π a tracking device to determine the geographical location of a person or object
	in relation to the —
	π premises under surveillance
	π object under surveillance
π retrieve —	
π a listening device	
π an optical surveillance device	
π a tracking device	

Grounds	Imminent threat
	π Threat of serious violence to a person Name _____
	π Threat of substantial damage to property Description _____

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

*[Form amended by No. 74 of 2004 s. 73(3); amended in Gazette
5 May 2006 p. 1736.]*

Surveillance Devices Act 1998, s. 21

Emergency authorisation

Strike out any parts of this form that are not applicable

Authorised person	Name
	π Commissioner of Police
	π Deputy Commissioner of Police
	π Assistant Commissioner of Police
	π Officer of the Corruption and Crime Commission
	π Person authorised by Chair of Board of Australian Crime Commission

Person to whom authorisation is issued	Name
	π Member of the police force
	π Officer of the Corruption and Crime Commission
	π Member of staff of Australian Crime Commission

Person, object or premises under surveillance	π Person _____
	π Unknown person
	π Object _____
	π Premises _____

Authorisation to use surveillance device	This authorisation authorises you to —
	π attach or install π use π maintain
	π a listening device to record, monitor, or listen to a private conversation
	π an optical surveillance device to record visually or observe a private activity
	π a tracking device to determine the geographical location of a person or object
	in relation to the —
	π premises under surveillance
	π object under surveillance
	π person under surveillance
	π retrieve —
π a listening device	
π an optical surveillance device	
π a tracking device	

*[Form amended by No. 74 of 2004 s. 73(3) and (4); amended in
Gazette 5 May 2006 p. 1736.]*

Surveillance Devices Act 1998, s. 15 and 19
Application for —

- **tracking device warrant**
- **tracking device (maintenance/retrieval) warrant**

Strike out any parts of this form that are not applicable

Applicant	Name	
	Business address	
		Postcode
	Phone no.	
	π Member of police force	
	π Officer of the Corruption and Crime Commission	
π Member of staff of Australian Crime Commission		
π Application is made on behalf of another law enforcement officer (Name)		

Person, object or premises under surveillance	π Person (see note 1) _____
	π Unknown person
	π Object _____
	π Premises _____

Nature of warrant	π Tracking device warrant (s. 13)
	π Tracking device (maintenance/retrieval) warrant (s. 14) to —
	π maintain a tracking device
	π retrieve a tracking device
	π maintain and retrieve a tracking device
π New warrant	π 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. _____
	The offence — π has been committed π may have been committed π is being committed π is about to be committed π is likely to be committed
	Date offence committed or expected to be committed _____
	The use of a surveillance device would be likely to — π assist an investigation into the offence π enable evidence to be obtained of — π the commission of the offence π the identity of the offender π the location of the offender
	Tracking device (maintenance/retrieval) warrant (s. 14)
	Vehicle _____
	Location when device installed _____ Current location _____
Person who installed device _____ π Member of police force π Officer of the Corruption and Crime Commission π Member of staff of Australian Crime Commission π Member of prescribed class of persons Specify class _____	
Entry to premises	Entry, by force if necessary, is required to — π (specified premises) _____ _____
	π 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
	π any premises where the vehicle on or in which the device is attached or installed may for the time being be
	π any premises where the surveillance device to be retrieved may for the time being be
Use of electricity supply	π Authority is required to connect the surveillance device to an electricity supply system and use electricity from that system to operate the device

Removal of vehicle	<p>π Authority is required to temporarily remove a vehicle from a premises for the purpose of —</p> <table border="0" style="width: 100%;"> <tr> <td style="text-align: center;">π attaching</td> <td style="text-align: center;">π installing</td> </tr> <tr> <td style="text-align: center;">π maintaining</td> <td style="text-align: center;">π retrieving</td> </tr> </table> <p>a tracking device</p>	π attaching	π installing	π maintaining	π retrieving
	π attaching	π installing			
	π maintaining	π retrieving			
Vehicle _____					
Premises _____					

Signature of applicant	Date _____
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Note 1 — Identification of person under surveillance
<p>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)</p>

Note 2 — Lodging of Application for warrant
<p>The application is to be lodged with the magistrate.</p> <p>An application must be accompanied by —</p> <ul style="list-style-type: none"> • an “Authorisation of surveillance”; and • an affidavit containing a “Statement of facts in support of application for warrant” in accordance with <i>Surveillance Devices Act 1998</i>, s. 15(3)(a), (b), (c) and (f). <p>An application should also be accompanied by a draft warrant in the form of the warrant being sought.</p>

[Form inserted in Gazette 8 Feb 2000 p. 458-60; amended in Gazette 5 May 2006 p. 1736; amended by No. 74 of 2004 s. 73(3).]

Notes

- ¹ This reprint is a compilation as at 15 December 2006 of the *Surveillance Devices Regulations 1999* 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

Citation	Gazettal	Commencement
<i>Surveillance Devices Regulations 1999</i>	18 Nov 1999 p. 5767-86	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 to 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
<i>Surveillance Devices Amendment Regulations 2006</i>	5 May 2006 p. 1735-6	5 May 2006
Reprint 1: The <i>Surveillance Devices Regulations 1999</i> as at 15 Dec 2006 (includes amendments listed above)		