

Western Australia

## **Listening Devices Act 1978**

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# Listening Devices Act 1978

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## NOTES



## Listening Devices Act 1978

**An Act to regulate the Use of Listening Devices and for incidental and other purposes.**

*[Assented to 18 May 1978.]*

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

**1. Short Title**

This Act may be cited as the *Listening Devices Act 1978*.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation.

**3. Interpretation**

In this Act, unless the contrary intention appears —

“**A-CC**” means the Anti-Corruption Commission established under the *Anti-Corruption Commission Act 1988*;

“**ACC officer**” means an officer or other employee appointed under section 6 (1) of the *Anti-Corruption Commission Act 1988*;

“**listening device**” means any electronic or mechanical instrument, apparatus, equipment, or other device capable

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of being used to overhear, record, monitor or listen to a private conversation or words spoken to or by any person in private conversation;

**“officer of Customs”** means an officer of Customs within the meaning of —

- (a) the *Customs Act 1901* of the Parliament of the Commonwealth; or
- (b) any Act in substitution for that Act, as amended from time to time;

**“private conversation”** means any conversation carried on in such circumstances as may reasonably indicate that the parties to the conversation desire it to be confined to those parties, but does not include a conversation made in any circumstances in which the parties to the conversation ought reasonably to expect that the conversation may be overheard.

*[Section 3 amended by No. 31 of 1996 s.4.]*

**4. Prohibition on use of a listening device**

- (1) A person shall not —
  - (a) use any listening device to overhear, record, monitor or listen to any private conversation to which he is not a party; or
  - (b) except in the course of any legal proceedings or in accordance with the provisions of subsection (2) of this section, communicate or publish the substance or meaning of any private conversation overheard, recorded, monitored or listened to by the use of any listening device, whether he was a party to the private conversation or not,

without the consent express or implied of the parties to the private conversation.

Penalty: Five thousand dollars or imprisonment for twelve months.

- (2) Notwithstanding the provisions of subsection (1) of this section, it is not an offence for a person who was a party to a private conversation to communicate or publish the substance or meaning of the private conversation which he has recorded by means of a listening device if the communication or publication is no more than is reasonably necessary in the public interest or in the course of his duty or for the protection of his lawful interests.
- (3) Subsection (1) of this section does not apply —
- (a) to or in relation to the use of any listening device by —
    - (i) a member of the police force acting in the performance of his duty if he has been authorized in writing to use a listening device by the Commissioner of Police or the Senior Assistant Commissioner or by an officer of police of or above the rank of Inspector who has been appointed in writing by the Commissioner to authorize the use of listening devices;
    - (ia) an A-CC officer acting in the course of the officer's duty if the officer has been authorized in writing to use a listening device by a member of the A-CC;
    - (ii) an officer of Customs authorized by a warrant under the hand of the Comptroller-General of Customs to use a listening device in the performance of his duty;
    - (iii) a person employed in connection with the security of the Commonwealth when acting in the performance of his duty under an Act passed by the Parliament of the Commonwealth relating to the security of the Commonwealth; or

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- (b) to the communication or publication of the substance or meaning of a private conversation overheard, recorded, monitored or listened to in accordance with the provisions of this Act by any member of the police force, A-CC officer, officer of Customs or person employed in connection with the security of the Commonwealth in the performance of their duty.

*[Section 4 amended by No. 31 of 1996 s.5.]*

**5. Commissioner of Police to report to Minister on request**

The Commissioner of Police shall furnish to the Minister on request a report containing such particulars as the Minister requires of the use of any listening device by any member of the police force to overhear, record, monitor or listen to any private conversation to which the member was not a party.

**5A. A-CC to report to Attorney General on request**

- (1) Subject to subsection (2), the A-CC shall furnish to the Attorney General on request a report containing such particulars as the Attorney General requires of the use of any listening device by any A-CC officer to overhear, record, monitor or listen to any private conversation to which the A-CC officer was not a party.
- (2) A report under this section shall not disclose the details of information obtained by any particular use of a listening device.

*[Section 5A inserted by No. 31 of 1996 s.6.]*

**6. If a record of private conversation is used otherwise than in accordance with Act**

A person referred to in paragraph (a) of subsection (3) of section 4 of this Act, who uses a listening device to overhear, record, monitor or listen to any private conversation to which he is not a party shall not communicate or publish the substance or meaning of that private conversation otherwise than in the performance of his duty.



Penalty: One thousand dollars or imprisonment for 6 months.

*[Section 6 amended by No. 78 of 1995 s.147.]*

**7. Records of private conversation to be destroyed**

Where a record whether in writing or otherwise of a private conversation overheard, recorded, monitored or listened to by the use of a listening device is made by a person of any private conversation to which he is not a party and the information so recorded is not or is not likely to be of assistance in the performance of his duty then the person who recorded such information shall forthwith destroy such record of information.

Penalty: Two hundred dollars.

**8. Liabilities of bodies corporate**

- (1) A body corporate is liable for any offence against this Act as if the body corporate were a natural person and is subject to the same pecuniary penalties as if it were a natural person.
- (2) Where a body corporate is guilty of any offence against this Act, a person who, being chairman, member of the governing body, director, manager, secretary or officer of the body corporate, authorizes or permits the commission of the offence or is a party thereto, shall be deemed to have committed the like offence and is liable to the penalty provided by this Act for such an offence.

**Notes**

- <sup>1.</sup> This is a compilation of the *Listening Devices Act 1978* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

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| <b>Short title</b>  | <b>Number and year</b> | <b>Assent</b> | <b>Commencement</b>   |
|---|------------------------|---------------|---|
| <i>Listening Devices Act 1978</i>                                   | 26 of 1978             | 18 May 1978   | 16 Jun 1978 (see <i>Gazette</i> 16 Jun 1978 pp.1871-2)            |
| <i>Sentencing (Consequential Provisions) Act 1995</i> , section 147 | 78 of 1995             | 16 Jan 1996   | 4 Nov 1996 (see section 2 and <i>Gazette</i> 25 Oct 1996 p.5632)  |
| <i>Listening Devices Amendment Act 1996</i>                         | 31 of 1996             | 6 Sep 1996    | 16 Nov 1996 (see section 2 and <i>Gazette</i> 15 Nov 1996 p.6447) |

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