



Western Australia

Surveillance Devices Act 1998

Surveillance Devices Regulations 1999

As at 20 Feb 2013

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Surveillance Devices Regulations 1999

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Surveillance Devices Regulations 1999

1. Citation

These regulations may be cited as the *Surveillance Devices Regulations 1999*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 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, classes prescribed

For the purposes of paragraph (d) of the definition of *law enforcement officer* in section 3(1) of the Act, each of the following classes of persons is prescribed —

- (a) conservation and land management officers (as defined in the *Conservation and Land Management Act 1984* section 3);
- (b) forest officers (as defined in the *Conservation and Land Management Act 1984* section 3);
- (c) rangers (as defined in the *Conservation and Land Management Act 1984* section 3);
- (d) wildlife officers (as defined in the *Conservation and Land Management Act 1984* section 3);
- (e) inspectors (as defined in the *Environmental Protection Act 1986* section 3(1)) who are officers or employees of a department, authority or agency of the State;
- (f) fisheries officers (as defined in the *Fish Resources Management Act 1994* section 4(1)) who are employed in the Serious Offences Unit of the Department as defined in section 4(1) of that Act).

[Regulation 4 inserted in Gazette 6 Jul 2010 p. 3225.]

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; and

- (b) Australian Federal Police established by section 6 of the *Australian Federal Police Act 1979* of the Commonwealth; and
- (c) Australian Customs Service referred to in the *Customs Act 1901* of the Commonwealth; and
- (d) Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974* of the Commonwealth; and
- (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 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;
 - (e) for the purposes of any of the following —
 - (i) *Bail Act 1982* section 50L(1)(a);

- (iia) *Dangerous Sexual Offenders Act 2006* section 19A(2);
 - (ii) *Sentence Administration Act 2003* section 30(c) or (e)(i) or 57(2)(a);
 - (iii) *Sentencing Act 1995* section 33H(2)(b), 75(2)(b) or 84C(2)(b);
 - (iv) *Young Offenders Act 1994* section 109B(1)(a) or 136B(1)(a).
- (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; and
 - (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; or
 - (b) the department of the Public Service principally assisting in the administration of the *Fire and Emergency Services Act 1998* or an equivalent department, authority or agency 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; or
- (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.

[Regulation 6 amended in Gazette 21 Sep 2007 p. 4734; 4 Jan 2013 p. 10; 19 Feb 2013 p. 992.]

7. Storage and destruction of Part 5 records

- (1) The Commissioner of Police, the Corruption and Crime Commission, a designated 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, a designated 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, a designated 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; 21 Sep 2007 p. 4735.]

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; and
 - (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.

8A. Reports by designated Commission

The information relating to applications for warrants, extensions of warrants and emergency authorisations included in a report under section 43A of the Act may include information of the kind described in regulation 8.

[Regulation 8A inserted in Gazette 21 Sep 2007 p. 4735.]

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; or
 - (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; or
 - (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

o Supreme Court judge
o Magistrate
At.....

Strike out any parts of this form that are not applicable

| | |
|--|--|
| Person to whom warrant is issued | Name |
| | π Member of police force |
| | π Officer of the Corruption and Crime Commission |
| | π Officer of a designated Commission |
| | π Member of staff of Australian Crime Commission |
| π Warrant issued on behalf of another law enforcement officer (Name) | |

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

| | |
|----------------|---------------------------------|
| Offence | Offence _____ |
| | Act or Regulations _____ |
| | Section or regulation no. _____ |

| | |
|--|--|
| Authority to use surveillance device | This warrant authorises you — |
| | π to attach or install, use, maintain and retrieve a — |
| | π listening device |
| | π optical surveillance device |
| | π tracking device |
| | π in relation to a tracking device attached to, or installed in, a vehicle, to — |
| | π maintain the device |
| | π retrieve the device |
| | π maintain and retrieve the device |
| | π to retrieve a — |
| | π listening device |
| | π optical surveillance device |
| π tracking device attached or installed under an emergency authorisation | |

| | |
|--|---|
| | <p>The surveillance device may be attached or installed, used or maintained —</p> <ul style="list-style-type: none"> π in, on or at the premises under surveillance π in or on the object under surveillance π 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 |
| | <p>π Where practicable the surveillance device should be retrieved or rendered inoperable during the period that the warrant is in force</p> |

| | |
|------------------------------------|---|
| Authority to enter premises | <p>This warrant authorises you to enter, by force if necessary —</p> <ul style="list-style-type: none"> 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 |
|------------------------------------|---|

| | |
|--|---|
| Authority to use electricity supply | <p>π This warrant authorises you to connect the surveillance device to an electricity supply system and to use electricity from that system to operate the device</p> |
|--|---|

| | | | | | |
|------------------------------------|--|-------------|--------------|---------------|--------------|
| Authority to remove vehicle | <p>π This warrant authorises you to temporarily remove this vehicle from this premises for the purpose of —</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">π attaching</td> <td style="width: 50%;">π installing</td> </tr> <tr> <td>π maintaining</td> <td>π retrieving</td> </tr> </table> <p>a tracking device</p> <p>Vehicle _____</p> <p>Premises _____</p> <p>You must return the vehicle to the premises when the device has been attached, installed, maintained or retrieved</p> | π attaching | π installing | π maintaining | π retrieving |
| π attaching | π installing | | | | |
| π maintaining | π retrieving | | | | |

| | |
|--------------------------|--|
| Period of warrant | <p>___/___/___ to ___/___/___, being _____ days</p> <p>The warrant may be used at any time of the day or night</p> |
|--------------------------|--|

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 Officer of a designated 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 person 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 _____ 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> |
| | Retrieval to avoid jeopardizing investigation of drug 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> |

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 Officer of a designated 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 Officer of a designated 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; 21 Sep 2007 p. 4735.]*

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 Officer of a designated 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 Officer of a designated 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 | π Authority is required to temporarily remove a vehicle from a premises for the purpose of — | | | | |
| | <table border="0"> <tr> <td style="padding-right: 20px;">π attaching</td> <td style="padding-right: 20px;">π installing</td> </tr> <tr> <td style="padding-right: 20px;">π maintaining</td> <td>π retrieving</td> </tr> </table> | π attaching | π installing | π maintaining | π retrieving |
| | π attaching | π installing | | | |
| | π maintaining | π retrieving | | | |
| a tracking device | | | | | |
| Vehicle _____ | | | | | |
| | Premises _____ | | | | |

| | |
|-------------------------------|------|
| Signature of applicant | Date |
|-------------------------------|------|

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

| |
|---|
| Note 2 — Lodging of Application for warrant |
| The application is to be lodged with the magistrate. An application must be accompanied by — |
| <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). |
| An application should also be accompanied by a draft warrant in the form of the warrant being sought. |

[Form inserted in Gazette 8 Feb 2000 p. 458-60; amended by No. 74 of 2004 s. 73(3); amended in Gazette 5 May 2006 p. 1736; 21 Sep 2007 p. 4735.]

Notes

¹ This is a compilation of the *Surveillance Devices Regulations 1999* and includes the amendments made by the other written laws referred to in the following table. 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 s. 73 assented to 8 Dec 2004</i> | | 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) | | |
| <i>Surveillance Devices Amendment Regulations 2007</i> | 21 Sep 2007 p. 4734-5 | r. 1 and 2: 21 Sep 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 22 Sep 2007 (see r. 2(b)) |
| <i>Surveillance Devices Amendment Regulations 2010</i> | 6 Jul 2010 p. 3224-5 | r. 1 and 2: 6 Jul 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 7 Jul 2010 (see r. 2(b)) |
| Reprint 2: The <i>Surveillance Devices Regulations 1999</i> as at 10 Sep 2010 (includes amendments listed above) | | |
| <i>Surveillance Devices Amendment Regulations (No. 2) 2012</i> | 4 Jan 2013 p. 10 | r. 1 and 2: 4 Jan 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Feb 2013 (see r. 2(b) and <i>Gazette</i> 4 Jan 2013 p. 3) |
| <i>Surveillance Devices Amendment Regulations 2012</i> | 19 Feb 2013 p. 991-2 | r. 1 and 2: 19 Feb 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 20 Feb 2013 (see r. 2(b)) |

Defined terms

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

| Defined term | Provision(s) |
|--------------------------------|---------------------|
| emergency service..... | 6(4) |
| hospital..... | 6(4) |
| nursing home | 6(4) |
| Part 5 record..... | 7(3) |
| prison | 6(4) |
| researcher | 6(4) |
| superintendent..... | 6(4) |
| surveillance information | 9(3) |
| vulnerable patient..... | 6(4) |