

Passed by both Houses



New South Wales

Surveillance Devices Amendment (Mutual Recognition) Bill 2013

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2013



New South Wales

Surveillance Devices Amendment (Mutual Recognition) Bill 2013

Act No , 2013

An Act to amend the *Surveillance Devices Act 2007* to make further provision with respect to the use and retrieval of surveillance devices; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Surveillance Devices Amendment (Mutual Recognition) Act 2013*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Surveillance Devices Act 2007 No 64

[1] Section 20 Contents of surveillance device warrants

Insert at the end of section 20 (1) (b) (xi):

- , and
- (xii) the period within which a report about the use of the surveillance device authorised by the warrant must be furnished to the eligible Judge or eligible Magistrate under section 44 (1), being a period that expires not less than 60 days after the expiry of the warrant.

[2] Section 28 Contents of retrieval warrants

Insert at the end of section 28 (1) (b) (vii):

- , and
- (viii) the period within which a report about the retrieval of the surveillance device authorised by the warrant must be furnished to the eligible Judge or eligible Magistrate under section 44 (6), being a period that expires not less than 60 days after the expiry of the warrant.

[3] Section 32 Emergency authorisation—continued use of authorised surveillance device in participating jurisdiction

Insert after section 32 (4):

- (5) An emergency authorisation cannot be granted in connection with a serious narcotics offence.

[4] Section 40 Prohibition on use, communication or publication of protected information

Insert “protected” before “information” in section 40 (1) (a).

[5] Section 40 (3) (b)

Omit “, substantial damage to property or the commission of a serious narcotics offence”.

Insert instead “or substantial damage to property”.

[6] Section 40 (3) (b1)

Insert after section 40 (3) (b):

- (b1) the use or communication of protected information obtained from the use of a device in this jurisdiction by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the threat of the commission of a serious narcotics offence, or

[7] Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General

Insert at the end of section 44 (1) (g):

- , and
- (h) in the case of a surveillance device warrant issued in this jurisdiction and executed in a participating jurisdiction:
 - (i) giving details of the benefit to the investigation of the use of the relevant surveillance device and of the general use made or to be

made of any evidence or information obtained by the use of the device, and

- (ii) giving details of the compliance with the conditions (if any) to which the warrant was subject.

[8] Section 44 (6)

Omit “for the purpose by the eligible Judge or eligible Magistrate granting the application”.
Insert instead “in the retrieval warrant”.

[9] Section 44 (6) (c)

Insert at the end of section 44 (6) (b):

, and

- (c) in the case of a retrieval warrant issued in this jurisdiction and executed in a participating jurisdiction:
 - (i) giving details of any premises entered, anything opened and any object removed or replaced under the warrant, and
 - (ii) giving details of the compliance with the conditions (if any) to which the warrant was subject.

[10] Section 45 Annual reports

Insert after section 45 (1) (b):

- (b1) the number of remote applications made by law enforcement officers during that year for surveillance device warrants to be issued in this jurisdiction and executed in a participating jurisdiction,
- (b2) the number of applications made by law enforcement officers for surveillance device warrants to be issued in this jurisdiction and executed in a participating jurisdiction that were refused during that year, and the reasons for refusal,
- (b3) the number of applications for extensions of surveillance device warrants issued in this jurisdiction and executed in a participating jurisdiction, made by law enforcement officers during that year, the number of extensions granted or refused and the reason why they were granted or refused,
- (b4) the number of arrests made by law enforcement officers during that year on the basis (wholly or partly) of information obtained by the use of a surveillance device under a surveillance device warrant or emergency authorisation issued in this jurisdiction and executed in a participating jurisdiction,
- (b5) the number of prosecutions that were commenced in this jurisdiction during that year in which information obtained by the use of a surveillance device under a surveillance device warrant or emergency authorisation issued in this jurisdiction and executed in a participating jurisdiction was given in evidence, and the number of those prosecutions in which a person was found guilty,

[11] Section 45 (2)

Omit “subsection (1) (a) and (b)”. Insert instead “subsection (1) (a)–(b3)”.

[12] Section 46 Keeping documents and records connected with warrants and emergency authorisations executed in this jurisdiction

Insert “for the use or retrieval of surveillance devices in this jurisdiction” after “agency” where thirdly occurring.

[13] Section 46A

Insert after section 46:

46A Keeping documents and records connected with warrants and emergency authorisations executed in participating jurisdictions

- (1) The chief officer of a law enforcement agency must cause a copy of the following documents to be kept in relation to the use or retrieval of a surveillance device in a participating jurisdiction:
 - (a) each warrant issued to a law enforcement officer of the agency,
 - (b) each notice given to the chief officer of the revocation of a warrant,
 - (c) each emergency authorisation given to a law enforcement officer of the agency,
 - (d) each application made by a law enforcement officer of the agency for an emergency authorisation,
 - (e) each application made by a law enforcement officer of the agency for:
 - (i) a warrant, or
 - (ii) an extension, variation or revocation of a warrant, or
 - (iii) approval of the exercise of powers under an emergency authorisation,
 - (f) each report made to a Judge or Magistrate under section 44,
 - (g) each certificate issued by a senior officer of the agency under section 50.
- (2) The chief officer of a law enforcement agency must cause the following information to be kept in relation to the use or retrieval of a surveillance device in a participating jurisdiction:
 - (a) a statement as to whether each application made by a law enforcement officer of the agency for a warrant, or the extension, variation or revocation of a warrant, was granted, refused or withdrawn,
 - (b) a statement as to whether each application made by a law enforcement officer of the agency for an emergency authorisation, or for approval of powers exercised under an emergency authorisation, was granted, refused or withdrawn,
 - (c) details of each use by the agency, or by a law enforcement officer of the agency, of information obtained by the use of a surveillance device by a law enforcement officer of the agency,
 - (d) details of each communication by a law enforcement officer of the agency to a person other than a law enforcement officer of the agency of information obtained by the use of a surveillance device by a law enforcement officer of the agency,
 - (e) details of each occasion when, to the knowledge of a law enforcement officer of the agency, information obtained by the use of a surveillance device by a law enforcement officer of the agency was given in evidence in a relevant proceeding,
 - (f) details of the destruction of records or reports under section 41 (1) (b).

[14] Schedule 1 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.