



New South Wales

# Surveillance Devices Amendment (Mutual Recognition) Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Surveillance Devices Act 2007* so as to bring the Act further into line with the model law on cross-border investigative powers for law enforcement developed by the Australian Leaders' Summit on Terrorism and Multi-jurisdictional Crime. This will facilitate the mutual recognition of warrants and authorisations for the use of surveillance devices issued under the New South Wales Act and those issued under Acts of other jurisdictions.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1      Amendment of Surveillance Devices Act 2007 No 64

### Timing and contents of reports on use of surveillance device warrants

**Schedule 1 [1]** provides that a surveillance device warrant must specify the period within which a report in respect of the warrant must be made to the eligible Judge or eligible Magistrate who issued the warrant. That period must expire not less than 60 days after the expiry of the warrant. The provision that requires the report (section 44 (1)) states that the report must be made within the time specified in the warrant, but there is currently no obligation to specify such a time. This is inconsistent with the model law.

**Schedule 1 [7]** provides that, where a surveillance device warrant has been issued in New South Wales and executed in a participating jurisdiction, the report on the use of the warrant must (in addition to the other matters currently required) include information (which is required by the model law) 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 details of the compliance with the conditions (if any) to which the warrant was subject.

#### **Timing and contents of reports on use of retrieval warrants**

**Schedule 1 [2]** provides that a retrieval warrant must specify the period within which a report in respect of the warrant must be made to the eligible Judge or eligible Magistrate who issued the warrant under section 44 (6) of the Act, with that period being one that expires not less than 60 days after the expiry of the warrant. There is currently no obligation to specify such a time in the warrant itself. This is inconsistent with the model law.

**Schedule 1 [8]** makes a consequential amendment.

**Schedule 1 [9]** provides that, where a retrieval warrant has been issued in New South Wales and executed in a participating jurisdiction, the report on the use of the warrant must (in addition to the other matters currently required) include information (which is required by the model law) giving details of premises entered, things opened or removed or replaced, and details of the compliance with the conditions (if any) to which the warrant was subject.

#### **Emergency use of surveillance devices arising from imminent threats of commission of serious narcotic offences**

**Schedule 1 [3]** provides that emergency authorisations issued in New South Wales to allow a law enforcement officer to use a surveillance device in a participating jurisdiction without a warrant cannot be granted in relation to threats of serious narcotic offences, as at present. This will bring New South Wales in line with the model law, which does not permit the use of surveillance devices without a warrant where there is a threat of serious narcotics offences only.

#### **Exemption to prohibition on use, communication or publication of information applies to serious narcotic offences only if information obtained in New South Wales**

**Schedule 1 [5] and [6]** limit an existing exemption to the prohibition on the use, communication or publication of protected information that currently applies to permit the use, communication or publication of information obtained from the use of a surveillance device by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the threat of a serious narcotics offence. Protected information relating to a serious narcotics offence will be exempt only if it was obtained from the use of a surveillance device in New South Wales. (The existing exemption to permit the use, communication or publication of protected information by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the threat of serious violence to a person or substantial damage to property will continue to apply whether the protected information was obtained in a participating jurisdiction or in New South Wales. That exemption is part of the model law.)

**Schedule 1 [4]** inserts an omitted word in a provision about protected information.

#### **Contents of annual report to Parliament**

**Schedule 1 [10]** includes additional reporting requirements in relation to the annual report about the operation of the Act that the Attorney General must table in Parliament. In addition to the other matters currently required, which apply to the exercise of powers in New South Wales or participating jurisdictions, the amendment will require the annual report to include additional details (that the model law requires) in cases where a surveillance device warrant issued in New South Wales has been executed in a participating jurisdiction.

**Schedule 1 [11]** makes a consequential amendment.

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

Schedule 1 [13] imposes additional obligations on chief officers of law enforcement agencies to keep records, in line with the model law, in relation to surveillance devices used by their agencies in a participating jurisdiction under warrants or emergency authorisations issued in New South Wales.

Schedule 1 [12] makes a consequential amendment.

**Savings and transitional regulations**

Schedule 1 [14] provides for the making of savings and transitional regulations consequent on the enactment of any Act that amends the *Surveillance Devices Act 2007*.