



New South Wales

# Surveillance Devices and Other Legislation Amendment Bill 2025

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend—

- (a) the *Surveillance Devices Act 2007* (the **SD Act**) to—
  - (i) provide exceptions to offences for the use of listening devices and optical surveillance devices and the communication or publication of surveillance device records, and
  - (ii) make it an offence in certain circumstances to possess a record of a private conversation or the carrying on of an activity obtained in contravention of the SD Act, and
  - (iii) enable the regulations to—
    - (A) exempt the overt use of surveillance devices from provisions of the SD Act, and
    - (B) prescribe tracking devices the use of which is not an offence, and
  - (iv) make miscellaneous changes, and
- (b) the *Law Enforcement (Powers and Responsibilities) Act 2002* (the **LEPR Act**) to enable the New South Wales Police Force to use body-worn video equipment (**BWV equipment**) to record conversations between police officers and certain persons.

## 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.

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

Schedule 1[1] inserts definitions of *investigative body* and *surveillance device record*.

Schedule 1[2] and [3] amend the definitions of *listening device* and *optical surveillance device* to align with the *Disability Discrimination Act 1992* of the Commonwealth, section 9(3).

Schedule 1[4] amends the definition of *relevant proceeding* to include any proceeding for administrative review under the *Firearms Act 1996*, section 75(1) as a proceeding for which protected information may be used, published or communicated.

Schedule 1[5] inserts proposed section 8A to provide that a person does not commit an offence if—

- (a) the person knowingly uses a listening device or optical surveillance device, and
- (b) the use is overt and authorised by another Act, and
- (c) the person is using the relevant device in the exercise of the person's functions under the other Act and has provided evidence to each party that they hold a position that exercises statutory functions.

Schedule 1[6] inserts a regulation-making power to prescribe tracking devices for which the installation, use or maintenance is not an offence.

Schedule 1[7] provides that a person must not possess a record of a private conversation or the carrying on of an activity if the record was made in contravention of the requirements for the use of surveillance devices under the SD Act, Part 2 and the person—

- (a) made the record, or
- (b) knows the record was made in contravention to the part and fails to give the record promptly to an investigative body.

Failure to comply with the provision is an offence with a maximum penalty of 100 penalty units or 5 years imprisonment for an individual, or 500 penalty units otherwise.

Schedule 1[8] inserts proposed sections 14A and 14B.

Proposed section 14A provides that it is not an offence to communicate or publish a surveillance device record if the communication or publication—

- (a) is to an investigative body in certain circumstances, or
- (b) is of a record that has previously been communicated or published to the public.

Proposed section 14B provides that it is not an offence for a person to communicate or publish a surveillance device record if—

- (a) the communication or publication is in the exercise of a function of the person as an officer of an investigative body, and
- (b) the person does not know the surveillance device record was obtained in contravention of the SD Act, Part 2 by a current or former officer of an investigative body.

Schedule 1[9] provides that the written consent of the Director of Public Prosecutions, instead of the Attorney General, is required to institute proceedings for offences against the SD Act.

Schedule 1[10] provides that a regulation exempting a class of persons from provisions of the SD Act—

- (a) may provide an exemption applying to the use of a surveillance device if the exemption applies only for the overt use of the surveillance device, and
- (b) must provide for a period, after which the exemption expires, of not more than 3 years, and

- (c) may impose restrictions on the use and disclosure of information obtained by a person in accordance with the exemption, and
- (d) is no longer required to commence after the expiry of the disallowance period under the *Interpretation Act 1987*, section 41.

**Schedule 1[11]** provides for the statutory review of the provisions amended or inserted by the proposed Act.

**Schedule 1[12]** inserts a transitional provision to provide that the exceptions under proposed section 8A apply retroactively to the use of a listening device or surveillance device in accordance with the proposed section.

## **Schedule 2      Amendment of Surveillance Devices Regulation 2022**

**Schedule 2**, consequent on Schedule 1[6], prescribes the Mobile Automatic Number Plate Recognition camera installed in a NSW Police Force vehicle as a tracking device the installation, use or maintenance of which is not an offence.

## **Schedule 3      Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**Schedule 3[1]** inserts a definition of *BWV equipment* for the LEPR Act, Part 8A.

**Schedule 3[3]** provides that a conversation between a police officer and an occupant in a police vehicle being used in the course of police activities recorded by in-car video equipment may also be recorded by the police officer's BWV equipment. **Schedule 3[2]** makes a consequential amendment.

**Schedule 3[4]** provides that a person must be informed that a conversation between a police officer and another person under the LEPR Act, Part 8A is being recorded using police BWV equipment.

**Schedule 3[5]** provides that the recording of a conversation under the LEPR Act, Part 8A by means of BWV equipment does not constitute the use of a listening device for the purposes of the SD Act.

**Schedule 3[9]** inserts a definition of *BWV recording* for the LEPR Act, section 108H. **Schedule 3[10]** makes a consequential amendment.

**Schedule 3[6]** provides that the Commissioner of Police must ensure BWV recordings made under the LEPR Act, Part 8A are kept for at least two years after they are made.

**Schedule 3[8]** provides that a BWV recording constitutes personal information about another person in certain circumstances. **Schedule 3[7] and [11]** make consequential amendments.



New South Wales

# Surveillance Devices and Other Legislation Amendment Bill 2025

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly*



New South Wales

## **Surveillance Devices and Other Legislation Amendment Bill 2025**

No. \_\_\_\_\_, 2025

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### **A Bill for**

An Act to amend the *Surveillance Devices Act 2007* to make miscellaneous amendments; to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable the NSW Police Force to use body-worn video to record conversations between police officers and certain persons; and for related purposes.

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*The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.*

*Legislative Council*

*Clerk of the Parliaments*

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**Tabling copy**

**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Surveillance Devices and Other Legislation Amendment Act 2025*.

3

**2 Commencement**

4

This Act commences on a day or days to be appointed by proclamation.

5

<b>Schedule 1</b>	<b>Amendment of Surveillance Devices Act 2007 No 64</b>	1
		2
<b>[1] Section 4 Definitions</b>		3
	Insert in alphabetical order in section 4(1)—	4
	<i>investigative body</i> means—	5
	(a) a law enforcement agency, or	6
	(b) another person, agency, authority or organisation whose functions under a law of the State or the Commonwealth include investigative functions that may result in the person, agency, authority or organisation taking formal action or proceedings against a person in relation to whom the investigative functions are exercised.	7 8 9 10 11
	<i>surveillance device record</i> means—	12
	(a) a private conversation, record or report to which section 11(1) applies, or	13 14
	(b) information to which section 14(1) applies.	15
<b>[2] Section 4(1), definition of “listening device”</b>		16
	Omit “a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and permit that person to hear only sounds ordinarily audible to the human ear”.	17 18 19
	Insert instead “a disability aid within the meaning of the <i>Disability Discrimination Act 1992</i> of the Commonwealth, section 9(3)”.	20 21
<b>[3] Section 4(1), definition of “optical surveillance device”</b>		22
	Omit “spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment”.	23 24
	Insert instead “a disability aid within the meaning of the <i>Disability Discrimination Act 1992</i> of the Commonwealth, section 9(3)”.	25 26
<b>[4] Section 4(1), definition of “relevant proceeding”, paragraph (v)</b>		27
	Omit “(a) or (f)”.	28
<b>[5] Section 8A</b>		29
	Insert after section 8—	30
<b>8A Exceptions to sections 7 and 8</b>		31
	(1) A person does not commit an offence against section 7 or 8 if—	32
	(a) the person knowingly uses a listening device or optical surveillance device (a <i>relevant device</i> ), and	33 34
	(b) the use of the relevant device is authorised by another Act, and	35
	(c) the person is using the relevant device in the exercise of the person’s functions under the other Act, and	36 37
	(d) the use of the relevant device by the person is overt, and	38
	(e) for a relevant device being used to record a private conversation, the person has provided evidence to each party to the private conversation that the person holds a position that exercises statutory functions.	39 40 41

<b>Example of evidence a person holds a position that exercises statutory functions—</b> an identification card issued by the agency on which the statutory functions are conferred	1 2 3
(2) Without limiting subsection (1)(d), use of a relevant device by a person is overt if—	4 5
(a) for a listening device—the person whose private conversation the listening device is being used to overhear, record, monitor or listen has been informed the listening device is being used to overhear, record, monitor or listen to the person’s conversation, or	6 7 8 9
(b) for an optical surveillance device—the person who is being recorded visually or whose activities are being observed by the optical surveillance device has been informed the device is being used to record or observe the person or the person’s activities.	10 11 12 13
<b>[6] Section 9 Prohibition on installation, use and maintenance of tracking devices</b>	14
Omit “purpose.” from section 9(2)(c).	15
Insert instead—	16
purpose,	17
(d) the installation, use or maintenance of a tracking device prescribed by the regulations.	18 19
<b>[7] Section 12</b>	20
Omit the section. Insert instead—	21
<b>12 Prohibition on possession of records of private conversations or activities in certain circumstances</b>	22 23
(1) A person must not possess a record of a private conversation or the carrying on of an activity if the person—	24 25
(a) recorded, or caused the recording to be made of, the private conversation or carrying on of the activity in contravention of this part, or	26 27 28
(b) knows the record was made through the use of a surveillance device in contravention of this part and fails to promptly give the record to an investigative body.	29 30 31
Maximum penalty—	32
(a) for an individual—100 penalty units or 5 years imprisonment, or both, or	33 34
(b) otherwise—500 penalty units.	35
(2) Section 12(1)(b) does not apply to an officer of an investigative body who is in possession of a record of a private conversation or the carrying on of an activity if the record is in the officer’s possession in connection with the exercise of the investigative body’s functions.	36 37 38 39
<b>[8] Sections 14A and 14B</b>	40
Insert after section 14—	41
<b>14A Exceptions to sections 11 and 14—generally</b>	42
(1) A person does not commit an offence against section 11 or 14 if the person—	43
(a) communicates or publishes a surveillance device record to an investigative body in the public interest, or	44 45

(b)	communicates or publishes a surveillance device record to an investigative body in accordance with section 12(1)(b), or	1 2
(c)	communicates or publishes a surveillance device record that has previously been communicated or published to the public, including by—	3 4 5
(i)	broadcast on radio or television, and	6
(ii)	dissemination by other electronic means, including the internet and social media.	7 8
(2)	In this section—	9
	<i>public interest</i> includes the communication or publication of surveillance device records to an investigative body if the records are relevant to the investigative body’s functions under—	10 11 12
(a)	a law of this State, or	13
(b)	a law of the Commonwealth.	14
<b>14B</b>	<b>Exceptions to sections 11 and 14—officers of investigative bodies</b>	15
	A person does not commit an offence against section 11 or 14 if the person—	16
(a)	communicates or publishes a surveillance device record in the exercise of the person’s functions as an officer of an investigative body, and	17 18
(b)	the surveillance device record is not known by the person to have been obtained through the use of a surveillance device by a current or former officer of the investigative body in contravention of this part.	19 20 21
<b>[9]</b>	<b>Section 56</b>	22
	Omit “Attorney General” wherever occurring.	23
	Insert instead “Director of Public Prosecutions”.	24
<b>[10]</b>	<b>Section 59 Regulations</b>	25
	Omit section 59(3) and (4). Insert instead—	26
(3)	A regulation under subsection (2)—	27
(a)	for an exemption applying to the use of a surveillance device—	28
(i)	may exempt only the overt use of the surveillance device, and	29
(ii)	expires at the end of the period, not more than 3 years, specified in the regulation, and	30 31
(b)	may impose restrictions on the use and disclosure of information obtained by a person in accordance with the exemption.	32 33
<b>[11]</b>	<b>Section 63</b>	34
	Omit the section. Insert instead—	35
<b>63</b>	<b>Review of certain provisions</b>	36
(1)	The Minister must review the relevant provisions to determine whether—	37
(a)	the policy objectives of the relevant provisions remain valid, and	38
(b)	the terms of the relevant provisions remain appropriate for achieving the objectives.	39 40
(2)	The review must be undertaken as soon as practicable after the period of 5 years from the commencement of the amendment Act.	41 42

(3)	A report on the outcome of the review must be tabled in each House of Parliament within 6 years after the commencement of the amendment Act.	1 2
(4)	In this section—	3
	<i>amendment Act</i> means the <i>Surveillance Devices and Other Legislation Amendment Act 2025</i> .	4 5
	<i>relevant provisions</i> means the provisions of this Act that are amended or inserted by the amendment Act.	6 7
<b>[12]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	8
	Insert at the end of the schedule, with appropriate part and clause numbering—	9
<b>Part</b>	<b>Surveillance Devices and Other Legislation Amendment Act 2025</b>	10 11
	<b>Exceptions to sections 7 and 8</b>	12
	Section 8A extends to the use of a listening device or optical surveillance device, in accordance with that section, that occurred before the commencement of the section.	13 14 15

<b>Schedule 2</b>	<b>Amendment of Surveillance Devices Regulation</b>	1
	<b>2022</b>	2
<b>Section 4A</b>		3
Insert after section 4—		4
<b>4A</b>	<b>MANPR camera—the Act, s 9</b>	5
	For the Act, section 9(2)(d), Mobile Automatic Number Plate Recognition (MANPR) cameras installed in NSW Police Force vehicles are prescribed.	6
		7

<b>Schedule 3</b>	<b>Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	1
		2
<b>[1] Section 108A Definitions</b>		3
	Insert in alphabetical order in section 108A(1)—	4
	<i>BWV equipment</i> means body-worn video equipment.	5
<b>[2] Section 108C, heading</b>		6
	Insert “or BWV equipment” after “ICV equipment”.	7
<b>[3] Section 108C(1)(b)</b>		8
	Omit “by means of the ICV equipment.”. Insert instead—	9
	by means of either of the following—	10
	(i) the ICV equipment,	11
	(ii) the police officer’s BWV equipment.	12
<b>[4] Section 108D Person to be informed that conversation will be recorded</b>		13
	Insert “or body-worn video equipment” after “equipment” in section 108D(1).	14
<b>[5] Section 108F Operation of Surveillance Devices Act 2007</b>		15
	Insert “or BWV equipment” after “equipment” wherever occurring.	16
<b>[6] Section 108G, heading</b>		17
	Insert “and BWV recordings” after “ICV recordings”.	18
<b>[7] Section 108H, heading</b>		19
	Insert “and BWV recordings” after “ICV recordings”.	20
<b>[8] Section 108H(1)</b>		21
	Insert “or BWV recording” after “ICV recording”.	22
<b>[9] Section 108H(2)</b>		23
	Insert in alphabetical order—	24
	<i>BWV recording</i> means a recording of sound made by means of BWV equipment under this part and includes a copy of the recording or any part of the recording.	25
		26
		27
<b>[10] Section 108H(2), definition of “ICV recording”</b>		28
	Insert “by means of ICV equipment” after “made”.	29

**[11] Section 108H, note**

1

Insert “and BWV recordings” after “ICV recordings”.

2