

First print



New South Wales

Listening Devices Amendment (Warrants) Bill 1998

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 *Listening Devices Act 1984* in connection with the installation and retrieval of listening devices under warrants authorising their use.

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 day after the date of assent to the proposed Act.

Clause 3 is a formal provision giving effect to the amendments to the *Listening Devices Act 1984* set out in Schedule 1.

Schedule 1 [1] provides that, if a further warrant is issued during the currency of an earlier warrant in respect of the same premises, the requirement that the listening device under the existing warrant be retrieved during the currency of the earlier warrant is waived. In that case, the device is taken to be installed under the further warrant.

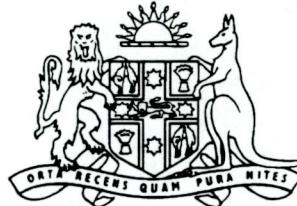
Schedule 1 [2] provides that a listening device must be retrieved as soon as practicable after the expiry of the warrant authorising its installation, but within 10 days or a longer period allowed by an order of a Judge of the Supreme Court.

Schedule 1 [3] requires the applicant for such an order that has been made to furnish a report to a Judge of the Supreme Court and to the Attorney General stating whether or not the listening device was retrieved during the currency of the order and giving the reasons for any failure to retrieve it.

Schedule 1 [4] contains savings and transitional provisions consequent on the enactment of the proposed Act. Generally, the amendments made by the proposed Act will not apply to or affect warrants already issued. However, aspects of the amendments will extend to warrants in force at the commencement of the proposed Act.

Schedule 1 [5] inserts a new Schedule 3, containing a form of order that may be used by a Judge of the Supreme Court to allow a further period for a listening device to be retrieved after the expiry of a warrant.

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New South Wales

Listening Devices Amendment (Warrants) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Listening Devices Act 1984* in relation to warrants granted under that Act for the installation and retrieval of listening devices; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Listening Devices Amendment (Warrants) Act 1998*.

2 Commencement

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This Act commences on the day after the date of assent.

3 Amendment of Listening Devices Act 1984 No 69

The *Listening Devices Act 1984* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 16 Warrants authorising use of listening devices

Insert after section 16 (6A):

- (6B) If an eligible Judge grants a further warrant under this section before the expiry of an existing warrant in respect of the same premises, the requirement to retrieve the listening device under the existing warrant is waived by force of this subsection, and the listening device is taken to be installed under the further warrant. 5
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[2] Section 16A

Insert after section 16:

16A Retrieval of listening device after expiry of warrant

- (1) If a listening device remains on the premises concerned after the expiry of the warrant authorising its installation, the warrant is taken to require the retrieval of the listening device as soon as practicable after the expiry of the warrant. 15
- (2) The warrant is in that case taken to continue in force for the period of 10 days after its expiry (or such longer period as is allowed by an eligible Judge) for the purpose only of: 20
- (a) authorising and requiring the retrieval of the listening device, and
- (b) authorising entry onto the premises for the purpose of that retrieval. 25
- (3) On application made in writing and on being satisfied that there are reasonable grounds for allowing such a longer period, an eligible Judge may, by order in writing, allow a longer period specified in the order. 30
- (4) Nothing in subsection (3) prevents the making of further orders in respect of the same warrant, but the maximum period that can be specified in any one order is 21 days.

- (5) An order under this section must state the time within which the applicant for the order is required to report under section 19 (4) to an eligible Judge and to the Attorney General.
- (6) An order under this section may be in or to the effect of the form set out in Schedule 3. 5

[3] Section 19 Reports

Insert after section 19 (3) (before the penalty):

- (4) The person on whose application an order has been made under section 16A must, within the time specified for the purpose in the order, furnish a report, in writing, to an eligible Judge and to the Attorney General: 10
- (a) stating whether or not the listening device concerned was retrieved during the currency of the order, and 15
- (b) if the listening device was not so retrieved, giving the reasons why it was not retrieved.

[4] Schedule 1 Savings and transitional provisions

Insert after clause 6:

7 Warrants granted before commencement of Listening Devices Amendment (Warrants) Act 1998 20

- (1) In this clause, *the amending Act* means the *Listening Devices Amendment (Warrants) Act 1998*.
- (2) The amendments made by the amending Act do not apply to or affect warrants granted under this Act before the commencement of the amending Act, except as provided by this clause. 25
- (3) A reference in section 16 (6B) as inserted by the amending Act to an existing warrant extends to a warrant in force under this Act at the commencement of the amending Act. 30
- (4) Section 16A as inserted by the amending Act extends to a warrant in force under this Act at the commencement of the amending Act.

[5] Schedule 3

Insert after Schedule 2:

Schedule 3 Form of order

(Section 16A)

I, being an eligible Judge within the meaning of the *Listening Devices Act 1984*, on application made by 5
..... (*name of applicant*) and being satisfied that there are reasonable grounds for allowing a longer period referred to in section 16A of that Act, do, by this order, allow the period commencing with and ending with during which the 10
warrant identified below is taken to continue in force for the purpose only of:

- (a) authorising and requiring the retrieval of the listening device referred to in the warrant, and
- (b) authorising entry onto the premises concerned for the purpose of that retrieval. 15

The warrant is (*insert description sufficient to identify the warrant*):

I fix (*period*) as the period within which the applicant for this order is required to report under section 19 (4) of the *Listening Devices Act 1984* to an eligible Judge and to the Attorney General. 20

Dated 19 .

(*signature*)
(*name*)
Judge 25