



New South Wales

Surveillance Devices Amendment (Statutory Review) Bill 2018

Explanatory note

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

The following Bills are cognate with this Bill:

Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018,

Terrorism (Police Powers) Amendment (Statutory Review) Bill 2018.

Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the appointment of a Surveillance Devices Commissioner,
- (b) to include an objects provision in the *Surveillance Devices Act 2007*,
- (c) to permit the use of an optical surveillance device without a warrant if the use is as part of a controlled operation,
- (d) to make consistent the information that is required to be in a **warrant** (being either a surveillance device warrant or a retrieval warrant), the information that is required to be in the application for the warrant and the information that is required to be provided to the Attorney General about the application for the warrant,
- (e) to remove a requirement for an application to revoke a warrant that is no longer needed if the warrant will cease to be in force within 5 days,
- (f) to require an applicant for a warrant to include in the application any information known to the applicant that may be adverse to the warrant application,
- (g) to require an applicant for a surveillance device warrant to identify persons who may be incidentally recorded by the surveillance device,

- (h) to require the annual report of the Department of Justice to include information about applications for warrants,
- (i) to require an application for an authority to conduct a controlled operation to include details of the proposed use of a listening device or optical surveillance device without a warrant.

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 a day or days to be appointed by proclamation.

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

Schedule 1 [1] sets out the objects of the *Surveillance Devices Act 2007* (the *principal Act*).

Schedule 1 [19] provides for the appointment of a Surveillance Devices Commissioner. The person appointed must be an Australian legal practitioner with at least 7 years experience who is, has been (or is eligible to be) a Judge or judicial officer. **Schedule 1 [19]** also permits the Attorney General to delegate functions under Part 3 (Warrants) or 5 (Compliance and monitoring) of the principal Act to the Surveillance Devices Commissioner, the Solicitor General, the Crown Advocate or a person authorised by the regulations under the principal Act. **Schedule 1 [2]** includes a definition of *Surveillance Devices Commissioner* for the purposes of the principal Act.

Schedule 1 [3] permits the use of an optical surveillance device without a warrant if the use is as part of a controlled operation. This is currently permitted in relation to listening devices. **Schedule 1 [4], [16] and [17]** make consequential amendments.

Schedule 1 [5]–[8] and [10]–[13] make consistent the information that is required to be in a warrant (being either a surveillance device warrant or a retrieval warrant), the information that is required to be in the application for the warrant and the information that is required to be provided to the Attorney General about the application for the warrant. An application for a warrant must now include any information known to the applicant that may be adverse to the warrant application or, if no adverse information is known, a statement to that effect. In addition, an application for a surveillance device warrant must now also identify persons who may be incidentally recorded by the surveillance device. **Schedule 1 [20]** makes a consequential amendment.

Schedule 1 [9] provides that the chief officer of a law enforcement agency who is satisfied that the use of a surveillance device under a surveillance device warrant is no longer necessary is not required to apply for the revocation of the warrant if the warrant will cease to be in force within 5 days after the day on which the chief officer became satisfied.

Schedule 1 [14] and [15] clarify that an application for the retrospective approval of an emergency authorisation to use a surveillance device may also be accompanied by an application for a surveillance device warrant (to permit the continued use of the surveillance device). Both applications may be determined at the same time. However, the application for the warrant is to be made in the same way as any other application for a surveillance device warrant.

Schedule 1 [18] provides that the annual report of the Department of Justice must include certain information about applications for warrants.

Schedule 1 [21] permits the regulations made under the principal Act to prescribe the form in which an application for a warrant is to be made.

Schedule 1 [22] contains savings and transitional provisions consequent on the other amendments made by Schedule 1.

Schedule 2 Amendment of Law Enforcement (Controlled Operations) Act 1997 No 136

Schedule 2 requires an application for an authority to conduct a controlled operation to include details of the proposed use of a listening device or optical surveillance device as part of that operation if the use will be carried out other than in accordance with a surveillance device warrant.