

# CONCURRENCE COPY

## LISTENING DEVICES BILL, 1984

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### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to regulate the use of certain devices capable of being used for listening to private conversations.

The Bill contains the following provisions:—

#### PART I.—PRELIMINARY.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is an interpretation provision. In particular, “private conversation” is defined as a conversation which any of the parties to the conversation desires to be confidential.

Clause 4 provides that the Crown is bound by the proposed Act.

#### PART II.—OFFENCES RELATING TO LISTENING DEVICES.

Clause 5 prohibits, except in certain circumstances, the use of a listening device to record or listen to a private conversation (including its use by a party to the conversation).

Clause 6 prohibits, except in certain circumstances, the communication or publication of private conversations which have come to a person’s knowledge as a result of the unlawful use of a listening device.

Clause 7 prohibits, except in certain circumstances, the communication or publication of a record of a private conversation made by a party to the conversation by the use of a listening device.

Clause 8 prohibits, except in certain circumstances, a person from being in possession of a record of a private conversation knowing that it has been obtained by the unlawful use of a listening device.

Clause 9 prohibits the manufacture, supply or possession of a listening device for an unlawful use.

Clause 10 provides that a person who contravenes a provision of Part II is guilty of an offence against that Part.

Clause 11 specifies the penalty for an offence against Part II.

### PART III.—ADMISSIBILITY OF EVIDENCE.

Clause 12 is an interpretation provision.

Clause 13 renders evidence inadmissible in civil or criminal proceedings if it was obtained by the unlawful use of a listening device, whether directly or indirectly. The clause, however, enables any such evidence to be admissible if, among other things, the parties consent or, in the case of certain serious offences, the court in special circumstances so determines.

Clause 14 renders admissible in criminal proceedings evidence obtained inadvertently or unexpectedly by the use pursuant to a warrant of a listening device for the purpose of some other offence.

### PART IV.—WARRANTS.

Clause 15 is an interpretation provision. For the purpose of Part IV, "prescribed offence" is defined to mean an indictable offence or a summary offence of a class or description prescribed by regulation.

Clause 16 authorises the Supreme Court to grant a warrant for the use of a listening device in connection with a prescribed offence.

Clause 17 provides that the Attorney General is to be notified of the particulars of an application for a warrant under clause 16 and is to be given an opportunity to be heard in relation to the application.

Clause 18 provides for the granting of a warrant by telephone in urgent circumstances.

Clause 19 requires a person to whom a warrant has been granted to report on its use to the Supreme Court and to the Attorney General and enables the Supreme Court to direct that any records obtained be placed in the custody of the Supreme Court.

Clause 20 gives the Supreme Court a discretion, in certain circumstances, to direct that the person who was the subject of surveillance by a listening device be notified of that fact.

Clause 21 makes provision with respect to proceedings in the Supreme Court under Part IV.

### PART V.—MISCELLANEOUS.

Clause 22 provides for the destruction of certain irrelevant records obtained by the use of a listening device.

Clause 23 requires the Attorney General to report to Parliament on the granting of warrants for the use of listening devices and certain other matters.

Clause 24 enables proceedings for offences to be disposed of summarily before a court of petty sessions or the Supreme Court.

Clause 25 enables offences to be prosecuted on indictment.

Clause 26 authorises certain summary proceedings to be treated as committal proceedings.

Clause 27 extends the time for instituting summary proceedings for certain offences.

Clause 28 provides that the Attorney General's consent is required for proceedings for an offence to be instituted.

Clause 29 deals with the liability of directors, or other persons concerned in the management, of a corporation which is guilty of an offence.

Clause 30 enables a court to order the forfeiture or destruction of listening devices or records to which an offence relates.

Clause 31 authorises the making of regulations.

Clause 32 repeals the Listening Devices Act, 1969.

Clause 33 and Schedule 1 enact savings and transitional provisions and, in particular, make provision with respect to the admissibility of evidence obtained before the commencement of the proposed Act and offences relating to the use or possession of records of private conversations that were unlawfully made before that commencement.

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# **LISTENING DEVICES BILL, 1984**

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NEW SOUTH WALES.

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## **LISTENING DEVICES BILL, 1984**

No.       , 1984.

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### **A BILL FOR**

**An Act to regulate the use of certain devices capable of being used for listening to private conversations; and to repeal the Listening Devices Act, 1969.**

[MR LANDA—17 *May*, 1984.]

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*Listening Devices.*

**BE** it enacted by the Queen's Most Excellent Majesty, **by and with** the advice and consent of the Legislative Council and Legislative **Assembly** of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.**

**PRELIMINARY.**

**Short title.**

1. This Act may be cited as the "Listening Devices Act, 1984".

**Commencement.**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**15 Interpretation.**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"listen to" includes hear;

"listening device" means any instrument, apparatus, equipment or device capable of being used to record or listen to a private conversation simultaneously with its taking place;

"party", in relation to a private conversation, means—

- (a) a person by or to whom words are spoken in the course of the conversation; or

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(b) a person who, with the consent, express or implied, of any of the persons by or to whom words are spoken in the course of the conversation, records or listens to those words;

5 “principal party”, in relation to a private conversation, means a person by or to whom words are spoken in the course of the conversation;

“private conversation” means any words spoken by one person to another person or to other persons in circumstances that may reasonably be taken to indicate that any of those persons desires the words to be  
10 listened to only—

(a) by themselves; or

(b) by themselves and by some other person who has the consent, express or implied, of all of those persons to do so;

“regulation” means a regulation made under this Act;

15 “serious narcotics offence” means an offence to which section 45A of the Poisons Act, 1966, applies, but does not include an offence which is declared by the regulations not to be a serious narcotics offence within the meaning of this Act.

(2) A reference in this Act to a listening device does not include a  
20 reference to a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and to permit the person to hear only sounds ordinarily audible to the human ear.

(3) A reference in this Act to—

25 (a) a report of a private conversation includes a reference to a report of the substance, meaning or purport of the conversation; or

(b) a record of a private conversation includes a reference to a statement prepared from such a record.

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**Act to bind the Crown.**

4. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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**PART II.**

**OFFENCES RELATING TO LISTENING DEVICES.**

**Prohibition on use of listening devices.**

5. (1) A person shall not use, or cause to be used, a listening device—
- 10 (a) to record or listen to a private conversation to which the person is not a party; or
- (b) to record a private conversation to which the person is a party.
- (2) Subsection (1) does not apply to—
- 15 (a) the use of a listening device pursuant to a warrant granted under Part IV;
- (b) the use of a listening device pursuant to an authority granted by or under the Telecommunications (Interception) Act 1979 of the Commonwealth or any other law of the Commonwealth;
- (c) the use of a listening device to obtain evidence or information in connection with—
- 20 (i) an imminent threat of serious violence to persons or of substantial damage to property; or
- (ii) a serious narcotics offence,
- if it is necessary to use the device immediately to obtain that evidence or information; or
- 25 (d) the unintentional hearing of a private conversation by means of a listening device.

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(3) Subsection (1) (b) does not apply to the use of a listening device by a party to a private conversation if—

- (a) all of the principal parties to the conversation consent, expressly or impliedly, to the listening device being so used; or
- 5 (b) a principal party to the conversation consents to the listening device being so used and—
  - (i) the recording of the conversation is reasonably necessary for the protection of the lawful interests of that principal party; or
  - 10 (ii) the recording of the conversation is not made for the purpose of communicating or publishing the conversation, or a report of the conversation, to persons who are not parties to the conversation.

(4) Where a listening device is used in the circumstances referred to 15 in subsection (2) (c) and its use would, but for subsection (2) (c), be contrary to this section, the person who used the device shall—

- (a) forthwith cause to be served on the Attorney General or a prescribed officer notice of that fact; and
- (b) within 7 days after its use, furnish a report, in writing, to the 20 Attorney General—
  - (i) containing particulars of the circumstances in which the device was used; and
  - (ii) without affecting the generality of subparagraph (i), containing the same particulars, and specifying the same 25 matters, as are required by section 19 (1) (b) in relation to the use of a listening device pursuant to a warrant granted under Part IV.

**Prohibition on communication or publication of private conversations unlawfully listened to.**

- 30 **6. (1)** A person shall not knowingly communicate or publish to any other person a private conversation, or a report of a private conversation, that has come to the person's knowledge as a result, direct or indirect, of the use of a listening device in contravention of section 5.

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(2) Subsection (1) does not apply—

(a) where the communication or publication is made—

(i) to a party to the private conversation;

(ii) with the consent, express or implied, of all of the principal parties to the private conversation; or

(iii) in the course of proceedings for an offence against this Act or the regulations;

(b) where the communication or publication is not more than is reasonably necessary in connection with—

(i) an imminent threat of serious violence to persons or of substantial damage to property; or

(ii) a serious narcotics offence; or

(c) to prevent a person who has obtained knowledge of the private conversation otherwise than in a manner referred to in that subsection from communicating or publishing to another person the knowledge so obtained by the person, notwithstanding that the person also obtained knowledge of the conversation in such a manner.

**Prohibition on communication or publication of records of private conversations by parties thereto.**

7. (1) A person who has been a party to a private conversation and has used, or caused to be used, a listening device to record the conversation (whether in contravention of section 5 or not), shall not subsequently communicate or publish to any other person any record of the conversation made, directly or indirectly, by the use of the device.

(2) Subsection (1) does not apply where the communication or publication—

(a) is made to another party to the private conversation or with the consent, express or implied, of all of the principal parties to the conversation;

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- (b) is made in the course of legal proceedings;
- (c) is not more than is reasonably necessary for the protection of the lawful interests of the person making the communication or publication;
- 5 (d) is made to a person who has, or is, on reasonable grounds, by the person making the communication or publication, believed to have, such an interest in the private conversation as to make the communication or publication reasonable under the circumstances in which it is made; or
- 10 (e) is made by a person who used the listening device to record the private conversation pursuant to a warrant granted under Part IV or pursuant to an authority granted by or under the Telecommunications (Interception) Act 1979 of the Commonwealth or any other law of the Commonwealth.

**15 Possession of record of private conversation.**

**8. (1)** A person shall not possess a record of a private conversation knowing that it has been obtained, directly or indirectly, by the use of a listening device in contravention of section 5.

**(2)** Subsection (1) does not apply where the record is in the possession  
20 of the person—

- (a) in connection with proceedings for an offence against this Act or the regulations;
- (b) with the consent, express or implied, of all of the principal parties to the private conversation; or
- 25 (c) as a consequence of a communication or publication of that record to that person in circumstances that do not constitute an offence against this Part.

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**Manufacture, supply, etc., of listening device for unlawful use.**

9. (1) A person shall not—

- (a) manufacture;
- (b) supply or offer to supply; or
- 5 (c) possess,

a listening device for use in contravention of section 5.

(2) In subsection (1), “supply” includes sell and distribute.

**Offence against this Part.**

10. A person who contravenes any provision of this Part, whether by  
10 act or omission, is guilty of an offence.

**Penalty for offence against this Part.**

11. (1) A person convicted summarily of an offence against this Part  
shall be liable—

- 15 (a) except as provided by paragraph (b), to a fine not exceeding  
\$4,000 or imprisonment for a term not exceeding 2 years, or both;  
or
- (b) where the offence was committed by a corporation and the proceed-  
ings for the offence were taken before the Supreme Court in its  
summary jurisdiction, to a fine not exceeding \$50,000.

20 (2) A person convicted on indictment of an offence against this Part  
shall be liable to a fine not exceeding \$10,000 or imprisonment for a term  
not exceeding 5 years, or both.

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**PART III.****ADMISSIBILITY OF EVIDENCE.****Interpretation.**

12. In this Part, a reference to the giving of evidence of a private  
5 conversation that has come to the knowledge of a person as a result of the  
use of a listening device includes a reference to the production of a record  
of such a private conversation.

**Inadmissibility of evidence of private conversations when unlawfully  
obtained.**

10 13. (1) Where a private conversation has come to the knowledge of a  
person as a result, direct or indirect, of the use of a listening device in  
contravention of section 5—

(a) evidence of the conversation; and

15 (b) evidence obtained as a direct consequence of the conversation so  
coming to the knowledge of that person,

may not be given by that person in any civil or criminal proceedings.

(2) Subsection (1) does not render any evidence inadmissible—

(a) if all of the principal parties to the private conversation concerned  
consent to the evidence being given;

20 (b) if the private conversation concerned comes to the knowledge of  
the person called to give the evidence otherwise than in the manner  
referred to in that subsection, notwithstanding that the person also  
obtained knowledge of the conversation in such a manner;

(c) in proceedings for an offence against this Act or the regulations; or

25 (d) in proceedings for—

(i) an offence punishable by penal servitude for life or for 20  
years or more; or

(ii) a serious narcotics offence,

if the court considers that the evidence should be admissible.

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(3) In determining whether to admit evidence as referred to in subsection (2) (d), the court shall—

(a) be guided by the public interest, including where relevant the public interest in—

5 (i) upholding the law;

(ii) protecting people from illegal or unfair treatment; and

(iii) punishing those guilty of offences; and

(b) have regard to all relevant matters, including—

10 (i) the seriousness of the offence in relation to which the evidence is sought to be admitted; and

(ii) the nature of the contravention of section 5 concerned.

(4) The court before which any proceedings referred to in subsection (2) (c) or (d) are brought may, at any stage of the proceedings and from time to time, make an order forbidding publication of any evidence, or of  
15 any report of, or report of the substance, meaning or purport of, any evidence referred to in subsection (2) (c) or (d).

(5) A person shall not contravene an order made under subsection (4).

Penalty (subsection (5)): \$2,000 or imprisonment for a term of 12  
20 months, or both.

**Admissibility of evidence of private conversation when obtained  
inadvertently pursuant to warrant.**

14. (1) Where a private conversation has inadvertently or unexpectedly come to the knowledge of a person as a result, direct or indirect, of the use  
25 of a listening device pursuant to a warrant granted under Part IV—

(a) evidence of the conversation; or

(b) evidence obtained as a consequence of the conversation so coming to the knowledge of that person,

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may be given by that person in any criminal proceedings notwithstanding that the warrant was not granted for the purpose of allowing that evidence to be obtained.

- (2) Subsection (1) does not render any evidence admissible if—
- 5 (a) the evidence relates to an offence in respect of which a warrant could not be granted under Part IV; or
- (b) the complaint upon which the warrant was granted was not, in the opinion of the court, made in good faith.

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PART IV.

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## WARRANTS.

**Interpretation.****15. In this Part—**

“Court” means the Supreme Court of New South Wales;

“premises” includes vessels, vehicles and aircraft;

15 “prescribed offence” means—

- (a) an offence punishable on indictment; or
- (b) an offence not so punishable, being an offence of a class or description prescribed for the purposes of this Part.

**Warrants authorising use of listening devices.**

- 20 **16. (1)** Upon complaint made by a person that the person suspects or believes—

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- (a) that a prescribed offence has been, is about to be or is likely to be committed; and
- (b) that, for the purpose of an investigation into that offence or of enabling evidence to be obtained of the commission of the offence or the identity of the offender, the use of a listening device is necessary,

the Court may, if satisfied that there are reasonable grounds for that suspicion or belief, authorise, by warrant, the use of the listening device.

(2) In determining whether a warrant should be granted under this section, the Court shall have regard to—

- (a) the nature of the prescribed offence in respect of which the warrant is sought;
- (b) the extent to which the privacy of any person is likely to be affected;
- (c) alternative means of obtaining the evidence or information sought to be obtained;
- (d) the evidentiary value of any evidence sought to be obtained; and
- (e) any previous warrant sought or granted under this Part in connection with the same prescribed offence.

(3) Where a warrant granted by the Court under this section authorises the installation of a listening device on any premises, the Court shall, by the warrant—

- (a) authorise and require the retrieval of the listening device; and
- (b) authorise entry onto those premises for the purpose of that installation and retrieval.

(4) A warrant granted by the Court under this section shall specify—

- (a) the prescribed offence in respect of which the warrant is granted;
- (b) where practicable, the name of any person whose private conversation may be recorded or listened to by the use of a listening device pursuant to the warrant;

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- (c) the period (being a period not exceeding 21 days) during which the warrant is in force;
- (d) the name of any person who may use a listening device pursuant to the warrant and the persons who may use the device on behalf of that person;
- (e) where practicable, the premises on which a listening device is to be installed, or the place at which a listening device is to be used, pursuant to the warrant;
- (f) any conditions subject to which premises may be entered, or a listening device may be used, pursuant to the warrant; and
- (g) the time within which the person authorised to use a listening device pursuant to the warrant is required to report pursuant to section 19 to the Court and the Attorney General.

(5) A warrant granted under this section may be revoked by the Court at any time before the expiration of the period specified in the warrant pursuant to subsection (4) (c).

(6) Subsection (4) (c) shall not be construed as preventing the grant of a further warrant under this section in respect of a prescribed offence in respect of which a warrant has, or warrants have, previously been granted.

(7) The regulations may provide that, in such circumstances as are prescribed, the powers of the Court under this section may be exercised by the District Court or a court of petty sessions, and for that purpose a reference in sections 16, 17, 19 and 21 to the Court shall be read and construed as a reference to the District Court or a court of petty sessions, as the case may be.

**Particulars of warrants sought under section 16 to be notified to Attorney General.**

17. (1) A person seeking a warrant under section 16 shall cause to be served on the Attorney General or a prescribed officer notice of the following particulars:—

- (a) the prescribed offence in respect of which the warrant is sought;

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- (b) where practicable, the type of listening device intended to be used;
- (c) where practicable, the name of any person whose private conversation is intended to be recorded or listened to by the use of the listening device;
- 5 (d) where practicable, the premises on which the listening device is intended to be installed or the place at which the listening device is intended to be used;
- (e) whether any attempt has been made to obtain by alternative means the evidence or information sought and, if so, the result of any such  
10 attempt;
- (f) any other alternative means of obtaining the evidence or information sought to be obtained;
- (g) the period during which the listening device is intended to be used;
- 15 (h) the name of the person who is to use the listening device;
- (i) details of any previous warrant sought or granted under this Part in connection with the same prescribed offence.

(2) A warrant shall not be granted under section 16 unless the Court is satisfied that—

- 20 (a) a notice in respect of the warrant has been served in accordance with subsection (1); and
- (b) the Attorney General has had an opportunity to be heard in relation to the granting of the warrant.

**Radio/telephone warrants.**

25 **18. (1)** In this section, a reference to a telephone includes a reference to a radio or any other communication device.

(2) Upon complaint made by telephone by a member of the police force that the member of the police force suspects or believes—

- 30 (a) that a prescribed offence has been, is about to be or is likely to be committed; and

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(b) that, for the purpose of an investigation into that offence or of enabling evidence to be obtained of the commission of the offence or the identity of the offender, the immediate use of a listening device is necessary,

5 the Court may, if satisfied that there are reasonable grounds for that suspicion or belief, authorise, by warrant, the use of the listening device.

(3) The Court shall not grant a warrant under this section authorising the use of a listening device if the Court is satisfied that it would be practicable in the circumstances for a warrant to be granted under section 16 authorising  
10 the use of that device.

(4) A complaint under this section may be made by a member of the police force by causing the complaint to be transmitted to the Court by another member of the police force.

(5) The fact that a complaint is made under this section by a member  
15 of the police force who causes the complaint to be transmitted to the Court by another member of the police force does not, if the Court is of the opinion that it is, in all the circumstances, impracticable to communicate directly with the member of the police force making the complaint, prevent the Court being satisfied as to the matters referred to in subsection (2).

20 (6) The Court grants a warrant under this section by stating the terms of the warrant.

(7) Where the Court grants a warrant under this section, the Court shall cause a record to be made in writing of—

- 25 (a) the name of the member of the police force who was the complainant;
- (b) where the complaint was transmitted by a member of the police force on behalf of the complainant—the name of the member of the police force who so transmitted the complaint;
- (c) the details of the complaint;
- 30 (d) the terms of the warrant; and
- (e) the date and time the warrant was granted.

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(8) The provisions of section 16 (2)–(6) apply to and in respect of a warrant granted under this section in the same way as those provisions apply to and in respect of a warrant granted under section 16, except that a reference in section 16 (4) (c), as so applied, to 21 days shall be read and construed as  
5 a reference to 24 hours.

(9) The regulations may provide that, in such circumstances as are prescribed, the powers of the Court under this section may be exercised by the District Court or a court of petty sessions, and for that purpose a reference in sections 18, 19 and 21 to the Court shall be read and construed as a  
10 reference to the District Court or a court of petty sessions, as the case may be.

**Report to Court and Attorney General, etc.**

19. (1) A person to whom a warrant has been granted under this Part authorising the use of a listening device shall, within the time specified therefor in the warrant, furnish a report, in writing, to the Court and to the  
15 Attorney General—

(a) stating whether or not a listening device was used pursuant to the warrant; and

(b) if a listening device was so used—

- 20 (i) specifying the name, if known, of any person whose private conversation was recorded or listened to by the use of the device;
- (ii) specifying the period during which the device was used;
- (iii) containing particulars of any premises on which the device was installed or any place at which the device was used;
- 25 (iv) containing particulars of the general use made or to be made of any evidence or information obtained by the use of the device; and
- (v) containing particulars of any previous use of a listening device in connection with the prescribed offence in respect  
30 of which the warrant was granted.

(2) Where a report is given to the Court under subsection (1), the Court may direct that any record of evidence or information obtained by the use of the listening device to which the report relates be brought into the Court, and a person to whom any such direction is given shall comply with  
35 the direction.

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(3) A record brought into the Court pursuant to subsection (2) shall be kept in the custody of the Court and may, by order of the Court, be made available to any person.

Penalty: \$2,000 or imprisonment for a term of 12 months, or both.

**5 Requirement to inform subject of surveillance.**

20 (1) Where, pursuant to a warrant granted under this Part, a listening device has been used to record or listen to the private conversation of a person, the Court may direct the person authorised to use the device to supply to that person, within a period specified by the Court, such information regarding the warrant and the use of the device as the Court may specify.

(2) The Court shall not give a direction under subsection (1) unless the Court is satisfied that, having regard to the evidence or information obtained by the use of the listening device and to any other relevant matter, the use of the listening device was not justified and was an unnecessary interference with the privacy of the person concerned.

(3) Before giving a direction under subsection (1), the Court shall give the person to whom the warrant was granted an opportunity to be heard in relation to the matter.

20 (4) A person to whom a direction is given under subsection (1) shall comply with the direction.

Penalty: \$2,000 or imprisonment for a term of 12 months, or both.

**Proceedings under this Part.**

25 21. (1) Proceedings in the Court under this Part shall be conducted in the absence of the public.

(2) The proceedings in, and the practice and procedure of, the Court under this Part shall, subject to this Part and the regulations, be regulated by rules of court and, without limiting the generality of the foregoing, any such rules of court may make provision for or with respect to—

30 (a) the manner of making complaints to the Court under sections 16 and 18;

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- (b) the manner in which warrants are granted or directions are given under this Part; and
- (c) the exclusion of persons from the Court and the prohibition of the publication or disclosure of any matter connected with the proceedings in the Court.

(3) Subsection (1) does not limit the rule-making powers conferred by the Supreme Court Act, 1970, or any other Act.

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PART V.

MISCELLANEOUS.

**10 Destruction of irrelevant records made by the use of a listening device.**

**22. (1)** This section applies to the use of a listening device—

- (a) pursuant to a warrant granted under Part IV; or
- (b) in the circumstances referred to in section 5 (2) (c).

(2) A person shall, as soon as practicable after it has been made, cause to be destroyed so much of any record, whether in writing or otherwise, of any evidence or information obtained by the person by the use of a listening device to which this section applies as does not relate directly or indirectly to the commission of a prescribed offence within the meaning of Part IV.

20 Penalty: \$2,000 or imprisonment for a term of 12 months, or both.

**Annual report by Attorney General.**

**23.** The Attorney General shall, as soon as practicable after 31st December in each year—

(a) cause to be prepared a report—

- (i) on the number of warrants sought under Part IV, and the number of warrants granted, in that year; and

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- (ii) on such other matters relating to the use of listening devices and to the administration of this Act as the Attorney General considers appropriate; and
- 5 (b) lay the report or cause it to be laid before both Houses of Parliament.

**Offences punishable summarily.**

24. Proceedings for an offence against this Act or the regulations may be taken—

- 10 (a) before a court of petty sessions constituted by a stipendiary magistrate sitting alone; or
- (b) before the Supreme Court in its summary jurisdiction.

**Offences punishable on indictment.**

25. Without limiting the operation of any other provision of this Act, an offence against Part II may be prosecuted on indictment.

**15 Certain summary proceedings to become committal proceedings.**

26. (1) Where—

- (a) proceedings for an offence against Part II are taken before a court of petty sessions;
- 20 (b) the court is of the opinion that the offence should be dealt with as an indictable offence instead of in a summary manner; and
- (c) no evidence has been adduced by or on behalf of the defendant,
- the court may, in its discretion, make a declaration that subsection (2) applies to the proceedings.

(2) Where a declaration is made by a court under subsection (1) in  
25 relation to any proceedings—

- (a) the court shall re-charge the defendant with the offence to which the proceedings relate;

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- (b) the information laid in accordance with section 52 of the Justices Act, 1902, in relation to that offence shall be deemed to have been withdrawn and the proceedings shall cease to be proceedings to which Division 2 of Part IV of that Act applies;
- 5 (c) the proceedings shall be continued as if originally commenced in accordance with Division 1 of that Part, and anything done, before the declaration was made, under or for the purposes of Division 2 of that Part in relation to the proceedings shall, except to the extent that the court otherwise directs, be deemed to have been done
- 10 under or for the purposes of Division 1 of that Part in relation to the proceedings; and
- (d) the court shall not accept or treat any admission made by the defendant before the declaration was made as a plea of guilty for the purposes of section 51A of that Act.
- 15 (3) Except as expressly provided, nothing in this section affects any power that a court or any person has apart from this section in relation to any offence or proceedings referred to in this section.

**Time for instituting proceedings for certain offences.**

27. Proceedings for an offence against Part II which is prosecuted
- 20 summarily may be commenced within a period of 2 years after the act or omission alleged to constitute the offence.

**Consent of Attorney General to prosecutions.**

28. (1) Proceedings for an offence against this Act or the regulations shall not be instituted without the written consent of the Attorney General.
- 25 (2) In proceedings referred to in subsection (1), a consent to institute the proceedings, purporting to have been signed by the Attorney General, shall be evidence of that consent without proof of the signature of the Attorney General.

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**Offences by corporations.**

29. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation  
5 shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the knowledge of the person;
- 10 (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has  
15 been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or a regulation on any corporation by which an offence against the provision is actually committed.

**Orders for forfeiture.**

20 30. (1) Where a court has convicted a person of an offence against this Act or the regulations, it may, in addition to any penalty it may impose, make either or both of the following orders:—

- (a) an order that any listening device used in the commission of the offence be forfeited to Her Majesty or destroyed;
- 25 (b) an order that any record of a private conversation—
  - (i) to which the offence relates; or
  - (ii) which was obtained by the use of a listening device to which the offence relates,be forfeited to Her Majesty or destroyed.

30 (2) Before making an order under subsection (1), the court may require notice to be given to, and may hear, such persons as the court thinks fit.

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(3) Without affecting any other right of appeal, an order under subsection (1) is appellable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence.

(4) Where an order is made under subsection (1) that a listening device or record be forfeited to Her Majesty or destroyed, any member of the police force may seize the listening device or record for the purpose of giving effect to the order.

**Regulations.**

31. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- 15 (a) exempting, subject to their complying with any conditions specified in the regulations, from any or all of the provisions of this Act, as may be so specified, persons belonging to any class of persons so specified; and
- (b) warrants granted under Part IV and proceedings under that Part in connection with any such warrants.

20 (2) Notwithstanding the provisions of section 41 of the Interpretation Act, 1897, any regulation made for the purposes of subsection (1) (a) shall take effect on and from the date of expiry of the period during which either House of Parliament may, under section 41 of the Interpretation Act, 1897, disallow the regulation, whichever date is the later, or on and from a later  
25 date specified in the regulation.

(3) Except as provided by subsection (2), section 41 of the Interpretation Act, 1897, applies to any regulation.

(4) A regulation may impose a penalty not exceeding \$500 for any contravention thereof.

30 (5) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;

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*Listening Devices.*

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- (b) apply differently according to different factors of a specified kind;  
or  
(c) authorise any matter or thing to be from time to time determined,  
applied or regulated by any specified person or body,  
5 or may do any combination of those things.

**Repeal of Act No. 70, 1969.**

32. The Listening Devices Act, 1969, is repealed.

**Savings and transitional provisions.**

33. Schedule 1 has effect.

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**SCHEDULE 1.**

(Sec. 33.)

**SAVINGS AND TRANSITIONAL PROVISIONS.****Interpretation.**

1. In this Schedule—

- 15 “appointed day” means the day appointed and notified under section 2 (2);  
“former Act” means the Listening Devices Act, 1969.

**Authorisations under former Act.**

2. (1) An authorisation given under section 8 of the former Act and in force  
immediately before the appointed day shall, for the purposes only of Part II, be deemed  
20 to be a warrant granted under Part IV.

- (2) Sections 8–11 of the former Act continue to apply to any authorisation  
given under section 8 of the former Act before the appointed day.

**Admissibility of evidence arising from use of listening device before appointed day.**

3. (1) The provisions of Part III apply to and in respect of the admissibility of  
25 evidence arising from the use of a listening device before the appointed day.

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*Listening Devices.*

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SCHEDULE 1—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(2) For the purposes of subclause (1), a reference in section 5 to a warrant granted under Part IV shall be read and construed as a reference to an authorisation 5 given under section 8 of the former Act.

**Offences in connection with use of a listening device before appointed day.**

4. (1) Section 6 applies to and in respect of the communication or publication on or after the appointed day of a private conversation, or a report of a private conversation, that has come to a person's knowledge as a result of the use of a listening device 10 before the appointed day.

(2) Section 7 applies to and in respect of the communication or publication on or after the appointed day of a record of a private conversation made by the use of a listening device before the appointed day.

(3) Section 8 applies to and in respect of the possession, on or after the appointed 15 day, of a record of a private conversation obtained by the use of a listening device before the appointed day.

(4) For the purposes of the application of any provision referred to in this clause, a listening device shall be deemed to have been used in contravention of section 5 if it was used in contravention of section 4 of the former Act.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984

(\$1.50)





# **LISTENING DEVICES ACT, 1984, No. 69**

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NEW SOUTH WALES.



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SCHEDULE 1.—SAVINGS AND TRANSITIONAL PROVISIONS.

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**LISTENING DEVICES ACT, 1984, No. 69**

**New South Wales**



ANNO TRICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No. 69, 1984.**

An Act to regulate the use of certain devices capable of being used for listening to private conversations; and to repeal the Listening Devices Act, 1969. [Assented to, 27th June, 1984.]

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*Listening Devices.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.**

**PRELIMINARY.**

**Short title.**

1. This Act may be cited as the "Listening Devices Act, 1984".

**Commencement.**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Interpretation.**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"listen to" includes hear;

"listening device" means any instrument, apparatus, equipment or device capable of being used to record or listen to a private conversation simultaneously with its taking place;

"party", in relation to a private conversation, means—

- (a) a person by or to whom words are spoken in the course of the conversation; or

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- (b) a person who, with the consent, express or implied, of any of the persons by or to whom words are spoken in the course of the conversation, records or listens to those words;

“principal party”, in relation to a private conversation, means a person by or to whom words are spoken in the course of the conversation;

“private conversation” means any words spoken by one person to another person or to other persons in circumstances that may reasonably be taken to indicate that any of those persons desires the words to be listened to only—

- (a) by themselves; or
- (b) by themselves and by some other person who has the consent, express or implied, of all of those persons to do so;

“regulation” means a regulation made under this Act;

“serious narcotics offence” means an offence to which section 45A of the Poisons Act, 1966, applies, but does not include an offence which is declared by the regulations not to be a serious narcotics offence within the meaning of this Act.

(2) A reference in this Act to a listening device does not include a reference to a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and to permit the person to hear only sounds ordinarily audible to the human ear.

(3) A reference in this Act to—

- (a) a report of a private conversation includes a reference to a report of the substance, meaning or purport of the conversation; or
- (b) a record of a private conversation includes a reference to a statement prepared from such a record.

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**Act to bind the Crown.**

4. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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**PART II.****OFFENCES RELATING TO LISTENING DEVICES.****Prohibition on use of listening devices.**

5. (1) A person shall not use, or cause to be used, a listening device—
- (a) to record or listen to a private conversation to which the person is not a party; or
  - (b) to record a private conversation to which the person is a party.
- (2) Subsection (1) does not apply to—
- (a) the use of a listening device pursuant to a warrant granted under Part IV;
  - (b) the use of a listening device pursuant to an authority granted by or under the Telecommunications (Interception) Act 1979 of the Commonwealth or any other law of the Commonwealth;
  - (c) the use of a listening device to obtain evidence or information in connection with—
    - (i) an imminent threat of serious violence to persons or of substantial damage to property; or
    - (ii) a serious narcotics offence,if it is necessary to use the device immediately to obtain that evidence or information; or
  - (d) the unintentional hearing of a private conversation by means of a listening device.

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*Listening Devices.*

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(3) Subsection (1) (b) does not apply to the use of a listening device by a party to a private conversation if—

- (a) all of the principal parties to the conversation consent, expressly or impliedly, to the listening device being so used; or
- (b) a principal party to the conversation consents to the listening device being so used and—
  - (i) the recording of the conversation is reasonably necessary for the protection of the lawful interests of that principal party; or
  - (ii) the recording of the conversation is not made for the purpose of communicating or publishing the conversation, or a report of the conversation, to persons who are not parties to the conversation.

(4) Where a listening device is used in the circumstances referred to in subsection (2) (c) and its use would, but for subsection (2) (c), be contrary to this section, the person who used the device shall—

- (a) forthwith cause to be served on the Attorney General or a prescribed officer notice of that fact; and
- (b) within 7 days after its use, furnish a report, in writing, to the Attorney General—
  - (i) containing particulars of the circumstances in which the device was used; and
  - (ii) without affecting the generality of subparagraph (i), containing the same particulars, and specifying the same matters, as are required by section 19 (1) (b) in relation to the use of a listening device pursuant to a warrant granted under Part IV.

**Prohibition on communication or publication of private conversations unlawfully listened to.**

6. (1) A person shall not knowingly communicate or publish to any other person a private conversation, or a report of a private conversation, that has come to the person's knowledge as a result, direct or indirect, of the use of a listening device in contravention of section 5.

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- (2) Subsection (1) does not apply—
- (a) where the communication or publication is made—
    - (i) to a party to the private conversation;
    - (ii) with the consent, express or implied, of all of the principal parties to the private conversation; or
    - (iii) in the course of proceedings for an offence against this Act or the regulations;
  - (b) where the communication or publication is not more than is reasonably necessary in connection with—
    - (i) an imminent threat of serious violence to persons or of substantial damage to property; or
    - (ii) a serious narcotics offence; or
  - (c) to prevent a person who has obtained knowledge of the private conversation otherwise than in a manner referred to in that subsection from communicating or publishing to another person the knowledge so obtained by the person, notwithstanding that the person also obtained knowledge of the conversation in such a manner.

**Prohibition on communication or publication of records of private conversations by parties thereto.**

7. (1) A person who has been a party to a private conversation and has used, or caused to be used, a listening device to record the conversation (whether in contravention of section 5 or not), shall not subsequently communicate or publish to any other person any record of the conversation made, directly or indirectly, by the use of the device.

(2) Subsection (1) does not apply where the communication or publication—

- (a) is made to another party to the private conversation or with the consent, express or implied, of all of the principal parties to the conversation;

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- (b) is made in the course of legal proceedings;
- (c) is not more than is reasonably necessary for the protection of the lawful interests of the person making the communication or publication;
- (d) is made to a person who has, or is, on reasonable grounds, by the person making the communication or publication, believed to have, such an interest in the private conversation as to make the communication or publication reasonable under the circumstances in which it is made; or
- (e) is made by a person who used the listening device to record the private conversation pursuant to a warrant granted under Part IV or pursuant to an authority granted by or under the Telecommunications (Interception) Act 1979 of the Commonwealth or any other law of the Commonwealth.

**Possession of record of private conversation.**

**8. (1)** A person shall not possess a record of a private conversation knowing that it has been obtained, directly or indirectly, by the use of a listening device in contravention of section 5.

**(2)** Subsection (1) does not apply where the record is in the possession of the person—

- (a) in connection with proceedings for an offence against this Act or the regulations;
- (b) with the consent, express or implied, of all of the principal parties to the private conversation; or
- (c) as a consequence of a communication or publication of that record to that person in circumstances that do not constitute an offence against this Part.

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**Manufacture, supply, etc., of listening device for unlawful use.**

9. (1) A person shall not—

- (a) manufacture;
- (b) supply or offer to supply; or
- (c) possess,

a listening device for use in contravention of section 5.

(2) In subsection (1), “supply” includes sell and distribute.

**Offence against this Part.**

10. A person who contravenes any provision of this Part, whether by act or omission, is guilty of an offence.

**Penalty for offence against this Part.**

11. (1) A person convicted summarily of an offence against this Part shall be liable—

- (a) except as provided by paragraph (b), to a fine not exceeding \$4,000 or imprisonment for a term not exceeding 2 years, or both; or
- (b) where the offence was committed by a corporation and the proceedings for the offence were taken before the Supreme Court in its summary jurisdiction, to a fine not exceeding \$50,000.

(2) A person convicted on indictment of an offence against this Part shall be liable to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years, or both.

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**PART III.****ADMISSIBILITY OF EVIDENCE.****Interpretation.**

**12.** In this Part, a reference to the giving of evidence of a private conversation that has come to the knowledge of a person as a result of the use of a listening device includes a reference to the production of a record of such a private conversation.

**Inadmissibility of evidence of private conversations when unlawfully obtained.**

**13. (1)** Where a private conversation has come to the knowledge of a person as a result, direct or indirect, of the use of a listening device in contravention of section 5—

- (a) evidence of the conversation; and
- (b) evidence obtained as a direct consequence of the conversation so coming to the knowledge of that person,

may not be given by that person in any civil or criminal proceedings.

**(2)** Subsection (1) does not render any evidence inadmissible—

- (a) if all of the principal parties to the private conversation concerned consent to the evidence being given;
- (b) if the private conversation concerned comes to the knowledge of the person called to give the evidence otherwise than in the manner referred to in that subsection, notwithstanding that the person also obtained knowledge of the conversation in such a manner;
- (c) in proceedings for an offence against this Act or the regulations; or
- (d) in proceedings for—
  - (i) an offence punishable by penal servitude for life or for 20 years or more; or
  - (ii) a serious narcotics offence,if the court considers that the evidence should be admissible.

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(3) In determining whether to admit evidence as referred to in subsection (2) (d), the court shall—

- (a) be guided by the public interest, including where relevant the public interest in—
  - (i) upholding the law;
  - (ii) protecting people from illegal or unfair treatment; and
  - (iii) punishing those guilty of offences; and
- (b) have regard to all relevant matters, including—
  - (i) the seriousness of the offence in relation to which the evidence is sought to be admitted; and
  - (ii) the nature of the contravention of section 5 concerned.

(4) The court before which any proceedings referred to in subsection (2) (c) or (d) are brought may, at any stage of the proceedings and from time to time, make an order forbidding publication of any evidence, or of any report of, or report of the substance, meaning or purport of, any evidence referred to in subsection (2) (c) or (d).

(5) A person shall not contravene an order made under subsection (4).

Penalty (subsection (5)): \$2,000 or imprisonment for a term of 12 months, or both.

**Admissibility of evidence of private conversation when obtained inadvertently pursuant to warrant.**

14. (1) Where a private conversation has inadvertently or unexpectedly come to the knowledge of a person as a result, direct or indirect, of the use of a listening device pursuant to a warrant granted under Part IV—

- (a) evidence of the conversation; or
- (b) evidence obtained as a consequence of the conversation so coming to the knowledge of that person,

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may be given by that person in any criminal proceedings notwithstanding that the warrant was not granted for the purpose of allowing that evidence to be obtained.

- (2) Subsection (1) does not render any evidence admissible if—
- (a) the evidence relates to an offence in respect of which a warrant could not be granted under Part IV; or
  - (b) the complaint upon which the warrant was granted was not, in the opinion of the court, made in good faith.
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PART IV.

WARRANTS.

**Interpretation.**

15. In this Part—

“Court” means the Supreme Court of New South Wales;

“premises” includes vessels, vehicles and aircraft;

“prescribed offence” means—

- (a) an offence punishable on indictment; or
- (b) an offence not so punishable, being an offence of a class or description prescribed for the purposes of this Part.

**Warrants authorising use of listening devices.**

16. (1) Upon complaint made by a person that the person suspects or believes—

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- (a) that a prescribed offence has been, is about to be or is likely to be committed; and
- (b) that, for the purpose of an investigation into that offence or of enabling evidence to be obtained of the commission of the offence or the identity of the offender, the use of a listening device is necessary,

the Court may, if satisfied that there are reasonable grounds for that suspicion or belief, authorise, by warrant, the use of the listening device.

(2) In determining whether a warrant should be granted under this section, the Court shall have regard to—

- (a) the nature of the prescribed offence in respect of which the warrant is sought;
- (b) the extent to which the privacy of any person is likely to be affected;
- (c) alternative means of obtaining the evidence or information sought to be obtained;
- (d) the evidentiary value of any evidence sought to be obtained; and
- (e) any previous warrant sought or granted under this Part in connection with the same prescribed offence.

(3) Where a warrant granted by the Court under this section authorises the installation of a listening device on any premises, the Court shall, by the warrant—

- (a) authorise and require the retrieval of the listening device; and
- (b) authorise entry onto those premises for the purpose of that installation and retrieval.

(4) A warrant granted by the Court under this section shall specify—

- (a) the prescribed offence in respect of which the warrant is granted;
- (b) where practicable, the name of any person whose private conversation may be recorded or listened to by the use of a listening device pursuant to the warrant;

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- (c) the period (being a period not exceeding 21 days) during which the warrant is in force;
- (d) the name of any person who may use a listening device pursuant to the warrant and the persons who may use the device on behalf of that person;
- (e) where practicable, the premises on which a listening device is to be installed, or the place at which a listening device is to be used, pursuant to the warrant;
- (f) any conditions subject to which premises may be entered, or a listening device may be used, pursuant to the warrant; and
- (g) the time within which the person authorised to use a listening device pursuant to the warrant is required to report pursuant to section 19 to the Court and the Attorney General.

(5) A warrant granted under this section may be revoked by the Court at any time before the expiration of the period specified in the warrant pursuant to subsection (4) (c).

(6) Subsection (4) (c) shall not be construed as preventing the grant of a further warrant under this section in respect of a prescribed offence in respect of which a warrant has, or warrants have, previously been granted.

(7) The regulations may provide that, in such circumstances as are prescribed, the powers of the Court under this section may be exercised by the District Court or a court of petty sessions, and for that purpose a reference in sections 16, 17, 19 and 21 to the Court shall be read and construed as a reference to the District Court or a court of petty sessions, as the case may be.

**Particulars of warrants sought under section 16 to be notified to Attorney General.**

17. (1) A person seeking a warrant under section 16 shall cause to be served on the Attorney General or a prescribed officer notice of the following particulars:—

- (a) the prescribed offence in respect of which the warrant is sought;

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*Listening Devices.*

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- (b) where practicable, the type of listening device intended to be used;
- (c) where practicable, the name of any person whose private conversation is intended to be recorded or listened to by the use of the listening device;
- (d) where practicable, the premises on which the listening device is intended to be installed or the place at which the listening device is intended to be used;
- (e) whether any attempt has been made to obtain by alternative means the evidence or information sought and, if so, the result of any such attempt;
- (f) any other alternative means of obtaining the evidence or information sought to be obtained;
- (g) the period during which the listening device is intended to be used;
- (h) the name of the person who is to use the listening device;
- (i) details of any previous warrant sought or granted under this Part in connection with the same prescribed offence.

(2) A warrant shall not be granted under section 16 unless the Court is satisfied that—

- (a) a notice in respect of the warrant has been served in accordance with subsection (1); and
- (b) the Attorney General has had an opportunity to be heard in relation to the granting of the warrant.

**Radio/telephone warrants.**

18. (1) In this section, a reference to a telephone includes a reference to a radio or any other communication device.

(2) Upon complaint made by telephone by a member of the police force that the member of the police force suspects or believes—

- (a) that a prescribed offence has been, is about to be or is likely to be committed; and

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- (b) that, for the purpose of an investigation into that offence or of enabling evidence to be obtained of the commission of the offence or the identity of the offender, the immediate use of a listening device is necessary,

the Court may, if satisfied that there are reasonable grounds for that suspicion or belief, authorise, by warrant, the use of the listening device.

(3) The Court shall not grant a warrant under this section authorising the use of a listening device if the Court is satisfied that it would be practicable in the circumstances for a warrant to be granted under section 16 authorising the use of that device.

(4) A complaint under this section may be made by a member of the police force by causing the complaint to be transmitted to the Court by another member of the police force.

(5) The fact that a complaint is made under this section by a member of the police force who causes the complaint to be transmitted to the Court by another member of the police force does not, if the Court is of the opinion that it is, in all the circumstances, impracticable to communicate directly with the member of the police force making the complaint, prevent the Court being satisfied as to the matters referred to in subsection (2).

(6) The Court grants a warrant under this section by stating the terms of the warrant.

(7) Where the Court grants a warrant under this section, the Court shall cause a record to be made in writing of—

- (a) the name of the member of the police force who was the complainant;
- (b) where the complaint was transmitted by a member of the police force on behalf of the complainant—the name of the member of the police force who so transmitted the complaint;
- (c) the details of the complaint;
- (d) the terms of the warrant; and
- (e) the date and time the warrant was granted.

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(8) The provisions of section 16 (2)–(6) apply to and in respect of a warrant granted under this section in the same way as those provisions apply to and in respect of a warrant granted under section 16, except that a reference in section 16 (4) (c), as so applied, to 21 days shall be read and construed as a reference to 24 hours.

(9) The regulations may provide that, in such circumstances as are prescribed, the powers of the Court under this section may be exercised by the District Court or a court of petty sessions, and for that purpose a reference in sections 18, 19 and 21 to the Court shall be read and construed as a reference to the District Court or a court of petty sessions, as the case may be.

**Report to Court and Attorney General, etc.**

**19. (1)** A person to whom a warrant has been granted under this Part authorising the use of a listening device shall, within the time specified therefor in the warrant, furnish a report, in writing, to the Court and to the Attorney General—

- (a) stating whether or not a listening device was used pursuant to the warrant; and
- (b) if a listening device was so used—
  - (i) specifying the name, if known, of any person whose private conversation was recorded or listened to by the use of the device;
  - (ii) specifying the period during which the device was used;
  - (iii) containing particulars of any premises on which the device was installed or any place at which the device was used;
  - (iv) containing particulars of the general use made or to be made of any evidence or information obtained by the use of the device; and
  - (v) containing particulars of any previous use of a listening device in connection with the prescribed offence in respect of which the warrant was granted.

(2) Where a report is given to the Court under subsection (1), the Court may direct that any record of evidence or information obtained by the use of the listening device to which the report relates be brought into the Court, and a person to whom any such direction is given shall comply with the direction.

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(3) A record brought into the Court pursuant to subsection (2) shall be kept in the custody of the Court and may, by order of the Court, be made available to any person.

Penalty: \$2,000 or imprisonment for a term of 12 months, or both.

**Requirement to inform subject of surveillance.**

20. (1) Where, pursuant to a warrant granted under this Part, a listening device has been used to record or listen to the private conversation of a person, the Court may direct the person authorised to use the device to supply to that person, within a period specified by the Court, such information regarding the warrant and the use of the device as the Court may specify.

(2) The Court shall not give a direction under subsection (1) unless the Court is satisfied that, having regard to the evidence or information obtained by the use of the listening device and to any other relevant matter, the use of the listening device was not justified and was an unnecessary interference with the privacy of the person concerned.

(3) Before giving a direction under subsection (1), the Court shall give the person to whom the warrant was granted an opportunity to be heard in relation to the matter.

(4) A person to whom a direction is given under subsection (1) shall comply with the direction.

Penalty: \$2,000 or imprisonment for a term of 12 months, or both.

**Proceedings under this Part.**

21. (1) Proceedings in the Court under this Part shall be conducted in the absence of the public.

(2) The proceedings in, and the practice and procedure of, the Court under this Part shall, subject to this Part and the regulations, be regulated by rules of court and, without limiting the generality of the foregoing, any such rules of court may make provision for or with respect to—

- (a) the manner of making complaints to the Court under sections 16 and 18;

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- (b) the manner in which warrants are granted or directions are given under this Part; and
- (c) the exclusion of persons from the Court and the prohibition of the publication or disclosure of any matter connected with the proceedings in the Court.

(3) Subsection (1) does not limit the rule-making powers conferred by the Supreme Court Act, 1970, or any other Act.

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PART V.

MISCELLANEOUS.

**Destruction of irrelevant records made by the use of a listening device.**

**22. (1)** This section applies to the use of a listening device—

- (a) pursuant to a warrant granted under Part IV; or
- (b) in the circumstances referred to in section 5 (2) (c).

(2) A person shall, as soon as practicable after it has been made, cause to be destroyed so much of any record, whether in writing or otherwise, of any evidence or information obtained by the person by the use of a listening device to which this section applies as does not relate directly or indirectly to the commission of a prescribed offence within the meaning of Part IV.

Penalty: \$2,000 or imprisonment for a term of 12 months, or both.

**Annual report by Attorney General.**

**23.** The Attorney General shall, as soon as practicable after 31st December in each year—

- (a) cause to be prepared a report—
  - (i) on the number of warrants sought under Part IV, and the number of warrants granted, in that year; and

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- (ii) on such other matters relating to the use of listening devices and to the administration of this Act as the Attorney General considers appropriate; and
- (b) lay the report or cause it to be laid before both Houses of Parliament.

**Offences punishable summarily.**

**24.** Proceedings for an offence against this Act or the regulations may be taken—

- (a) before a court of petty sessions constituted by a stipendiary magistrate sitting alone; or
- (b) before the Supreme Court in its summary jurisdiction.

**Offences punishable on indictment.**

**25.** Without limiting the operation of any other provision of this Act, an offence against Part II may be prosecuted on indictment.

**Certain summary proceedings to become committal proceedings.**

**26. (1)** Where—

- (a) proceedings for an offence against Part II are taken before a court of petty sessions;
  - (b) the court is of the opinion that the offence should be dealt with as an indictable offence instead of in a summary manner; and
  - (c) no evidence has been adduced by or on behalf of the defendant,
- the court may, in its discretion, make a declaration that subsection (2) applies to the proceedings.

**(2)** Where a declaration is made by a court under subsection (1) in relation to any proceedings—

- (a) the court shall re-charge the defendant with the offence to which the proceedings relate;

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- (b) the information laid in accordance with section 52 of the Justices Act, 1902, in relation to that offence shall be deemed to have been withdrawn and the proceedings shall cease to be proceedings to which Division 2 of Part IV of that Act applies;
- (c) the proceedings shall be continued as if originally commenced in accordance with Division 1 of that Part, and anything done, before the declaration was made, under or for the purposes of Division 2 of that Part in relation to the proceedings shall, except to the extent that the court otherwise directs, be deemed to have been done under or for the purposes of Division 1 of that Part in relation to the proceedings; and
- (d) the court shall not accept or treat any admission made by the defendant before the declaration was made as a plea of guilty for the purposes of section 51A of that Act.

(3) Except as expressly provided, nothing in this section affects any power that a court or any person has apart from this section in relation to any offence or proceedings referred to in this section.

**Time for instituting proceedings for certain offences.**

27. Proceedings for an offence against Part II which is prosecuted summarily may be commenced within a period of 2 years after the act or omission alleged to constitute the offence.

**Consent of Attorney General to prosecutions.**

28. (1) Proceedings for an offence against this Act or the regulations shall not be instituted without the written consent of the Attorney General.

(2) In proceedings referred to in subsection (1), a consent to institute the proceedings, purporting to have been signed by the Attorney General, shall be evidence of that consent without proof of the signature of the Attorney General.

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**Offences by corporations.**

**29. (1)** Where a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the knowledge of the person;
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

**(2)** A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

**(3)** Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or a regulation on any corporation by which an offence against the provision is actually committed.

**Orders for forfeiture.**

**30. (1)** Where a court has convicted a person of an offence against this Act or the regulations, it may, in addition to any penalty it may impose, make either or both of the following orders:—

- (a) an order that any listening device used in the commission of the offence be forfeited to Her Majesty or destroyed;
- (b) an order that any record of a private conversation—
  - (i) to which the offence relates; or
  - (ii) which was obtained by the use of a listening device to which the offence relates,be forfeited to Her Majesty or destroyed.

**(2)** Before making an order under subsection (1), the court may require notice to be given to, and may hear, such persons as the court thinks fit.

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(3) Without affecting any other right of appeal, an order under subsection (1) is appellable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence.

(4) Where an order is made under subsection (1) that a listening device or record be forfeited to Her Majesty or destroyed, any member of the police force may seize the listening device or record for the purpose of giving effect to the order.

**Regulations.**

**31. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) exempting, subject to their complying with any conditions specified in the regulations, from any or all of the provisions of this Act, as may be so specified, persons belonging to any class of persons so specified; and
- (b) warrants granted under Part IV and proceedings under that Part in connection with any such warrants.

(2) Notwithstanding the provisions of section 41 of the Interpretation Act, 1897, any regulation made for the purposes of subsection (1) (a) shall take effect on and from the date of expiry of the period during which either House of Parliament may, under section 41 of the Interpretation Act, 1897, disallow the regulation, whichever date is the later, or on and from a later date specified in the regulation.

(3) Except as provided by subsection (2), section 41 of the Interpretation Act, 1897, applies to any regulation.

(4) A regulation may impose a penalty not exceeding \$500 for any contravention thereof.

(5) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;

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- (b) apply differently according to different factors of a specified kind;  
or
  - (c) authorise any matter or thing to be from time to time determined,  
applied or regulated by any specified person or body,
- or may do any combination of those things.

**Repeal of Act No. 70, 1969.**

32. The Listening Devices Act, 1969, is repealed.

**Savings and transitional provisions.**

33. Schedule 1 has effect.

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**SCHEDULE 1.**

(Sec. 33.)

**SAVINGS AND TRANSITIONAL PROVISIONS.****Interpretation.**

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);  
“former Act” means the Listening Devices Act, 1969.

**Authorisations under former Act.**

2. (1) An authorisation given under section 8 of the former Act and in force immediately before the appointed day shall, for the purposes only of Part II, be deemed to be a warrant granted under Part IV.

(2) Sections 8–11 of the former Act continue to apply to any authorisation given under section 8 of the former Act before the appointed day.

**Admissibility of evidence arising from use of listening device before appointed day.**

3. (1) The provisions of Part III apply to and in respect of the admissibility of evidence arising from the use of a listening device before the appointed day.

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SCHEDULE 1—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(2) For the purposes of subclause (1), a reference in section 5 to a warrant granted under Part IV shall be read and construed as a reference to an authorisation given under section 8 of the former Act.

**Offences in connection with use of a listening device before appointed day.**

4. (1) Section 6 applies to and in respect of the communication or publication on or after the appointed day of a private conversation, or a report of a private conversation, that has come to a person's knowledge as a result of the use of a listening device before the appointed day.

(2) Section 7 applies to and in respect of the communication or publication on or after the appointed day of a record of a private conversation made by the use of a listening device before the appointed day.

(3) Section 8 applies to and in respect of the possession, on or after the appointed day, of a record of a private conversation obtained by the use of a listening device before the appointed day.

(4) For the purposes of the application of any provision referred to in this clause, a listening device shall be deemed to have been used in contravention of section 5 if it was used in contravention of section 4 of the former Act.

*In the name and on behalf of Her Majesty I assent to this Act.*

L. W. STREET,  
*By Deputation from*  
*His Excellency the Governor.*

*Government House,*  
*Sydney, 27th June, 1984.*



