

FIRST PRINT

## LISTENING DEVICES (AMENDMENT) BILL 1991

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The main object of this Bill is to amend the Listening Devices Act 1984 to place restrictions on the use of a listening device pursuant to a warrant after a person has been charged with an offence with which the warrant is concerned so as to protect the person from being overheard when discussing his or her defence.

Under the amendments a listening device will not be able to be used to listen to a conversation involving the person charged unless the warrant expressly authorises that use. A warrant will not be able to be granted containing such an express authorisation except in special cases.

The Bill also contains amendments that:

- (a) enable listening device warrants to authorise the use of listening devices for the investigation of offences under the laws of the Commonwealth and of other States and Territories; and
- (b) allow the use of assumed names or code-names in listening device warrants and associated documents if it is to protect the safety of the persons concerned; and
- (c) make consequential transitional arrangements.

Each amendment is explained in detail in the Bill in the explanatory note relating to the amendment concerned.

---

Clause 1 specifies 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.

Clause 3 gives effect to the Schedule of amendments (Schedule 1).

Clause 4 states that the explanatory matter contained in the Bill does not form part of the Bill.

Schedule 1 contains the amendments described above.

---



FIRST PRINT

**LISTENING DEVICES (AMENDMENT) BILL 1991**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Listening Devices Act 1984 No. 69
4. Explanatory notes

**SCHEDULE 1—AMENDMENTS**

---





# **LISTENING DEVICES (AMENDMENT) BILL 1991**

**NEW SOUTH WALES**



No. , 1991

---

---

## **A BILL FOR**

An Act to amend the Listening Devices Act 1984 to make further provision with respect to warrants authorising the use of listening devices.

---

---

*Listening Devices (Amendment) 1991*

---

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

**Short title**

1. This Act may be cited as the Listening Devices (Amendment) Act 1991.

**Commencement**

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

**Amendment of Listening Devices Act 1984 No. 69**

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

**Explanatory notes**

4. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

---

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 15 (Definitions):**

Omit the definition of "**prescribed offence**", insert instead:

"**prescribed offence**" means an offence (including an offence under a law of the Commonwealth or of another State or of a Territory) that:

- (a) is punishable on indictment; or
- (b) is of a class or description prescribed for the purposes of this Part (whether or not it is punishable on indictment).

**Explanatory note—item (1)**

The amendment made by item (1) enables warrants to be issued under the Act authorising the use of listening devices in the investigation of offences under the laws of the Commonwealth and of other States and Territories (not just New South Wales, as at present).



*Listening Devices (Amendment) 1991*

---

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 16A:

After section 16, insert:

**Use of warrant after person arrested etc.**

16A. (1) After proceedings for an offence have commenced against a person:

- (a) a conversation to which the person is a principal party is a **“protected conversation”** in respect of a warrant that is concerned with that offence; and
- (b) information concerning the nature or conduct of the accused person’s defence in those proceedings is **“protected information”** for the purposes of this section.

(2) A warrant granted under this Part does not authorise a person to use a listening device to record or listen to a private conversation when the person knows or ought reasonably to know that the conversation is a protected conversation in respect of the warrant.

(3) Subsection (2) does not apply to a warrant (a “special warrant”) that expressly authorises the use of a listening device to record or listen to a protected conversation (whether the warrant is granted before or after the proceedings concerned were commenced).

(4) Such a special warrant may be granted under and in accordance with this Part but not unless the Court is satisfied that the value of the evidence likely to be obtained (whether against the accused or some other person) is sufficient to justify the risk that protected information might be obtained by use of the listening device.

(5) Such a special warrant does not authorise a person to use a listening device for the purpose of obtaining protected information.

(6) Proceedings are for an offence with which a warrant is “concerned” if they are for an offence specified in the warrant or for an offence in substitution for an offence specified in the warrant.

(7) Proceedings for an offence are taken to have commenced against a person as soon as:

- (a) the person is charged with the offence; or



*Listening Devices (Amendment) 1991*

---

SCHEDULE 1—AMENDMENTS—*continued*

- (b) a summons or attendance notice is issued for the appearance of the person in connection with the offence; or
- (c) the person is arrested by a police officer for or in connection with the offence.

**Explanatory note—item (2)**

The amendment made by item (2) provides that a warrant under the Act does not authorise the use of a listening device to listen to or record a private conversation if a party to the conversation has been charged or arrested in connection with an offence to which the warrant relates. This will not prevent the continued use of the warrant to listen to other conversations (to which the accused is not a party).

The Court will, in addition, be authorised to grant a special warrant which expressly authorises the use of a listening device to listen to or record an accused person's conversations. The Court is not to do so unless satisfied that the value of the evidence likely to be obtained is sufficient to justify the risk that use of the listening device might result in the obtaining of "protected" information (information concerning the nature or conduct of the person's defence). These special warrants will be subject to the limitation that they will not authorise the use of a listening device for the purpose of obtaining such protected information. They will be able to be granted before or after a person is charged.

The result of the amendments will be that a listening device warrant will in effect cease against an accused person when the person is charged (unless it is one of the new special warrants) but can continue to be used against other suspects who have not yet been charged. Once a person is charged, a special warrant can be obtained if the circumstances justify the risk that the accused person might be unfairly disadvantaged by having the plans for his or her defence overheard.

An example of a situation where the Court would be justified in granting a special warrant is where it is likely that the accused person will confess to the crime or reveal the identity of a co-offender.

The unauthorised use of a listening device is an offence (current section 5) and evidence thereby obtained is generally inadmissible (current section 13).

(3) Section 20A:

After section 20, insert:

**Use of assumed names or code-names in warrants**

20A. (1) The Court may grant a warrant under this Part which refers to a person by an assumed name or code-name if the Court is satisfied that it is necessary to do so to protect the safety of the person.



---

*Listening Devices (Amendment) 1991*

---

**SCHEDULE 1—AMENDMENTS—*continued***

(2) A person may be referred to by an assumed name or code-name in a notice under section 17 or report under section 19 if the notice or report states that the use of the assumed name or code-name is to protect the safety of the person.

**Explanatory note—item (3)**

At present the Act requires that the persons whose private conversation may be listened to or recorded by the use of a listening device authorised by a warrant under the Act are to be specified in the warrant, and in certain other documents required to be prepared in relation to the warrant. The amendment made by item (3) will enable persons to be referred to by assumed names or code-names if it is to protect their safety.

(4) **Schedule 1 (Savings and transitional provisions):**

After clause 4, insert:

**Transitional provisions—Listening Devices (Amendment) Act 1991**

5. Section 16A applies from the commencement of that section to a warrant whether issued before or after that commencement but does not render anything unlawful which was lawfully done under such a warrant before that commencement.

**Explanatory note—item (4)**

The amendment made by item (4) contains transitional provisions which apply the amendment in item (2) to the use of a warrant whether it was issued before or after the commencement of the amendment.

---

