

First print



New South Wales

# Listening Devices Amendment Bill 1996

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend the *Listening Devices Act 1984* to provide that warrants authorising the use of listening devices are, instead of being issued by the Supreme Court, to be issued by persons who are Judges of the Supreme Court and who consent to being involved in the grant of warrants. This will bring the process of issuing warrants into line with the process under the *Telecommunications (Interception) Act 1979* of the Commonwealth, and will be consistent with the decision of the High Court in *Grollo v Palmer* (1995) 184 CLR 348. (Similar provisions are made for District Court Judges and Magistrates, in the event that regulations are made authorising them to grant warrants.) The Bill also makes ancillary amendments.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day to be appointed by proclamation of the Governor.

**Clause 3** is a formal provision giving effect to the Schedule of amendments.

**Schedule 1 [1]** amends section 3 to insert some definitions used in the proposed amendments.

**Schedule 1 [2]** inserts new sections 3A and 3B.

Proposed section 3A defines *eligible Judge* for the purposes of the Act. The essence of the section is that an eligible Judge is a person who is a Judge of the Supreme Court and who consents to being involved in the grant of warrants. A Judge is able to revoke his or her consent.

Proposed section 3B is in similar terms to proposed section 3A and applies to Judges of the District Court and Magistrates (as *eligible judicial officers*). Provision is made in the Act for regulations to be made prescribing circumstances in which such Judges and Magistrates can grant warrants that would otherwise be able to be granted by eligible Judges.

**Schedule 1 [3]–[7], [9]–[29]** in effect replace references in Part 4 of the Act to the Supreme Court with references to “eligible Judges”, as defined by proposed section 3A mentioned above, and make consequential amendments.

**Schedule 1 [8]** inserts new section 16 (6A) to provide for the form of a warrant.

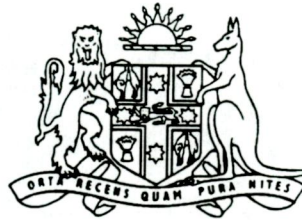
**Schedule 1 [30]** replaces section 21. The section continues to provide that matters under Part 4 of the Act are to be dealt with in the absence of the public. Provisions relating to rules of court are omitted.

**Schedule 1 [31]** ensures that the regulations can deal with matters formerly able to be dealt with by rules of court.

**Schedule 1 [32]** amends Schedule 1 to insert clause 6 to cover warrants issued before the commencement of the proposed Act. Clause 6 (2) provides that such warrants can be dealt with as if issued by eligible Judges. Clause 6 (3) and (4) provide that the use of such warrants did not and does not constitute any contravention of the Act. This will have the effect of protecting evidence obtained by the use of such warrants in the event that they are held to be invalid on the ground that they were issued by the Supreme Court.

**Schedule 1 [33]** inserts a new Schedule, setting out the form in which a warrant may be issued under the Act. The form of the warrant is substantially the same as that currently provided for in the rules of the Supreme Court.

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New South Wales

# Listening Devices Amendment Bill 1996

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New South Wales

# Listening Devices Amendment Bill 1996

No     , 1996

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## **A Bill for**

An Act to amend the *Listening Devices Act 1984* in connection with the grant of warrants authorising the use of listening devices; and for other purposes.

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

**1 Name of Act**

This Act is the *Listening Devices Amendment Act 1996*.

**2 Commencement**

This Act commences on a day to be appointed by proclamation.      5

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

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

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## Schedule 1 Amendments

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*exercise* a function includes perform a duty. 5

*function* includes a power, authority or duty.

### [2] Sections 3A and 3B

Insert after section 3:

#### 3A Judges

(1) In this Act: 10

*eligible Judge* means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

*Judge* means a person who is a Judge of the Supreme Court. 15

(2) A Judge may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3).

(3) The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Act. 20

(4) An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by this Act, the same protection and immunity as a Judge of the Supreme Court has in relation to proceedings in the Supreme Court. 25

(5) A Judge who has given consent under this section may, by instrument in writing, revoke the consent.

(6) The Attorney General may, by instrument in writing, amend or revoke a declaration under this section. 30

**3B Other judicial officers**

- (1) In this Act:
- eligible judicial officer* means a judicial officer in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force. 5
- judicial officer* means a person who is a Judge of the District Court or a Magistrate.
- (2) A judicial officer may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3). 10
- (3) The Attorney General may, by instrument in writing, declare judicial officers in relation to whom consents are in force under subsection (2) to be eligible judicial officers for the purposes of this Act.
- (4) An eligible judicial officer has, in relation to the exercise of a function conferred on an eligible judicial officer by this Act, the same protection and immunity as: 15
- (a) in the case of a person who is a Judge of the District Court—a Judge of the District Court has in relation to proceedings in the District Court, or 20
- (b) in the case of a person who is a Magistrate—a Magistrate has in relation to proceedings in a Local Court.
- (5) A judicial officer who has given consent under this section may, by instrument in writing, revoke the consent. 25
- (6) The Attorney General may, by instrument in writing, amend or revoke a declaration under this section.

**[3] Section 16 Warrants authorising use of listening devices**

- Omit “the Court” from section 16 (1). 30  
Insert instead “an eligible Judge”.



**[4] Section 16 (2)**

Omit "the Court". Insert instead "the eligible Judge".

**[5] Section 16 (3)**

Omit "the Court" where firstly occurring.  
Insert instead "an eligible Judge".

5

**[6] Section 16 (3)**

Omit "the Court" where secondly occurring.  
Insert instead "the eligible Judge".

**[7] Section 16 (4) and (5)**

Omit "the Court" wherever occurring.  
Insert instead "an eligible Judge".

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**[8] Section 16 (6A)**

Insert after section 16 (6):

(6A) A warrant under this section may be in or to the effect of  
the form set out in Schedule 2.

15

**[9] Section 16 (7)**

Omit the subsection. Insert instead:

(7) The regulations may provide that, in such circumstances  
as are prescribed, the functions of an eligible Judge  
under this section may be exercised by an eligible  
judicial officer. For that purpose a reference in sections  
16, 17, 19 and 20A to an eligible Judge is to be read and  
construed as a reference to an eligible judicial officer.

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Listening Devices Amendment Bill 1996

Schedule 1 Amendments

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- [10] Section 17 Particulars of warrants sought under section 16 to be notified to Attorney General**  
Omit "the Court" from section 17 (2).  
Insert instead "the eligible Judge".
- [11] Section 18 Radio/telephone warrants** 5  
Omit "the Court" from section 18 (2).  
Insert instead "an eligible Judge".
- [12] Section 18 (3)**  
Omit "The Court". Insert instead "An eligible Judge".
- [13] Section 18 (3)** 10  
Omit "the Court". Insert instead "the eligible Judge".
- [14] Section 18 (4)**  
Omit "the Court". Insert instead "an eligible Judge".
- [15] Section 18 (5)** 15  
Omit "the Court" where firstly occurring.  
Insert instead "an eligible Judge".
- [16] Section 18 (5)**  
Omit "the Court" where secondly and thirdly occurring.  
Insert instead "the eligible Judge".
- [17] Section 18 (6)** 20  
Omit "The Court". Insert instead "An eligible Judge".
- [18] Section 18 (7)**  
Omit "the Court" where firstly occurring.  
Insert instead "an eligible Judge".
- [19] Section 18 (7)** 25  
Omit "the Court" where secondly occurring.  
Insert instead "the eligible Judge".

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**[20] Section 18 (9)**

Omit the subsection. Insert instead:

- (9) The regulations may provide that, in such circumstances as are prescribed, the functions of an eligible Judge under this section may be exercised by an eligible judicial officer. For that purpose a reference in sections 18, 19 and 20A to an eligible Judge is to be read and construed as a reference to an eligible judicial officer.

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**[21] Section 19 Reports**

Omit "the Court" from section 19 (1).  
Insert instead "an eligible Judge".

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**[22] Section 19 (2)**

Omit "the Court" where firstly and secondly occurring.  
Insert instead "an eligible Judge".

**[23] Section 20 Requirement to inform subject of surveillance**

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Omit "the Court" where firstly occurring in section 20 (1).  
Insert instead "an eligible Judge".

**[24] Section 20 (1)**

Omit "the Court" where secondly and thirdly occurring.  
Insert instead "the eligible Judge".

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**[25] Section 20 (2)**

Omit "The Court". Insert instead "An eligible Judge".

**[26] Section 20 (2)**

Omit "the Court". Insert instead "the eligible Judge".

Listening Devices Amendment Bill 1996

Schedule 1 Amendments

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- [27] Section 20 (3)**  
Omit "the Court". Insert instead "the eligible Judge".
- [28] Section 20A Use of assumed names or code-names in warrants**  
Omit "The Court" from section 20A (1).  
Insert instead "An eligible Judge". 5
- [29] Section 20A (1)**  
Omit "the Court". Insert instead "the eligible Judge".
- [30] Section 21**  
Omit the section. Insert instead:
- 21 Procedure under this Part** 10
- Applications under this Part and any other matters arising under this Part are to be dealt with in the absence of the public.
- [31] Section 31 Regulations**
- Omit section 31 (1) (b). Insert instead: 15
- (b) warrants under Part 4 and the procedure under that Part in connection with any such warrants, including:
- (i) the manner of making applications under that Part, and 20
- (ii) the manner in which warrants are granted or directions are given under that Part, and
- (iii) the prohibition of the publication or disclosure of any matter connected with any such procedure. 25

**[32] Schedule 1 Savings and transitional provisions**

Insert after clause 5:

**6 Warrants granted before commencement of Listening Devices Amendment Act 1996**

- (1) In this clause: 5
- previous warrant* means a warrant or purported warrant:
- (a) that was granted or that purported to be granted by the Supreme Court of New South Wales under Part 4 before the relevant date, and
- (b) that was signed or authorised by a Judge of the Supreme Court, and 10
- (c) that would have been a valid warrant disregarding any invalidity arising from the fact that it was:
- (i) granted by the Supreme Court, or
- (ii) signed or authorised by a Judge of the Supreme Court, 15
- or both.
- relevant date* means the date of commencement of the *Listening Devices Amendment Act 1996*.
- (2) This Act applies on and after the relevant date to and in respect of previous warrants as if they had been granted by eligible Judges. 20
- (3) Section 5 (1) does not apply to the use (before, on or after the relevant date) of a listening device pursuant to a previous warrant. This subclause does not affect the generality of section 5 (2). 25
- (4) Accordingly, for the purposes of:
- (a) this Act (including section 13), and
- (b) the *Evidence Act 1995* (including section 138), and 30
- (c) any other Act or law,
- a listening device used (before, on or after the relevant date) in accordance with a previous warrant is taken not to have been used, or not to be used, in contravention of this Act (including section 5). 35

**[33] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Form of warrant**

(Section 16)

I, being an eligible Judge within the meaning of the *Listening Devices Act 1984*, having been satisfied that there are reasonable grounds for the suspicion or belief of *(name)* that the prescribed offence(s) set out in paragraph (1) has been *or* is about to be *or* is likely to be committed: 5  
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(1) specify as the prescribed offence(s) in respect of which the warrant is granted the following:  
*(set out the prescribed offence(s)).*

(2) authorise the use by *(names)* and on his or her behalf *(names or descriptions of persons)* of a listening device by which to record or listen to the private conversation of *(name)* at *(description of premises)* subject to the condition(s) that: 15

(a)  
(b) 20  
*(set out condition(s)).*

(3) authorise the installation of a listening device by *(name)* on *(description of premises)*.

(4) authorise and require the retrieval of the listening device. 25

(5) authorise entry on to *(description of premises)* between *(times of day)* *(or at any time of day)* for the purpose of that installation and retrieval, subject to the condition(s) that:

(a) 30  
(b)  
*(set out condition(s)).*

(6) fix the period                      am on 19  
until      pm on                      19 *(or as the case may be)* as the period during which this warrant is to be in force. 35

- (7) fix (*period after event*) as the period within which the person authorised to use the listening device pursuant to this warrant is required to report pursuant to section 19 of the *Listening Devices Act 1984* to an eligible Judge and to the Attorney General. 5

Dated 19 .

(*signature*)

(*name*)

Judge 10







New South Wales

# Listening Devices Amendment Act 1996 No 118

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New South Wales

# Listening Devices Amendment Act 1996 No 118

Act No 118, 1996

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An Act to amend the *Listening Devices Act 1984* in connection with the grant of warrants authorising the use of listening devices; and for other purposes. [Assented to 3 December 1996]

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

**1 Name of Act**

This Act is the *Listening Devices Amendment Act 1996*.

**2 Commencement**

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

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

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

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## Schedule 1 Amendments

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*exercise* a function includes perform a duty.

*function* includes a power, authority or duty.

### [2] Sections 3A and 3B

Insert after section 3:

#### 3A Judges

(1) In this Act:

*eligible Judge* means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

*Judge* means a person who is a Judge of the Supreme Court.

(2) A Judge may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3).

(3) The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Act.

(4) An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by this Act, the same protection and immunity as a Judge of the Supreme Court has in relation to proceedings in the Supreme Court.

(5) A Judge who has given consent under this section may, by instrument in writing, revoke the consent.

(6) The Attorney General may, by instrument in writing, amend or revoke a declaration under this section.

**3B Other judicial officers**

- (1) In this Act:

*eligible judicial officer* means a judicial officer in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

*judicial officer* means a person who is a Judge of the District Court or a Magistrate.

- (2) A judicial officer may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3).
- (3) The Attorney General may, by instrument in writing, declare judicial officers in relation to whom consents are in force under subsection (2) to be eligible judicial officers for the purposes of this Act.
- (4) An eligible judicial officer has, in relation to the exercise of a function conferred on an eligible judicial officer by this Act, the same protection and immunity as:
- (a) in the case of a person who is a Judge of the District Court—a Judge of the District Court has in relation to proceedings in the District Court, or
  - (b) in the case of a person who is a Magistrate—a Magistrate has in relation to proceedings in a Local Court.
- (5) A judicial officer who has given consent under this section may, by instrument in writing, revoke the consent.
- (6) The Attorney General may, by instrument in writing, amend or revoke a declaration under this section.

**[3] Section 16 Warrants authorising use of listening devices**

Omit “the Court” from section 16 (1).  
Insert instead “an eligible Judge”.

**[4] Section 16 (2)**

Omit "the Court". Insert instead "the eligible Judge".

**[5] Section 16 (3)**

Omit "the Court" where firstly occurring.  
Insert instead "an eligible Judge".

**[6] Section 16 (3)**

Omit "the Court" where secondly occurring.  
Insert instead "the eligible Judge".

**[7] Section 16 (4) and (5)**

Omit "the Court" wherever occurring.  
Insert instead "an eligible Judge".

**[8] Section 16 (6A)**

Insert after section 16 (6):

(6A) A warrant under this section may be in or to the effect of the form set out in Schedule 2.

**[9] Section 16 (7)**

Omit the subsection. Insert instead:

(7) The regulations may provide that, in such circumstances as are prescribed, the functions of an eligible Judge under this section may be exercised by an eligible judicial officer. For that purpose a reference in sections 16, 17, 19 and 20A to an eligible Judge is to be read and construed as a reference to an eligible judicial officer.

**[10] Section 17 Particulars of warrants sought under section 16 to be notified to Attorney General**

Omit "the Court" from section 17 (2).  
Insert instead "the eligible Judge".

**[11] Section 18 Radio/telephone warrants**

Omit "the Court" from section 18 (2).  
Insert instead "an eligible Judge".

**[12] Section 18 (3)**

Omit "The Court". Insert instead "An eligible Judge".

**[13] Section 18 (3)**

Omit "the Court". Insert instead "the eligible Judge".

**[14] Section 18 (4)**

Omit "the Court". Insert instead "an eligible Judge".

**[15] Section 18 (5)**

Omit "the Court" where firstly occurring.  
Insert instead "an eligible Judge".

**[16] Section 18 (5)**

Omit "the Court" where secondly and thirdly occurring.  
Insert instead "the eligible Judge".

**[17] Section 18 (6)**

Omit "The Court". Insert instead "An eligible Judge".

**[18] Section 18 (7)**

Omit "the Court" where firstly occurring.  
Insert instead "an eligible Judge".

**[19] Section 18 (7)**

Omit "the Court" where secondly occurring.  
Insert instead "the eligible Judge".



**[20] Section 18 (9)**

Omit the subsection. Insert instead:

- (9) The regulations may provide that, in such circumstances as are prescribed, the functions of an eligible Judge under this section may be exercised by an eligible judicial officer. For that purpose a reference in sections 18, 19 and 20A to an eligible Judge is to be read and construed as a reference to an eligible judicial officer.

**[21] Section 19 Reports**

Omit "the Court" from section 19 (1).  
Insert instead "an eligible Judge".

**[22] Section 19 (2)**

Omit "the Court" where firstly and secondly occurring.  
Insert instead "an eligible Judge".

**[23] Section 20 Requirement to inform subject of surveillance**

Omit "the Court" where firstly occurring in section 20 (1).  
Insert instead "an eligible Judge".

**[24] Section 20 (1)**

Omit "the Court" where secondly and thirdly occurring.  
Insert instead "the eligible Judge".

**[25] Section 20 (2)**

Omit "The Court". Insert instead "An eligible Judge".

**[26] Section 20 (2)**

Omit "the Court". Insert instead "the eligible Judge".

**[27] Section 20 (3)**

Omit "the Court". Insert instead "the eligible Judge".

**[28] Section 20A Use of assumed names or code-names in warrants**

Omit "The Court" from section 20A (1).  
Insert instead "An eligible Judge".

**[29] Section 20A (1)**

Omit "the Court". Insert instead "the eligible Judge".

**[30] Section 21**

Omit the section. Insert instead:

**21 Procedure under this Part**

Applications under this Part and any other matters arising under this Part are to be dealt with in the absence of the public.

**[31] Section 31 Regulations**

Omit section 31 (1) (b). Insert instead:

- (b) warrants under Part 4 and the procedure under that Part in connection with any such warrants, including:
  - (i) the manner of making applications under that Part, and
  - (ii) the manner in which warrants are granted or directions are given under that Part, and
  - (iii) the prohibition of the publication or disclosure of any matter connected with any such procedure.

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**[32] Schedule 1 Savings and transitional provisions**

Insert after clause 5:

**6 Warrants granted before commencement of Listening Devices Amendment Act 1996**

(1) In this clause:

*previous warrant* means a warrant or purported warrant:

- (a) that was granted or that purported to be granted by the Supreme Court of New South Wales under Part 4 before the relevant date, and
- (b) that was signed or authorised by a Judge of the Supreme Court, and
- (c) that would have been a valid warrant disregarding any invalidity arising from the fact that it was:
  - (i) granted by the Supreme Court, or
  - (ii) signed or authorised by a Judge of the Supreme Court,

or both.

*relevant date* means the date of commencement of the *Listening Devices Amendment Act 1996*.

- (2) This Act applies on and after the relevant date to and in respect of previous warrants as if they had been granted by eligible Judges.
- (3) Section 5 (1) does not apply to the use (before, on or after the relevant date) of a listening device pursuant to a previous warrant. This subclause does not affect the generality of section 5 (2).
- (4) Accordingly, for the purposes of:
  - (a) this Act (including section 13), and
  - (b) the *Evidence Act 1995* (including section 138), and
  - (c) any other Act or law,a listening device used (before, on or after the relevant date) in accordance with a previous warrant is taken not to have been used, or not to be used, in contravention of this Act (including section 5).

**[33] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Form of warrant**

(Section 16)

I, being an eligible Judge within the meaning of the *Listening Devices Act 1984*, having been satisfied that there are reasonable grounds for the suspicion or belief of *(name)* that the prescribed offence(s) set out in paragraph (1) has been *or* is about to be *or* is likely to be committed:

- (1) specify as the prescribed offence(s) in respect of which the warrant is granted the following:  
*(set out the prescribed offence(s)).*
- (2) authorise the use by *(names)* and on his or her behalf *(names or descriptions of persons)* of a listening device by which to record or listen to the private conversation of *(name)* at *(description of premises)* subject to the condition(s) that:
  - (a)
  - (b)*(set out condition(s)).*
- (3) authorise the installation of a listening device by *(name)* on *(description of premises)*.
- (4) authorise and require the retrieval of the listening device.
- (5) authorise entry on to *(description of premises)* between *(times of day)* *(or at any time of day)* for the purpose of that installation and retrieval, subject to the condition(s) that:
  - (a)
  - (b)*(set out condition(s)).*
- (6) fix the period                                  am    on    19  
until        pm    on                                  19 *(or as the case  
may be)* as the period during which this warrant is  
to be in force.

- (7) fix (*period after event*) as the period within which the person authorised to use the listening device pursuant to this warrant is required to report pursuant to section 19 of the *Listening Devices Act 1984* to an eligible Judge and to the Attorney General.

Dated 19 .

(*signature*)

(*name*)

Judge

[Minister's second reading speech made in—  
Legislative Council on 20 November 1996  
Legislative Assembly on 27 November 1996]

BY AUTHORITY

