

LISTENING DEVICES ACT.

New South Wales,



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 70, 1969.

An Act to regulate the use of certain devices capable of being used for listening to private conversations; and for purposes connected therewith. [Assented to, 27th November, 1969.]

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:—

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Listening Devices Act, 1969".

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(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. No. 70, 1969

2. Except where otherwise provided, this Act binds the Crown. Act binds
Crown.

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

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

“private conversation” means any words spoken by one person to another person in circumstances that indicate that those persons desire the words to be heard or listened to only by themselves or that indicate that either of those persons desires the words to be heard or listened to only by themselves and by some other person, but does not include words spoken by one person to another person in circumstances in which either of those persons ought reasonably to expect the words to be heard, recorded or listened to by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

(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 him only to hear sounds ordinarily audible to the human ear.

(3) A reference in this Act to a party to a private conversation is a reference—

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

(b)

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- (b) to 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 a private conversation, hears, records or listens to those words.

Prohibition
on use of
listening
devices.

4. (1) A person is guilty of an offence against this Act if he uses a listening device to hear, record, or listen to a private conversation.

(2) Subsection one of this section does not apply—

- (a) where the person using the listening device is a party to the private conversation;
- (b) where the person using the listening device does so in accordance with an authorisation given to him under section eight of this Act or in accordance with an authorisation given to him by the Minister of the Commonwealth administering any Act of the Commonwealth relating to the security of the Commonwealth, customs or excise or the Commonwealth Police Force, or given to him by a delegate appointed in writing by any such Minister to give authorisations to use listening devices; or
- (c) to the unintentional hearing of a private conversation by means of a telephone.

(3) The court by which a person is convicted of an offence under this section may, by its conviction, order that any listening device used in the commission of the offence and described in the order shall be forfeited to Her Majesty and delivered up, within such period as may be specified in the order, by the person who has possession of the listening device to a person specified in the order.

(4) Where an order is made under subsection three of this section and the person who has possession of the listening device refuses or fails to deliver up the listening device in accordance with the order, he is guilty of an offence against this Act and liable to a penalty not exceeding one thousand

dollars,

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dollars, and, whether or not proceedings for the offence have been commenced, any member of the police force may seize the listening device and deliver it up in accordance with the order. No. 70, 1969

5. (1) A person is guilty of an offence against this Act if he communicates or publishes to any other person a private conversation, or a report of, or of the substance, meaning or purport of, a private conversation, that has come to his knowledge as a result, direct or indirect, of the use of a listening device used in contravention of section four of this Act. Prohibition on communication or publication of private conversations unlawfully listened to.

(2) Subsection one of this section does not apply—

(a) where the communication or publication of the private conversation is made—

(i) to a party to the conversation or with the consent, express or implied, of such a party; or

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

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

6. (1) A person who, having been a party to a private conversation and having used a listening device to hear, record or listen to that conversation, subsequently communicates or publishes to any other person any record of the conversation made, directly or indirectly, by the use of a listening device or any statement prepared from such a record is guilty of an offence against this Act. Prohibition on communication or publication of private conversations by parties thereto.

(2)

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No. 70, 1969 (2) Subsection one of this section 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 other parties to the private conversation, being parties referred to in paragraph (a) of subsection three of section three of this Act;
- (b) is made in the course of legal proceedings;
- (c) is not more than is reasonably necessary—
 - (i) in the public interest;
 - (ii) in the performance of a duty of the person making the communication or publication; or
 - (iii) for the protection of the lawful interests of that person;
- (d) is made to a person who has, or is believed, on reasonable grounds, by the person making the communication or publication, 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 hear, record or listen to the private conversation in accordance with an authorisation referred to in paragraph (b) of subsection two of section four of this Act.

Inadmissibility of evidence of private conversations when unlawfully obtained.

7. (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 used in contravention of section four of this Act, evidence of that conversation may not be given by that person in any civil or criminal proceedings.

(2)

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(2) Subsection one of this section does not render No. 70, 1969 inadmissible—

- (a) evidence of a private conversation that has, in the manner referred to in that subsection, come to the knowledge of the person called to give the evidence, if a party to the conversation consents to that person giving the evidence;
- (b) evidence of a private conversation that has, otherwise than in the manner referred to in that subsection, come to the knowledge of the person called to give the evidence, notwithstanding that he also obtained knowledge of the conversation in such a manner; or
- (c) in any proceedings for an offence against this Act, evidence of a private conversation that has in the manner referred to in that subsection come to the knowledge of the person called to give the evidence.

(3) The court before which any proceedings referred to in paragraph (c) of subsection two of this section 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 that paragraph.

(4) Any person who contravenes an order made under subsection three of this section is guilty of an offence against this Act.

8. (1) In this section, "prescribed officer of police" means—

- (a) the Commissioner of Police or a member of the police force appointed to act as Commissioner of Police;
- (b) an Assistant Commissioner of Police; or

Authorisation of use of listening devices by certain police officers.

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(c) a police officer of the rank of Superintendent, or a member of the police force acting in that rank, where the Superintendent or member has been authorised in writing by the Minister to exercise the powers conferred on a prescribed officer of police by this section.

(2) Where a prescribed officer of police is satisfied—

- (a) that, for the purpose of the conduct by a member of the police force of an investigation into an offence that has been committed, the use of a listening device is necessary; or
- (b) that an offence is about to be, or is reasonably likely to be, committed and that, for the purpose of enabling a member of the police force to obtain evidence of the commission of the offence or of the identity of the offender, the use of a listening device is necessary,

that prescribed officer may, subject to subsection three of this section, authorise, in writing, the use by a member of the police force or by any other person of a listening device for that purpose for such period not exceeding, in the case of an authorisation given by a prescribed officer of police referred to in paragraph (a) or (b) of subsection one of this section, twenty-one days or, in the case of an authorisation given by a prescribed officer of police referred to in paragraph (c) of that subsection, forty-eight hours, as may be specified in the authorisation.

(3) A prescribed officer of police referred to in paragraph (c) of subsection one of this section—

- (a) shall not authorise the use of a listening device under subsection two of this section except where in his opinion it is a case of emergency for him to do so; and
- (b) shall as soon as practicable but not later than forty-eight hours after so authorising the use of a listening device inform a prescribed officer of police referred to in paragraph (a) or (b) of that subsection that he has done so.

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(4) A prescribed officer of police who has been so informed may at any time, by an instrument in writing signed by him—

- (a) cancel the authorisation referred to in the information; or
- (b) direct that the authorisation shall cease to have effect on and from a time specified in the instrument, being a time before the expiration of the authorisation,

and the authorisation shall cease to have effect—

- (c) in the case where it has been cancelled, upon notice of the cancellation being given to the person to whom the authorisation was given; and
- (d) in the case where such a direction has been given and notice of the direction is given to the person to whom the authorisation was given, at the time specified in the direction, or upon notice of the direction being given to that person, whichever is the later.

(5) As soon as practicable after a prescribed officer of police has given an authorisation under subsection two of this section, he shall prepare and sign a certificate—

- (a) certifying in writing that before giving the authorisation he satisfied himself as to the matters specified in paragraph (a) or (b) of subsection two of this section; and
- (b) specifying—
 - (i) the offence that has been committed or the offence that he is satisfied is about to be, or is reasonably likely to be, committed, and in respect of which he has given the authorisation;
 - (ii) the name of the member of the police force who, in the course of his duties, requested the authorisation;

(iii)

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- (iii) the period for which the authorisation is to be in force;
- (iv) the name or names (if known) of the persons in respect of whose private conversations the use of the listening device has been authorised; and
- (v) the name of the member of the police force, being a member of or above the rank of sergeant, appointed to have the general supervision of the use to which the listening device may be put.

Certain documents under section 8 to be prima facie evidence.

9. (1) A document purporting to be an authorisation given under section eight of this Act shall, in all courts and on all occasions, without proof of the signature of the prescribed officer of police purporting to have signed the document, be prima facie evidence that the person specified in the document as the person to whom the authorisation was given was authorised under that section to use a listening device for the purpose and for the period specified in the document.

(2) A document purporting to be an instrument under subsection four, or to be a certificate under subsection five, of section eight of this Act shall, in all courts and upon all occasions, without proof of the signature or of the official character of the person purporting to have signed the document and without the production of any record or other document upon which the instrument or certificate may have been founded, be prima facie evidence of the matters stated in and by the instrument or certificate.

Duties of Commissioner of Police.

10. The Commissioner of Police shall—

- (a) cause to be furnished to the Minister in respect of each authorisation given under section eight of this Act, not later than one month after the authorisation was given, a report as to the results of the use
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of the listening device in respect of which the authorisation was given and as to such other matters relating to the use of the listening device as may have been specified in a direction given by the Minister to the Commissioner of Police; No. 70, 1969

- (b) as soon as practicable, but not later than three days, after an instrument under subsection four, or a certificate under subsection five, of section eight of this Act has been executed, furnish to the Minister a copy of the instrument or certificate; and
- (c) cause a record to be kept of all such authorisations, instruments and certificates.

11. The Commissioner of Police 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 information obtained by the use of a listening device pursuant to an authorisation given under section eight of this Act as does not relate directly or indirectly to the commission of an offence. Destruction of irrelevant records made by the use of a listening device.

12. A person who—

- (a) publishes or causes to be published by radio or television or in any newspaper or other publication an advertisement relating to any listening device of a prescribed class or description; or Advertising listening devices prohibited.
- (b) in any other way advertises or publicly exhibits any such listening device with the intention or apparent intention of promoting its sale or use,

is guilty of an offence against this Act.

13. A person guilty of an offence against this Act is, where no other penalty is provided, liable for a first offence to a penalty not exceeding two thousand dollars or imprisonment for a term not exceeding six months and for a second or subsequent offence to a penalty not exceeding two thousand dollars or imprisonment for a term not exceeding twelve months. Penalty.

14.

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No. 70, 1969 **14.** (1) Proceedings for an offence against this Act may be taken in any court of petty sessions.

Proceedings
for offences
against
this Act.

(2) Proceedings for an offence under section four, five or six of this Act may be commenced within a period of two years after the commission of the offence or within a period of six months after the first discovery thereof by the person whose private conversation was heard, recorded or listened to, whichever period first expires.

Regulations. **15.** (1) The Governor may make regulations not inconsistent with this Act—

- (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;
- (b) prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Notwithstanding the provisions of section forty-one of the Interpretation Act, 1897, any regulation made for the purposes of paragraph (a) of subsection one of this section shall take effect on and from the date of expiry of the period during which either House of Parliament may, under section forty-one 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 in subsection two of this section, section forty-one of the Interpretation Act, 1897, applies to any regulation made under this Act.