



New South Wales

Surveillance Devices Amendment (Mutual Recognition) Bill 2013

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 *Surveillance Devices Act 2007* so as to bring the Act further into line with the model law on cross-border investigative powers for law enforcement developed by the Australian Leaders' Summit on Terrorism and Multi-jurisdictional Crime. This will facilitate the mutual recognition of warrants and authorisations for the use of surveillance devices issued under the New South Wales Act and those issued under Acts of other jurisdictions.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

Timing and contents of reports on use of surveillance device warrants

Schedule 1 [1] provides that a surveillance device warrant must specify the period within which a report in respect of the warrant must be made to the eligible Judge or eligible Magistrate who issued the warrant. That period must expire not less than 60 days after the expiry of the warrant. The provision that requires the report (section 44 (1)) states that the report must be made within the time specified in the warrant, but there is currently no obligation to specify such a time. This is inconsistent with the model law.

Schedule 1 [7] provides that, where a surveillance device warrant has been issued in New South Wales and executed in a participating jurisdiction, the report on the use of the warrant must (in addition to the other matters currently required) include information (which is required by the model law) giving details of the benefit to the investigation of the use of the relevant surveillance device and of the general use made or to be made of any evidence or information obtained by the use of the device, and details of the compliance with the conditions (if any) to which the warrant was subject.

Timing and contents of reports on use of retrieval warrants

Schedule 1 [2] provides that a retrieval warrant must specify the period within which a report in respect of the warrant must be made to the eligible Judge or eligible Magistrate who issued the warrant under section 44 (6) of the Act, with that period being one that expires not less than 60 days after the expiry of the warrant. There is currently no obligation to specify such a time in the warrant itself. This is inconsistent with the model law.

Schedule 1 [8] makes a consequential amendment.

Schedule 1 [9] provides that, where a retrieval warrant has been issued in New South Wales and executed in a participating jurisdiction, the report on the use of the warrant must (in addition to the other matters currently required) include information (which is required by the model law) giving details of premises entered, things opened or removed or replaced, and details of the compliance with the conditions (if any) to which the warrant was subject.

Emergency use of surveillance devices arising from imminent threats of commission of serious narcotic offences

Schedule 1 [3] provides that emergency authorisations issued in New South Wales to allow a law enforcement officer to use a surveillance device in a participating jurisdiction without a warrant cannot be granted in relation to threats of serious narcotic offences, as at present. This will bring New South Wales in line with the model law, which does not permit the use of surveillance devices without a warrant where there is a threat of serious narcotics offences only.

Exemption to prohibition on use, communication or publication of information applies to serious narcotic offences only if information obtained in New South Wales

Schedule 1 [5] and [6] limit an existing exemption to the prohibition on the use, communication or publication of protected information that currently applies to permit the use, communication or publication of information obtained from the use of a surveillance device by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the threat of a serious narcotics offence. Protected information relating to a serious narcotics offence will be exempt only if it was obtained from the use of a surveillance device in New South Wales. (The existing exemption to permit the use, communication or publication of protected information by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the threat of serious violence to a person or substantial damage to property will continue to apply whether the protected information was obtained in a participating jurisdiction or in New South Wales. That exemption is part of the model law.)

Schedule 1 [4] inserts an omitted word in a provision about protected information.

Contents of annual report to Parliament

Schedule 1 [10] includes additional reporting requirements in relation to the annual report about the operation of the Act that the Attorney General must table in Parliament. In addition to the other matters currently required, which apply to the exercise of powers in New South Wales or participating jurisdictions, the amendment will require the annual report to include additional details (that the model law requires) in cases where a surveillance device warrant issued in New South Wales has been executed in a participating jurisdiction.

Schedule 1 [11] makes a consequential amendment.

Keeping documents and records connected with warrants and emergency authorisations executed in participating jurisdictions

Schedule 1 [13] imposes additional obligations on chief officers of law enforcement agencies to keep records, in line with the model law, in relation to surveillance devices used by their agencies in a participating jurisdiction under warrants or emergency authorisations issued in New South Wales.

Schedule 1 [12] makes a consequential amendment.

Savings and transitional regulations

Schedule 1 [14] provides for the making of savings and transitional regulations consequent on the enactment of any Act that amends the *Surveillance Devices Act 2007*.



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New South Wales

Surveillance Devices Amendment (Mutual Recognition) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Surveillance Devices Act 2007* to make further provision with respect to the use and retrieval of surveillance devices; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

2

This Act is the *Surveillance Devices Amendment (Mutual Recognition) Act 2013*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Surveillance Devices Act 2007	1
	No 64	2
[1] Section 20 Contents of surveillance device warrants		3
Insert at the end of section 20 (1) (b) (xi):		4
, and		5
(xii) the period within which a report about the use of the surveillance device authorised by the warrant must be furnished to the eligible Judge or eligible Magistrate under section 44 (1), being a period that expires not less than 60 days after the expiry of the warrant.		6 7 8 9
[2] Section 28 Contents of retrieval warrants		10
Insert at the end of section 28 (1) (b) (vii):		11
, and		12
(viii) the period within which a report about the retrieval of the surveillance device authorised by the warrant must be furnished to the eligible Judge or eligible Magistrate under section 44 (6), being a period that expires not less than 60 days after the expiry of the warrant.		13 14 15 16
[3] Section 32 Emergency authorisation—continued use of authorised surveillance device in participating jurisdiction		17 18
Insert after section 32 (4):		19
(5) An emergency authorisation cannot be granted in connection with a serious narcotics offence.		20 21
[4] Section 40 Prohibition on use, communication or publication of protected information		22 23
Insert “protected” before “information” in section 40 (1) (a).		24
[5] Section 40 (3) (b)		25
Omit “, substantial damage to property or the commission of a serious narcotics offence”.		26
Insert instead “or substantial damage to property”.		27
[6] Section 40 (3) (b1)		28
Insert after section 40 (3) (b):		29
(b1) the use or communication of protected information obtained from the use of a device in this jurisdiction by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the threat of the commission of a serious narcotics offence, or		30 31 32 33 34
[7] Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General		35
Insert at the end of section 44 (1) (g):		36
, and		37
(h) in the case of a surveillance device warrant issued in this jurisdiction and executed in a participating jurisdiction:		38 39
(i) giving details of the benefit to the investigation of the use of the relevant surveillance device and of the general use made or to be		40 41

	made of any evidence or information obtained by the use of the device, and	1
		2
	(ii) giving details of the compliance with the conditions (if any) to which the warrant was subject.	3
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[8]	Section 44 (6)	5
	Omit “for the purpose by the eligible Judge or eligible Magistrate granting the application”.	6
	Insert instead “in the retrieval warrant”.	7
[9]	Section 44 (6) (c)	8
	Insert at the end of section 44 (6) (b):	9
	, and	10
	(c) in the case of a retrieval warrant issued in this jurisdiction and executed in a participating jurisdiction:	11
		12
	(i) giving details of any premises entered, anything opened and any object removed or replaced under the warrant, and	13
		14
	(ii) giving details of the compliance with the conditions (if any) to which the warrant was subject.	15
		16
[10]	Section 45 Annual reports	17
	Insert after section 45 (1) (b):	18
	(b1) the number of remote applications made by law enforcement officers during that year for surveillance device warrants to be issued in this jurisdiction and executed in a participating jurisdiction,	19
		20
		21
	(b2) the number of applications made by law enforcement officers for surveillance device warrants to be issued in this jurisdiction and executed in a participating jurisdiction that were refused during that year, and the reasons for refusal,	22
		23
		24
		25
	(b3) the number of applications for extensions of surveillance device warrants issued in this jurisdiction and executed in a participating jurisdiction, made by law enforcement officers during that year, the number of extensions granted or refused and the reason why they were granted or refused,	26
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		29
		30
	(b4) the number of arrests made by law enforcement officers during that year on the basis (wholly or partly) of information obtained by the use of a surveillance device under a surveillance device warrant or emergency authorisation issued in this jurisdiction and executed in a participating jurisdiction,	31
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	(b5) the number of prosecutions that were commenced in this jurisdiction during that year in which information obtained by the use of a surveillance device under a surveillance device warrant or emergency authorisation issued in this jurisdiction and executed in a participating jurisdiction was given in evidence, and the number of those prosecutions in which a person was found guilty,	36
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		41
[11]	Section 45 (2)	42
	Omit “subsection (1) (a) and (b)”. Insert instead “subsection (1) (a)–(b3)”.	43

[12]	Section 46 Keeping documents and records connected with warrants and emergency authorisations executed in this jurisdiction	1 2
	Insert “for the use or retrieval of surveillance devices in this jurisdiction” after “agency” where thirdly occurring.	3 4
[13]	Section 46A	5
	Insert after section 46:	6
46A	Keeping documents and records connected with warrants and emergency authorisations executed in participating jurisdictions	7 8
(1)	The chief officer of a law enforcement agency must cause a copy of the following documents to be kept in relation to the use or retrieval of a surveillance device in a participating jurisdiction:	9 10 11
(a)	each warrant issued to a law enforcement officer of the agency,	12
(b)	each notice given to the chief officer of the revocation of a warrant,	13
(c)	each emergency authorisation given to a law enforcement officer of the agency,	14 15
(d)	each application made by a law enforcement officer of the agency for an emergency authorisation,	16 17
(e)	each application made by a law enforcement officer of the agency for:	18
(i)	a warrant, or	19
(ii)	an extension, variation or revocation of a warrant, or	20
(iii)	approval of the exercise of powers under an emergency authorisation,	21 22
(f)	each report made to a Judge or Magistrate under section 44,	23
(g)	each certificate issued by a senior officer of the agency under section 50.	24
(2)	The chief officer of a law enforcement agency must cause the following information to be kept in relation to the use or retrieval of a surveillance device in a participating jurisdiction:	25 26 27
(a)	a statement as to whether each application made by a law enforcement officer of the agency for a warrant, or the extension, variation or revocation of a warrant, was granted, refused or withdrawn,	28 29 30
(b)	a statement as to whether each application made by a law enforcement officer of the agency for an emergency authorisation, or for approval of powers exercised under an emergency authorisation, was granted, refused or withdrawn,	31 32 33 34
(c)	details of each use by the agency, or by a law enforcement officer of the agency, of information obtained by the use of a surveillance device by a law enforcement officer of the agency,	35 36 37
(d)	details of each communication by a law enforcement officer of the agency to a person other than a law enforcement officer of the agency of information obtained by the use of a surveillance device by a law enforcement officer of the agency,	38 39 40 41
(e)	details of each occasion when, to the knowledge of a law enforcement officer of the agency, information obtained by the use of a surveillance device by a law enforcement officer of the agency was given in evidence in a relevant proceeding,	42 43 44 45
(f)	details of the destruction of records or reports under section 41 (1) (b).	46

[14] Schedule 1 Savings, transitional and other provisions	1
Omit clause 1 (1). Insert instead:	2
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	3
	4