

Passed by both Houses



New South Wales

# Law Enforcement (Controlled Operations) Amendment Bill 2013

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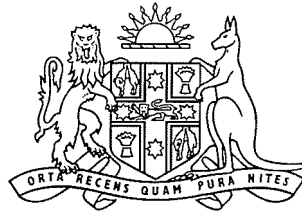
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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2013

*Clerk of the Parliaments*



New South Wales

## **Law Enforcement (Controlled Operations) Amendment Bill 2013**

Act No     , 2013

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An Act to amend the *Law Enforcement (Controlled Operations) Act 1997* to make provision for the role of a secondary law enforcement officer in controlled operations and to amend the *Surveillance Devices Act 2007* to make further provision with respect to the use of listening devices in controlled operations.

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

**1    Name of Act**

This Act is the *Law Enforcement (Controlled Operations) Amendment Act 2013*.

**2    Commencement**

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

## **Schedule 1      Amendment of Law Enforcement (Controlled Operations) Act 1997 No 136**

**[1] Section 3 Definitions**

Omit the definition of *principal law enforcement officer* from section 3 (1).

Insert instead:

*principal law enforcement officer* for an authorised operation means the law enforcement officer who is identified by the authority for the operation as the principal law enforcement officer.

**[2] Section 3 (1), definition of “secondary law enforcement officer”**

Insert in alphabetical order:

*secondary law enforcement officer* for an authorised operation means the law enforcement officer who is identified by the authority for the operation as the secondary law enforcement officer.

**[3] Section 5 Applications for authorities**

Insert after section 5 (2A) (d):

- (e) the names and ranks of the law enforcement officers nominated to be the principal law enforcement officer and the secondary law enforcement officer for the proposed operation.

**[4] Section 8 Form of authority**

Omit section 8 (2) (b). Insert instead:

- (b) must identify the principal law enforcement officer who is the person who is to conduct, and to have responsibility for, the operation, and
- (b1) must identify the secondary law enforcement officer who is the person who is to conduct, and to have responsibility for, the operation whenever the principal law enforcement officer is unavailable to do so, and

**[5] Section 8 (3)**

Insert “, (b1)” after “subsection (2) (b)”.

**[6] Section 10 Variation of authority**

Insert after section 10 (1) (b):

- (b1) to provide for an alternative secondary law enforcement officer for the operation,

**[7] Section 13B**

Insert after section 13A:

**13B Functions of secondary law enforcement officer**

A function that is conferred on a principal law enforcement officer for an authorised operation under Part 3 or 3A or the regulations is taken to be conferred on the secondary law enforcement officer for the authorised operation whenever the principal law enforcement officer is unavailable to exercise the function.

**[8] Section 19 Exclusion of civil liability**

Insert “or the secondary law enforcement officer” after “officer” wherever occurring in section 19 (b) and (d) (ii).

**[9] Section 19**

Insert “secondary law enforcement officer,” after “principal law enforcement officer,”.

**[10] Section 20I Documents relating to cross-border controlled operations**

Omit “of a principal law enforcement officer of the agency” from section 20I (f).

Insert instead “given to the chief executive officer”.

**[11] Section 20J Register relating to cross-border controlled operations**

Omit “the principal law enforcement officer for the operation made a report” from section 20J (2) (b) (viii).

Insert instead “a report on the operation was made”.

**[12] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1 (1):

any other Act that amends this Act

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## **Schedule 2      Consequential amendment of Law Enforcement (Controlled Operations) Regulation 2012**

**[1]    Clause 12 Written notice to Ombudsman of variation of authority:  
section 21**

Insert “or secondary law enforcement officer” after “officer” in clause 12 (d).

**[2]    Clause 13 Written notice to Ombudsman of receipt of report of  
authorised operation: section 21**

Omit “from the principal law enforcement officer for the operation” from clause 13 (a).

**[3]    Schedule 1 Forms**

Insert after item 6 (a) in Form 1:

- (a1) [Name], a law enforcement officer within the meaning of the Act (the *secondary law enforcement officer*), may conduct the controlled operation in accordance with the plan of the proposed operation accompanying the Application whenever the principal law enforcement officer is unavailable to conduct, and to have responsibility for, the operation.

**[4]    Schedule 1, Form 2**

Insert after item 6 (a):

- (a1) [Name], a law enforcement officer within the meaning of the Act (the *secondary law enforcement officer*), may conduct the cross-border controlled operation:
- (i) whenever the principal law enforcement officer is unavailable to conduct, and to have responsibility for, the operation, and
  - (ii) in accordance with the plan of the proposed operation accompanying the Application, in participating jurisdictions namely:  
[List the participating jurisdictions in which the controlled conduct is, or is likely, to be engaged in]

**[5]    Schedule 1, Form 3**

Insert after item 3 (b):

- \*(b1) to authorise [name] as the alternative secondary law enforcement officer for the controlled operation.

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Schedule 2 Consequential amendment of Law Enforcement (Controlled Operations)  
Regulation 2012

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**[6] Schedule 2 Code of conduct**

Omit “the principal law enforcement officer for the operation” from clause 4 (b).

Insert instead “the law enforcement officer who is conducting, and has responsibility for, the operation”.



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## Schedule 3      Amendment of Surveillance Devices Act 2007 No 64

### Section 7 Prohibition on installation, use and maintenance of listening devices

Omit section 7 (4). Insert instead:

- (4) Subsection (1) does not apply to the use of a listening device to record, monitor or listen to a private conversation if:
  - (a) a party to the private conversation is a participant in an authorised operation and, in the case of a participant who is a law enforcement officer, is using an assumed name or assumed identity, and
  - (b) the person using the listening device is that participant or another participant in that authorised operation.

- (5) In this section:  
*authorised operation* and *participant* in an authorised operation have the same meanings as in the *Law Enforcement (Controlled Operations) Act 1997*.

**Note.** The definition of *participant* in an authorised operation includes a *civilian participant* within the meaning of the *Law Enforcement (Controlled Operations) Act 1997*.