

[Act 1996 No 118]



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.

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 [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.