



New South Wales

Law Enforcement (Controlled Operations) Amendment Bill 2012

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Law Enforcement (Controlled Operations) Act 1997* to provide for a secondary law enforcement officer to exercise the functions of a principal law enforcement officer in authorised controlled operations whenever the principal law enforcement officer is unavailable, and
- (b) to amend the *Surveillance Devices Act 2007* to permit the use of listening devices by authorised civilian participants in authorised controlled operations that include civilian participants.

This Bill also makes consequential amendments to the *Law Enforcement (Controlled Operations) Regulation 2012*.

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 Law Enforcement (Controlled Operations) Act 1997 No 136

Schedule 1 [3] requires an application for authority to conduct a controlled operation to nominate a principal law enforcement officer and a secondary law enforcement officer for the proposed operation. A controlled operation is an operation conducted for the purpose of obtaining evidence of or frustrating criminal activity or corrupt conduct and that may involve an activity that would otherwise be unlawful.

Schedule 1 [4] requires such an authority to identify the principal law enforcement officer and the secondary law enforcement officer for the operation. The principal law enforcement officer is to conduct, and to have responsibility for, the operation. The secondary law enforcement officer is to conduct, and to have responsibility for, the operation whenever the principal law enforcement officer is unavailable to do so. **Schedule 1 [1], [2] and [5]–[11]** make consequential amendments.

Schedule 1 [12] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

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

Schedule 2 makes consequential amendments to the *Law Enforcement (Controlled Operations) Regulation 2012*.

Schedule 3 Amendment of Surveillance Devices Act 2007 No 64

Schedule 3 amends the *Surveillance Devices Act 2007* to permit the use of a listening device to record or monitor a private conversation where a party to the conversation is a civilian participant in an authorised controlled operation and the listening device is being used by that participant or another participant in the operation.



New South Wales

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New South Wales

Law Enforcement (Controlled Operations) Amendment Bill 2012

No. , 2012

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Law Enforcement (Controlled Operations) Amendment Act 2012</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Law Enforcement (Controlled Operations) Act 1997 No 136	1 2
[1] Section 3 Definitions		3
	Omit the definition of <i>principal law enforcement officer</i> from section 3 (1).	4
	Insert instead:	5
	<i>principal law enforcement officer</i> for an authorised operation means the law enforcement officer who is identified by the authority for the operation as the principal law enforcement officer.	6 7 8 9
[2] Section 3 (1), definition of “secondary law enforcement officer”		10
	Insert in alphabetical order:	11
	<i>secondary law enforcement officer</i> for an authorised operation means the law enforcement officer who is identified by the authority for the operation as the secondary law enforcement officer.	12 13 14 15
[3] Section 5 Applications for authorities		16
	Insert after section 5 (2A) (d):	17
	(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.	18 19 20 21
[4] Section 8 Form of authority		22
	Omit section 8 (2) (b). Insert instead:	23
	(b) must identify the principal law enforcement officer who is the person who is to conduct, and to have responsibility for, the operation, and	24 25 26
	(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	27 28 29 30
[5] Section 8 (3)		31
	Insert “, (b1)” after “subsection (2) (b)”.	32

[6] Section 10 Variation of authority	1
Insert after section 10 (1) (b):	2
(b1) to provide for an alternative secondary law enforcement officer for the operation,	3 4
[7] Section 13B	5
Insert after section 13A:	6
13B Functions of secondary law enforcement officer	7
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 9 10 11 12 13
[8] Section 19 Exclusion of civil liability	14
Insert “or the secondary law enforcement officer” after “officer” wherever occurring in section 19 (b) and (d) (ii).	15 16
[9] Section 19	17
Insert “secondary law enforcement officer,” after “principal law enforcement officer,”.	18 19
[10] Section 20I Documents relating to cross-border controlled operations	20
Omit “of a principal law enforcement officer of the agency” from section 20I (f).	21 22
Insert instead “given to the chief executive officer”.	23
[11] Section 20J Register relating to cross-border controlled operations	24
Omit “the principal law enforcement officer for the operation made a report” from section 20J (2) (b) (viii).	25 26
Insert instead “a report on the operation was made”.	27
[12] Schedule 2 Savings and transitional provisions	28
Insert at the end of clause 1 (1):	29
any other Act that amends this Act	30

Schedule 2	Consequential amendment of Law Enforcement (Controlled Operations) Regulation 2012	1
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		3
[1]	Clause 12 Written notice to Ombudsman of variation of authority: section 21	4
	Insert “or secondary law enforcement officer” after “officer” in clause 12 (d).	5
		6
[2]	Clause 13 Written notice to Ombudsman of receipt of report of authorised operation: section 21	7
	Omit “from the principal law enforcement officer for the operation” from clause 13 (a).	8
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[3]	Schedule 1 Forms	11
	Insert after item 6 (a) in Form 1:	12
	(a1) [Name], a law enforcement officer within the meaning of the Act (the <i>secondary law enforcement officer</i>), 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.	13
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[4]	Schedule 1, Form 2	20
	Insert after item 6 (a):	21
	(a1) [Name], a law enforcement officer within the meaning of the Act (the <i>secondary law enforcement officer</i>), may conduct the cross-border controlled operation:	22
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		24
	(i) whenever the principal law enforcement officer is unavailable to conduct, and to have responsibility for, the operation, and	25
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		27
	(ii) in accordance with the plan of the proposed operation accompanying the Application, in participating jurisdictions namely:	28
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	[List the participating jurisdictions in which the controlled conduct is, or is likely, to be engaged in]	
[5]	Schedule 1, Form 3	33
	Insert after item 3 (b):	34
	*(b1) to authorise [name] as the alternative secondary law enforcement officer for the controlled operation.	35
		36

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

[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	1
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Section 7	Prohibition on installation, use and maintenance of listening devices	3
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	Omit section 7 (4). Insert instead:	5
(4)	Subsection (1) does not apply to the use of a listening device to record, monitor or listen to a private conversation if:	6
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(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	8
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(b)	the person using the listening device is that participant or another participant in that authorised operation.	12
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(5)	In this section:	14
	<i>authorised operation</i> and <i>participant</i> in an authorised operation have the same meanings as in the <i>Law Enforcement (Controlled Operations) Act 1997</i> .	15
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	Note. The definition of <i>participant</i> in an authorised operation includes a <i>civilian participant</i> within the meaning of the <i>Law Enforcement (Controlled Operations) Act 1997</i> .	18
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