



New South Wales

Surveillance Devices Amendment (Validation) Bill 2009

Explanatory note

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

Overview of Bill

Before its repeal by the *Surveillance Devices Act 2007*, the *Listening Devices Act 1984* prohibited the use of listening devices to record private conversations (except in circumstances set out in that Act) without the use of a warrant granted by an eligible Judge. An eligible Judge was a Judge of the Supreme Court who had consented to being involved in the grant of warrants and in respect of whom a declaration was in force declaring the judge to be an eligible Judge for the purposes of that Act.

The object of this Bill is to amend the *Surveillance Devices Act 2007* to validate certain warrants purporting to have been granted between 3 March 2008 and 7 March 2008 under the 1984 Act by an eligible Judge when the judge concerned had given the requisite consent but in respect of whom a declaration was not yet in force. The validation puts beyond doubt the use of listening devices pursuant to the warrants and ensures that evidence obtained by the use of the listening devices will not be inadmissible solely on the ground of any technical invalidity.

Outline of provisions

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

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

Clause 3 amends the *Surveillance Devices Act 2007* as described in the Overview.

First print



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Surveillance Devices Amendment (Validation) Bill 2009

No. , 2009

A Bill for

An Act to amend the *Surveillance Devices Act 2007* to validate certain warrants granted under the *Listening Devices Act 1984*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Surveillance Devices Amendment (Validation) Act 2009</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Amendment of Surveillance Devices Act 2007 No 64	6
Schedule 1 Savings, transitional and other provisions	7
Insert after clause 6:	8
Part 3 Validation of certain listening device warrants	9
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7 Validation	11
(1) In this Part:	12
<i>relevant period</i> means the period commencing on 3 March 2008 and ending on 7 March 2008 (inclusive).	13
<i>repealed Act</i> means the <i>Listening Devices Act 1984</i> as in force immediately before 1 August 2008.	14
<i>warrant</i> means a warrant authorising the use of a listening device granted under the repealed Act.	15
(2) The instrument made under section 3A of the repealed Act on 10 March 2008 that declared The Honourable Justice Lucy McCallum (the <i>Judge</i>) to be an eligible Judge for the purposes of that Act is taken to have been made on 3 March 2008.	16
(3) Accordingly:	17
(a) any warrant purporting to have been granted by the Judge during the relevant period that, but for subclause (2), would have been invalid only because it had not been granted by a person who was an eligible Judge is taken at the time it was granted and at all relevant times after it was granted to have been a valid warrant granted by an eligible Judge, and	18
(b) any evidence obtained, directly or indirectly, as a result of the use of a listening device pursuant to such a warrant is not rendered inadmissible only because the warrant was granted in those circumstances, and	19
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- (c) section 3A (4) of the repealed Act is taken to have applied during the relevant period in respect of any function exercised by the Judge in respect of such a warrant.

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