

Listening Devices Act 1984 No 69

[1984-69]



New South Wales

Status Information

Currency of version

Repealed version for 6 December 2005 to 31 July 2008 (accessed 15 November 2024 at 7:15)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Miscellaneous Acts (Local Court) Amendment Act 2007 No 94 (not commenced)
- **Repeal**
The Act was repealed by sec 62 of the *Surveillance Devices Act 2007 No 64* with effect from 1.8.2008.
- **Note**
The Act is to be repealed on the commencement of sec 62 of the *Surveillance Devices Act 2007 No 64*.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Listening Devices Act 1984 No 69



New South Wales

An Act to regulate the use of certain devices capable of being used for listening to private conversations; and to repeal the *Listening Devices Act 1969*.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Listening Devices Act 1984*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

exercise a function includes perform a duty.

function includes a power, authority or duty.

listen to includes hear.

listening device means any instrument, apparatus, equipment or device capable of being used to record or listen to a private conversation simultaneously with its taking place.

party, in relation to a private conversation, means:

- (a) a person by or to whom words are spoken in the course of the conversation, or
- (b) a person who, with the consent, express or implied, of any of the persons by or to whom words are spoken in the course of the conversation, records or listens to those words.

principal party, in relation to a private conversation, means a person by or to whom words are spoken in the course of the conversation.

private conversation means any words spoken by one person to another person or to other persons in circumstances that may reasonably be taken to indicate that any of those persons desires the words to be listened to only:

- (a) by themselves, or
- (b) by themselves and by some other person who has the consent, express or implied, of all of those persons to do so.

regulation means a regulation made under this Act.

serious narcotics offence means:

- (a) an offence under Division 2 of Part 2 of the [Drug Misuse and Trafficking Act 1985](#), or
 - (b) an offence contained in Part 9.1 of the [Criminal Code](#) of the Commonwealth,
- but does not include an offence which is declared by the regulations not to be a serious narcotics offence within the meaning of this Act.

(1A) A thing is not precluded from being a listening device within the meaning of this Act merely because it is also capable of:

- (a) recording or transmitting visual images (for example a video camera), or
- (b) recording or transmitting its own position.

(2) A reference in this Act to a listening device does not include a reference to a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and to permit the person to hear only sounds ordinarily audible to the human ear.

(3) A reference in this Act to:

- (a) a report of a private conversation includes a reference to a report of the substance, meaning or purport of the conversation, or
- (b) a record of a private conversation includes a reference to a statement prepared from such a record.

3A Judges

(1) In this Act:

eligible Judge means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

Judge means a person who is a Judge of the Supreme Court.

- (2) A Judge may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3).
- (3) The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Act.
- (4) An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by this Act, the same protection and immunity as a Judge of the Supreme Court has in relation to proceedings in the Supreme Court.
- (5) A Judge who has given consent under this section may, by instrument in writing, revoke the consent.
- (6) The Attorney General may, by instrument in writing, amend or revoke a declaration under this section.

3B Other judicial officers

- (1) In this Act:

eligible judicial officer means a judicial officer in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

judicial officer means a person who is a Judge of the District Court or a Magistrate.

- (2) A judicial officer may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3).
- (3) The Attorney General may, by instrument in writing, declare judicial officers in relation to whom consents are in force under subsection (2) to be eligible judicial officers for the purposes of this Act.
- (4) An eligible judicial officer has, in relation to the exercise of a function conferred on an eligible judicial officer by this Act, the same protection and immunity as:
 - (a) in the case of a person who is a Judge of the District Court—a Judge of the District Court has in relation to proceedings in the District Court, or
 - (b) in the case of a person who is a Magistrate—a Magistrate has in relation to proceedings in a Local Court.
- (5) A judicial officer who has given consent under this section may, by instrument in writing, revoke the consent.
- (6) The Attorney General may, by instrument in writing, amend or revoke a declaration under this section.

4 Act to bind the Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Part 2 Offences relating to listening devices

5 Prohibition on use of listening devices

- (1) A person shall not use, or cause to be used, a listening device:
 - (a) to record or listen to a private conversation to which the person is not a party, or
 - (b) to record a private conversation to which the person is a party.
- (2) Subsection (1) does not apply to:
 - (a) the use of a listening device pursuant to a warrant granted under Part 4,
 - (b) the use of a listening device pursuant to an authority granted by or under the [Telecommunications \(Interception\) Act 1979](#) of the Commonwealth or any other law of the Commonwealth,
 - (c) the use of a listening device to obtain evidence or information in connection with:
 - (i) an imminent threat of serious violence to persons or of substantial damage to property, or
 - (ii) a serious narcotics offence,if it is necessary to use the device immediately to obtain that evidence or information,
 - (d) the unintentional hearing of a private conversation by means of a listening device, or
 - (e) the use of a listening device to record a refusal to consent to the recording of an interview by a member of the police force in connection with the commission of an offence by a person suspected of having committed the offence.
- (3) Subsection (1) (b) does not apply to the use of a listening device by a party to a private conversation if:
 - (a) all of the principal parties to the conversation consent, expressly or impliedly, to the listening device being so used, or
 - (b) a principal party to the conversation consents to the listening device being so used and:
 - (i) the recording of the conversation is reasonably necessary for the protection of

the lawful interests of that principal party, or

- (ii) the recording of the conversation is not made for the purpose of communicating or publishing the conversation, or a report of the conversation, to persons who are not parties to the conversation.

(4) Where a listening device is used in the circumstances referred to in subsection (2) (c) and its use would, but for subsection (2) (c), be contrary to this section, the person who used the device shall:

- (a) forthwith cause to be served on the Attorney General or a prescribed officer notice of that fact, and
- (b) within 7 days after its use, furnish a report, in writing, to the Attorney General:
 - (i) containing particulars of the circumstances in which the device was used, and
 - (ii) without affecting the generality of subparagraph (i), containing the same particulars, and specifying the same matters, as are required by section 19 (1) (b) in relation to the use of a listening device pursuant to a warrant granted under Part 4.

6 Prohibition on communication or publication of private conversations unlawfully listened to

(1) A person shall not knowingly communicate or publish to any other person a private conversation, or a report of a private conversation, that has come to the person's knowledge as a result, direct or indirect, of the use of a listening device in contravention of section 5.

(2) Subsection (1) does not apply:

- (a) where the communication or publication is made:
 - (i) to a party to the private conversation,
 - (ii) with the consent, express or implied, of all the principal parties to the private conversation, or
 - (iii) in the course of proceedings for an offence against this Act or the regulations,
- (b) where the communication or publication is not more than is reasonably necessary in connection with:
 - (i) an imminent threat of serious violence to persons or of substantial damage to property, or
 - (ii) a serious narcotics offence, or
- (c) to prevent a person who has obtained knowledge of the private conversation

otherwise than in a manner referred to in that subsection from communicating or publishing to another person the knowledge so obtained by the person, notwithstanding that the person also obtained knowledge of the conversation in such a manner.

7 Prohibition on communication or publication of records of private conversations by parties thereto

- (1) A person who has been a party to a private conversation and has used, or caused to be used, a listening device to record the conversation (whether in contravention of section 5 or not), shall not subsequently communicate or publish to any other person any record of the conversation made, directly or indirectly, by the use of the device.
- (2) Subsection (1) does not apply where the communication or publication:
 - (a) is made to another party to the private conversation or with the consent, express or implied, of all of the principal parties to the conversation,
 - (b) is made in the course of legal proceedings,
 - (c) is not more than is reasonably necessary for the protection of the lawful interests of the person making the communication or publication,
 - (d) is made to a person who has, or is, on reasonable grounds, by the person making the communication or publication, believed to have, such an interest in the private conversation as to make the communication or publication reasonable under the circumstances in which it is made, or
 - (e) is made by a person who used the listening device to record the private conversation pursuant to a warrant granted under Part 4 or pursuant to an authority granted by or under the *Telecommunications (Interception) Act 1979* of the Commonwealth or any other law of the Commonwealth.

8 Possession of record of private conversation

- (1) A person shall not possess a record of a private conversation knowing that it has been obtained, directly or indirectly, by the use of a listening device in contravention of section 5.
- (2) Subsection (1) does not apply where the record is in the possession of the person:
 - (a) in connection with proceedings for an offence against this Act or the regulations,
 - (b) with the consent, express or implied, of all of the principal parties to the private conversation, or
 - (c) as a consequence of a communication or publication of that record to that person in circumstances that do not constitute an offence against this Part.

9 Manufacture, supply etc of listening device for unlawful use

- (1) A person shall not:
- (a) manufacture,
 - (b) supply or offer to supply, or
 - (c) possess,
- a listening device for use in contravention of section 5.
- (2) In subsection (1), **supply** includes sell and distribute.

10 Offence against this Part

A person who contravenes any provision of this Part, whether by act or omission, is guilty of an offence.

11 Penalty for offence against this Part

- (1) A person convicted summarily of an offence against this Part shall be liable:
- (a) except as provided by paragraph (b), to a fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years, or both, or
 - (b) where the offence was committed by a corporation and the proceedings for the offence were taken before the Supreme Court in its summary jurisdiction, to a fine not exceeding 500 penalty units.
- (2) A person convicted on indictment of an offence against this Part shall be liable to a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

Part 3 Admissibility of evidence

12 Interpretation

In this Part, a reference to the giving of evidence of a private conversation that has come to the knowledge of a person as a result of the use of a listening device includes a reference to the production of a record of such a private conversation.

13 Inadmissibility of evidence of private conversations when unlawfully obtained

- (1) Where a private conversation has come to the knowledge of a person as a result, direct or indirect, of the use of a listening device in contravention of section 5:
- (a) evidence of the conversation, and
 - (b) evidence obtained as a direct consequence of the conversation so coming to the knowledge of that person,

may not be given by that person in any civil or criminal proceedings (including proceedings for or in connection with the grant of bail).

- (2) Subsection (1) does not render any evidence inadmissible:
- (a) if all of the principal parties to the private conversation concerned consent to the evidence being given,
 - (b) if the private conversation concerned comes to the knowledge of the person called to give the evidence otherwise than in the manner referred to in that subsection, notwithstanding that the person also obtained knowledge of the conversation in such a manner,
 - (c) in proceedings for an offence against this Act or the regulations, or
 - (d) in proceedings for:
 - (i) an offence punishable by imprisonment for life or for 20 years or more, or
 - (ii) a serious narcotics offence,(or in proceedings for or in connection with the grant of bail in any such proceedings) if the court considers that the evidence should be admissible.
- (3) In determining whether to admit evidence as referred to in subsection (2) (d), the court shall:
- (a) be guided by the public interest, including where relevant the public interest in:
 - (i) upholding the law,
 - (ii) protecting people from illegal or unfair treatment, and
 - (iii) punishing those guilty of offences, and
 - (b) have regard to all relevant matters, including:
 - (i) the seriousness of the offence in relation to which the evidence is sought to be admitted, and
 - (ii) the nature of the contravention of section 5 concerned.
- (4) The court before which any proceedings referred to in subsection (2) (c) or (d) are brought may, at any stage of the proceedings and from time to time, make an order forbidding publication of any evidence, or of any report of, or report of the substance, meaning or purport of, any evidence referred to in subsection (2) (c) or (d).
- (5) A person shall not contravene an order made under subsection (4).

Maximum penalty (subsection (5)): 20 penalty units or imprisonment for a term of 12

months, or both.

14 Admissibility of evidence of private conversation when obtained inadvertently pursuant to warrant

(1) Where a private conversation has inadvertently or unexpectedly come to the knowledge of a person as a result, direct or indirect, of the use of a listening device pursuant to a warrant granted under Part 4:

- (a) evidence of the conversation, or
- (b) evidence obtained as a consequence of the conversation so coming to the knowledge of that person,

may be given by that person in any criminal proceedings (including proceedings for or in connection with the grant of bail) notwithstanding that the warrant was not granted for the purpose of allowing that evidence to be obtained.

(2) Subsection (1) does not render any evidence admissible if:

- (a) the evidence relates to an offence in respect of which a warrant could not be granted under Part 4, or
- (b) the application upon which the warrant was granted was not, in the opinion of the court, made in good faith.

Part 4 Warrants

15 Definitions

In this Part:

Court means the Supreme Court of New South Wales.

premises includes vessels, vehicles and aircraft.

prescribed offence means an offence (including an offence under a law of the Commonwealth or of another State or Territory) that:

- (a) is punishable on indictment, or
- (b) is of a class or description prescribed for the purposes of this Part (whether or not it is punishable on indictment).

16 Warrants authorising use of listening devices

(1) Upon application made by a person that the person suspects or believes:

- (a) that a prescribed offence has been, is about to be or is likely to be committed, and
- (b) that, for the purpose of an investigation into that offence or of enabling evidence

to be obtained of the commission of the offence or the identity of the offender, the use of a listening device is necessary,

an eligible Judge may, if satisfied that there are reasonable grounds for that suspicion or belief, authorise, by warrant, the use of the listening device.

- (2) In determining whether a warrant should be granted under this section, the eligible Judge shall have regard to:
- (a) the nature of the prescribed offence in respect of which the warrant is sought,
 - (b) the extent to which the privacy of any person is likely to be affected,
 - (c) alternative means of obtaining the evidence or information sought to be obtained,
 - (d) the evidentiary value of any evidence sought to be obtained, and
 - (e) any previous warrant sought or granted under this Part in connection with the same prescribed offence.
- (3) Where a warrant granted by an eligible Judge under this section authorises the installation of a listening device on any premises, the eligible Judge shall, by the warrant:
- (a) authorise and require the retrieval of the listening device, and
 - (b) authorise entry onto those premises for the purpose of that installation and retrieval.
- (4) A warrant granted by an eligible Judge under this section shall specify:
- (a) the prescribed offence in respect of which the warrant is granted,
 - (b) where practicable, the name of any person whose private conversation may be recorded or listened to by the use of a listening device pursuant to the warrant,
 - (c) the period (being a period not exceeding 21 days or, if the offence is a terrorism offence, 90 days) during which the warrant is in force,
 - (d) the name of any person who may use a listening device pursuant to the warrant and the persons who may use the device on behalf of that person,
 - (e) where practicable, the premises on which a listening device is to be installed, or the place at which a listening device is to be used, pursuant to the warrant,
 - (f) any conditions subject to which premises may be entered, or a listening device may be used, pursuant to the warrant, and
 - (g) the time within which the person authorised to use a listening device pursuant to the warrant is required to report pursuant to section 19 to an eligible Judge and

the Attorney General.

- (5) A warrant granted under this section may be revoked by an eligible Judge at any time before the expiration of the period specified in the warrant pursuant to subsection (4) (c).
- (6) Subsection (4) (c) shall not be construed as preventing the grant of a further warrant under this section in respect of a prescribed offence in respect of which a warrant has, or warrants have, previously been granted.
- (6A) A warrant under this section may be in or to the effect of the form set out in Schedule 2.
- (6B) If an eligible Judge grants a further warrant under this section before the expiry of an existing warrant in respect of the same premises, the requirement to retrieve the listening device under the existing warrant is waived by force of this subsection, and the listening device is taken to be installed under the further warrant.
- (7) The regulations may provide that, in such circumstances as are prescribed, the functions of an eligible Judge under this section may be exercised by an eligible judicial officer. For that purpose a reference in sections 16, 17, 19 and 20A to an eligible Judge is to be read and construed as a reference to an eligible judicial officer.
- (8) In this section:

terrorism offence means an offence under Part 6B of the *Crimes Act 1900* or an offence against section 101.1, 101.2, 101.4, 101.5, 101.6, 102.2, 102.3, 102.4, 102.5, 102.6, 102.7 or 103.1 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

16A Retrieval of listening device after expiry of warrant

- (1) If a listening device remains on the premises concerned after the expiry of the warrant authorising its installation, the warrant is taken to require the retrieval of the listening device as soon as practicable after the expiry of the warrant.
- (2) The warrant is in that case taken to continue in force for the period of 10 days after its expiry (or such longer period as is allowed by an eligible Judge) for the purpose only of:
 - (a) authorising and requiring the retrieval of the listening device, and
 - (b) authorising entry onto the premises for the purpose of that retrieval.
- (3) On application made in writing and on being satisfied that there are reasonable grounds for allowing such a longer period, an eligible Judge may, by order in writing, allow a longer period specified in the order.

- (4) Nothing in subsection (3) prevents the making of further orders in respect of the same warrant, but the maximum period that can be specified in any one order is 21 days.
- (5) An order under this section must state the time within which the applicant for the order is required to report under section 19 (4) to an eligible Judge and to the Attorney General.
- (6) An order under this section may be in or to the effect of the form set out in Schedule 3.

17 Particulars of warrants sought under section 16 to be notified to Attorney General

- (1) A person seeking a warrant under section 16 shall cause to be served on the Attorney General or a prescribed officer notice of the following particulars:
 - (a) the prescribed offence in respect of which the warrant is sought,
 - (b) where practicable, the type of listening device intended to be used,
 - (c) where practicable, the name of any person whose private conversation is intended to be recorded or listened to by the use of the listening device,
 - (d) where practicable, the premises on which the listening device is intended to be installed or the place at which the listening device is intended to be used,
 - (e) whether any attempt has been made to obtain by alternative means the evidence or information sought and, if so, the result of any such attempt,
 - (f) any other alternative means of obtaining the evidence or information sought to be obtained,
 - (g) the period during which the listening device is intended to be used,
 - (h) the name of the person who is to use the listening device,
 - (i) details of any previous warrant sought or granted under this Part in connection with the same prescribed offence.
- (2) A warrant shall not be granted under section 16 unless the eligible Judge is satisfied that:
 - (a) a notice in respect of the warrant has been served in accordance with this section, and
 - (b) the Attorney General has had an opportunity to be heard in relation to the granting of the warrant.
- (3) A notice required by this section to be served on a person may be served:
 - (a) by delivering it personally to the person, or

- (b) by sending it by facsimile transmission to a number specified by the person (in correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent.

18 Radio/telephone warrants

- (1) In this section, a reference to a telephone includes a reference to a radio or any other communication device.
- (2) Upon application made by telephone by a member of the police force that the member of the police force suspects or believes:
 - (a) that a prescribed offence has been, is about to be or is likely to be committed, and
 - (b) that, for the purpose of an investigation into that offence or of enabling evidence to be obtained of the commission of the offence or the identity of the offender, the immediate use of a listening device is necessary,an eligible Judge may, if satisfied that there are reasonable grounds for that suspicion or belief, authorise, by warrant, the use of the listening device.
- (3) An eligible Judge shall not grant a warrant under this section authorising the use of a listening device if the eligible Judge is satisfied that it would be practicable in the circumstances for a warrant to be granted under section 16 authorising the use of that device.
- (4) The application under this section may be made by a member of the police force by causing the application to be transmitted to an eligible Judge by another member of the police force.
- (5) The fact that an application is made under this section by a member of the police force who causes the application to be transmitted to an eligible Judge by another member of the police force does not, if the eligible Judge is of the opinion that it is, in all the circumstances, impracticable to communicate directly with the member of the police force making the application, prevent the eligible Judge being satisfied as to the matters referred to in subsection (2).
- (6) An eligible Judge grants a warrant under this section by stating the terms of the warrant.
- (7) Where an eligible Judge grants a warrant under this section, the eligible Judge shall cause a record to be made in writing of:
 - (a) the name of the member of the police force who was the applicant,
 - (b) where the application was transmitted by a member of the police force on behalf of the applicant—the name of the member of the police force who so transmitted the application,

- (c) the details of the application,
 - (d) the terms of the warrant, and
 - (e) the date and time the warrant was granted.
- (8) The provisions of section 16 (2)–(6) apply to and in respect of a warrant granted under this section in the same way as those provisions apply to and in respect of a warrant granted under section 16, except that a reference in section 16 (4) (c), as so applied, to 21 days shall be read and construed as a reference to 24 hours.
- (9) The regulations may provide that, in such circumstances as are prescribed, the functions of an eligible Judge under this section may be exercised by an eligible judicial officer. For that purpose a reference in sections 18, 19 and 20A to an eligible Judge is to be read and construed as a reference to an eligible judicial officer.

19 Reports

- (1) A person to whom a warrant has been granted under this Part authorising the use of a listening device shall, within the time specified therefor in the warrant, furnish a report, in writing, to an eligible Judge and to the Attorney General:
- (a) stating whether or not a listening device was used pursuant to the warrant, and
 - (b) if a listening device was so used:
 - (i) specifying the name, if known, of any person whose private conversation was recorded or listened to by the use of the device,
 - (ii) specifying the period during which the device was used,
 - (iii) containing particulars of any premises on which the device was installed or any place at which the device was used,
 - (iv) containing particulars of the general use made or to be made of any evidence or information obtained by the use of the device, and
 - (v) containing particulars of any previous use of a listening device in connection with the prescribed offence in respect of which the warrant was granted.
- (2) Where a report is given to an eligible Judge under subsection (1), an eligible Judge may direct that any record of evidence or information obtained by the use of the listening device to which the report relates be brought into the Court, and a person to whom any such direction is given shall comply with the direction.
- (3) A record brought into the Court pursuant to subsection (2) shall be kept in the custody of the Court and may, by order of the Court, be made available to any person.
- (4) The person on whose application an order has been made under section 16A must,

within the time specified for the purpose in the order, furnish a report, in writing, to an eligible Judge and to the Attorney General:

- (a) stating whether or not the listening device concerned was retrieved during the currency of the order, and
- (b) if the listening device was not so retrieved, giving the reasons why it was not retrieved.

Maximum penalty: 20 penalty units or imprisonment for a term of 12 months, or both.

20 Requirement to inform subject of surveillance

- (1) Where, pursuant to a warrant granted under this Part, a listening device has been used to record or listen to the private conversation of a person, an eligible Judge may direct the person authorised to use the device to supply to that person, within a period specified by the eligible Judge, such information regarding the warrant and the use of the device as the eligible Judge may specify.
- (2) An eligible Judge shall not give a direction under subsection (1) unless the eligible Judge is satisfied that, having regard to the evidence or information obtained by the use of the listening device and to any other relevant matter, the use of the listening device was not justified and was an unnecessary interference with the privacy of the person concerned.
- (3) Before giving a direction under subsection (1), the eligible Judge shall give the person to whom the warrant was granted an opportunity to be heard in relation to the matter.
- (4) A person to whom a direction is given under subsection (1) shall comply with the direction.

Maximum penalty: 20 penalty units or imprisonment for a term of 12 months, or both.

20A Use of assumed names or code-names in warrants

- (1) An eligible Judge may grant a warrant under this Part that refers to a person by an assumed name or code-name if the eligible Judge is satisfied that it is necessary to do so to protect the safety of the person.
- (2) A person may be referred to by an assumed name or code-name in a notice under section 17 or report under section 5 (4) or 19 if the person who furnishes the notice or report believes on reasonable grounds that use of the assumed name is necessary to protect the safety of the person referred to.
- (3) The only persons who may be referred to by assumed names or code-names are persons who are referred to as participants or potential participants in a conversation to which the warrant, notice or report relates.

21 Procedure under this Part

Applications under this Part and any other matters arising under this Part are to be dealt with in the absence of the public.

Part 5 Miscellaneous

22 Destruction of irrelevant records made by the use of a listening device

- (1) This section applies to the use of a listening device:
 - (a) pursuant to a warrant granted under Part 4, or
 - (b) in the circumstances referred to in section 5 (2) (c).
- (2) A person shall, as soon as practicable after it has been made, cause to be destroyed so much of any record, whether in writing or otherwise, of any evidence or information obtained by the person by the use of a listening device to which this section applies as does not relate directly or indirectly to the commission of a prescribed offence within the meaning of Part 4.

Maximum penalty: 20 penalty units or imprisonment for a term of 12 months, or both.

23 Annual report by Attorney General

The Attorney General shall, as soon as practicable after 31 December in each year:

- (a) cause to be prepared a report:
 - (i) on the number of warrants sought under Part 4, and the number of warrants granted, in that year, and
 - (ii) on such other matters relating to the use of listening devices and to the administration of this Act as the Attorney General considers appropriate, and
- (b) lay the report or cause it to be laid before both Houses of Parliament.

24 Offences punishable summarily

Proceedings for an offence against this Act or the regulations may be taken:

- (a) before a Local Court constituted by a Magistrate sitting alone, or
- (b) before the Supreme Court in its summary jurisdiction.

25 Offences punishable on indictment

Without limiting the operation of any other provision of this Act, an offence against Part 2 may be prosecuted on indictment.

26 Certain summary proceedings to become committal proceedings

(1) Where:

- (a) proceedings for an offence against Part 2 are taken before a Local Court,
- (b) the court is of the opinion that the offence should be dealt with as an indictable offence instead of in a summary manner, and
- (c) no evidence has been adduced by or on behalf of the defendant,

the court may, in its discretion, make a declaration that subsection (2) applies to the proceedings.

(2) Where a declaration is made by a court under subsection (1) in relation to any proceedings:

- (a) the court shall re-charge the defendant with the offence to which the proceedings relate, and
- (b) the court attendance notice in relation to that notice is deemed to have been withdrawn and the proceedings cease to be proceedings to which Chapter 4 of the *Criminal Procedure Act 1986* applies, and
- (c) the proceedings are to be continued as if originally commenced in accordance with Part 2 of Chapter 3 of that Act, and anything done, before the declaration was made, under or for the purposes of that Part in relation to the proceedings is, except to the extent that the Court otherwise directs, taken to have been done under or for the purposes of that Part in relation to the proceedings, and
- (d) the court is not to accept or treat any admission made by the defendant before the declaration was made as a plea of guilty for the purposes of Division 5 of Part 2 of Chapter 3 of that Act.

(3) Except as expressly provided, nothing in this section affects any power that a court or any person has apart from this section in relation to any offence or proceedings referred to in this section.

27 Time for instituting proceedings for certain offences

Proceedings for an offence against Part 2 which is prosecuted summarily may be commenced within a period of 2 years after the act or omission alleged to constitute the offence.

28 Consent of Attorney General to prosecutions

(1) Proceedings for an offence against this Act or the regulations shall not be instituted without the written consent of the Attorney General.

- (2) In proceedings referred to in subsection (1), a consent to institute the proceedings, purporting to have been signed by the Attorney General, shall be evidence of that consent without proof of the signature of the Attorney General.

29 Offences by corporations

- (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision unless the person satisfies the court that:
 - (a) the corporation contravened the provision without the knowledge of the person,
 - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or a regulation on any corporation by which an offence against the provision is actually committed.

30 Orders for forfeiture

- (1) Where a court has convicted a person of an offence against this Act or the regulations, it may, in addition to any penalty it may impose, make either or both of the following orders:
 - (a) an order that any listening device used in the commission of the offence be forfeited to Her Majesty or destroyed,
 - (b) an order that any record of a private conversation:
 - (i) to which the offence relates, or
 - (ii) which was obtained by the use of a listening device to which the offence relates,be forfeited to Her Majesty or destroyed.
- (2) Before making an order under subsection (1), the court may require notice to be given to, and may hear, such persons as the court thinks fit.
- (3) Without affecting any other right of appeal, an order under subsection (1) is

appellable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence.

- (4) Where an order is made under subsection (1) that a listening device or record be forfeited to Her Majesty or destroyed, any member of the police force may seize the listening device or record for the purpose of giving effect to the order.

31 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
- (a) exempting, subject to their complying with any conditions specified in the regulations, from any or all of the provisions of this Act, as may be so specified, persons belonging to any class of persons so specified, and
 - (b) warrants under Part 4 and the procedure under that Part in connection with any such warrants, including:
 - (i) the manner of making applications under that Part, and
 - (ii) the manner in which warrants are granted or directions are given under that Part, and
 - (iii) the prohibition of the publication or disclosure of any matter connected with any such procedure.
- (2) Notwithstanding the provisions of section 39 of the *Interpretation Act 1987*, any regulation made for the purposes of subsection (1) (a) shall take effect on and from the date of expiry of the period during which either House of Parliament may, under section 41 of the *Interpretation Act 1987* disallow the regulation, whichever date is the later, or on and from a later date specified in the regulation.
- (3) Except as provided by subsection (2), section 39 of the *Interpretation Act 1987* applies to any regulation.
- (4) A regulation may impose a penalty not exceeding 5 penalty units for any contravention thereof.
- (5) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or

regulated by any specified person or body,
or may do any combination of those things.

32 Repeal of Act No 70, 1969

The *Listening Devices Act 1969* is repealed.

33 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 33)

1 Definitions

In this Schedule:

appointed day means the day appointed and notified under section 2 (2).

former Act means the *Listening Devices Act 1969*.

2 Authorisations under former Act

- (1) An authorisation given under section 8 of the former Act and in force immediately before the appointed day shall, for the purposes only of Part 2, be deemed to be a warrant granted under Part 4.
- (2) Sections 8–11 of the former Act continue to apply to any authorisation given under section 8 of the former Act before the appointed day.

3 Admissibility of evidence arising from use of listening device before appointed day

- (1) The provisions of Part 3 apply to and in respect of the admissibility of evidence arising from the use of a listening device before the appointed day.
- (2) For the purposes of subclause (1), a reference in section 5 to a warrant granted under Part 4 shall be read and construed as a reference to an authorisation given under section 8 of the former Act.

4 Offences in connection with use of a listening device before appointed day

- (1) Section 6 applies to and in respect of the communication or publication on or after the appointed day of a private conversation, or a report of a private conversation, that has come to a person's knowledge as a result of the use of a listening device before the appointed day.
- (2) Section 7 applies to and in respect of the communication or publication on or after the appointed day of a record of a private conversation made by the use of a listening

device before the appointed day.

- (3) Section 8 applies to and in respect of the possession, on or after the appointed day, of a record of a private conversation obtained by the use of a listening device before the appointed day.
- (4) For the purposes of the application of any provision referred to in this clause, a listening device shall be deemed to have been used in contravention of section 5 if it was used in contravention of section 4 of the former Act.

5 Change in nomenclature

A warrant issued under section 16 or 18 before the commencement of Schedule 1.6 [3] or [6] to the *Criminal Legislation Amendment Act 1996* is taken to be a warrant issued under those sections as amended by that Act.

6 Warrants granted before commencement of *Listening Devices Amendment Act 1996*

- (1) In this clause:

previous warrant means a warrant or purported warrant:

- (a) that was granted or that purported to be granted by the Supreme Court of New South Wales under Part 4 before the relevant date, and
- (b) that was signed or authorised by a Judge of the Supreme Court, and
- (c) that would have been a valid warrant disregarding any invalidity arising from the fact that it was:
 - (i) granted by the Supreme Court, or
 - (ii) signed or authorised by a Judge of the Supreme Court,or both.

relevant date means the date of commencement of the *Listening Devices Amendment Act 1996*.

- (2) This Act applies on and after the relevant date to and in respect of previous warrants as if they had been granted by eligible Judges.
- (3) Section 5 (1) does not apply to the use (before, on or after the relevant date) of a listening device pursuant to a previous warrant. This subclause does not affect the generality of section 5 (2).
- (4) Accordingly, for the purposes of:
 - (a) this Act (including section 13), and

(b) the *Evidence Act 1995* (including section 138), and

(c) any other Act or law,

a listening device used (before, on or after the relevant date) in accordance with a previous warrant is taken not to have been used, or not to be used, in contravention of this Act (including section 5).

7 Warrants granted before commencement of *Listening Devices Amendment (Warrants) Act 1998*

- (1) In this clause, **the amending Act** means the *Listening Devices Amendment (Warrants) Act 1998*.
- (2) The amendments made by the amending Act do not apply to or affect warrants granted under this Act before the commencement of the amending Act, except as provided by this clause.
- (3) A reference in section 16 (6B) as inserted by the amending Act to an existing warrant extends to a warrant in force under this Act at the commencement of the amending Act.
- (4) Section 16A as inserted by the amending Act extends to a warrant in force under this Act at the commencement of the amending Act.

8 Application of section 3 (1A) inserted by *Crimes Legislation Amendment Act 2000*

- (1) In this clause:

amending Act means Schedule 6 to the *Crimes Legislation Amendment Act 2000*.

relevant device means a device that was not a listening device within the meaning of this Act before the commencement of section 3 (1A), as inserted by the amending Act, but that becomes such a listening device because of the enactment of section 3 (1A).

- (2) A warrant authorising the use of a listening device that was granted under Part 4 before the commencement of the amending Act is taken to authorise the use, on and after that commencement, of a relevant device.
- (3) Section 6 extends to and in respect of the communication or publication, after the commencement of the amending Act, of a private conversation, or of a report of a private conversation, that has come to a person's knowledge as a result of the use of a relevant device before that commencement.
- (4) Section 7 extends to and in respect of the communication or publication, after the commencement of the amending Act, of a record of a private conversation made by the use of a relevant device before that commencement.

- (5) Section 8 extends to and in respect of the possession, after the commencement of the amending Act, of a record of a private conversation obtained by the use of a relevant device before that commencement.
- (6) Section 14 extends to and in respect of the admissibility of evidence arising from the use of a relevant device before the commencement of the amending Act in proceedings instituted after that commencement.

9 Definition of “serious narcotics offence”

An offence that was a serious narcotics offence immediately before the commencement of Schedule 6 to the *Crimes and Courts Legislation Amendment Act 2005* continues to be a serious narcotics offence for the purposes of this Act despite the amendment to the definition of **serious narcotics offence** by the *Crimes and Courts Legislation Amendment Act 2005*.

Schedule 2 Form of warrant

(Section 16)

I, being an eligible Judge within the meaning of the *Listening Devices Act 1984*, having been satisfied that there are reasonable grounds for the suspicion or belief of (name) that the prescribed offence(s) set out in paragraph (1) has been or is about to be or is likely to be committed:

- (1) specify as the prescribed offence(s) in respect of which the warrant is granted the following:
(set out the prescribed offence(s)).
- (2) authorise the use by (names) and on his or her behalf (names or descriptions of persons) of a listening device by which to record or listen to the private conversation of (name) at (description of premises) subject to the condition(s) that:
 - (a)
 - (b)(set out condition(s)).
- (3) authorise the installation of a listening device by (name) on (description of premises).
- (4) authorise and require the retrieval of the listening device.
- (5) authorise entry on to (description of premises) between (times of day) (or at any time of day) for the purpose of that installation and retrieval, subject to the condition(s) that:
 - (a)
 - (b)(set out condition(s)).
- (6) fix the period am on 19 until pm on 19 (or as the case may be) as the period during which this warrant is to be in force.
- (7) fix (period after event) as the period within which the person authorised to use the listening device pursuant to this warrant is required to report pursuant to section 19 of the *Listening Devices Act 1984* to an eligible Judge and to the Attorney General.

Dated 19 .

(signature)
(name)
Judge

Schedule 3 Form of order

(Section 16A)

I, being an eligible Judge within the meaning of the *Listening Devices Act 1984*, on application made by _____ (*name of applicant*) and being satisfied that there are reasonable grounds for allowing a longer period referred to in section 16A of that Act, do, by this order, allow the period commencing with _____ and ending with _____ during which the warrant identified below is taken to continue in force for the purpose only of:

- (a) authorising and requiring the retrieval of the listening device referred to in the warrant, and
- (b) authorising entry onto the premises concerned for the purpose of that retrieval.

The warrant is (*insert description sufficient to identify the warrant*):

I fix _____ (*period*) as the period within which the applicant for this order is required to report under section 19 (4) of the *Listening Devices Act 1984* to an eligible Judge and to the Attorney General.

Dated 19 .

(signature)
(name)
Judge