

South Australia

**Listening and Surveillance Devices (Visual
Surveillance) Amendment Bill 2005**

A BILL FOR

An Act to amend the *Listening and Surveillance Devices Act 1972*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Listening and Surveillance Devices (Visual Surveillance) Amendment Act 2005*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Listening and Surveillance Devices Act 1972*

4—Amendment of section 3—Interpretation

(1) Section 3—after the definition of *premises* insert:

private activity means—

(a) an activity carried on—

(i) inside a building or at private premises; and

(ii) in circumstances that may reasonably be taken to indicate that a party to the activity desires it to be observed only by the parties to the activity,

but does not include an activity carried on in circumstances in which the parties to it ought reasonably to expect that it may be observed by someone else; or

(b) nude bathing or other nudist activities at a public place set aside for that purpose;

(2) Section 3—after the definition of *private conversation* insert:

public place means a place (including a place on private land) to which the public has access;

5—Substitution of section 4

Section 4—delete the section and substitute:

4—Regulation of use of listening and visual surveillance devices

Except as provided by this Act, a person must not intentionally use—

(a) a listening device to overhear, record, monitor or listen to a private conversation, whether or not the person is a party to the conversation, without the consent, express or implied, of the parties to that conversation; or

(b) a visual surveillance device to observe, record visually or monitor a private activity, whether or not the person is a party to the activity, without the consent, express or implied, of the parties to that activity.

Maximum penalty: \$10 000 or imprisonment for 2 years.

6—Amendment of section 5—Prohibition on communication or publication

(1) Section 5(1)—after "listening device" insert:

or a visual surveillance device

(2) Section 5(2)—after "listening device" insert:

or a visual surveillance device

(3) Section 5(2)(a)—after "conversation" insert:

or private activity

(4) Section 5(2)(b)—after "conversation" insert:

or private activity

5 **7—Amendment of section 6—Warrants—General provisions**

(1) Section 6(1)—after paragraph (a) insert:

(ab) the use of one or more visual surveillance devices;

(2) Section 6(7b)—after paragraph (a) insert:

10 (ab) a warrant authorising the use of a visual surveillance device to observe or record visually activity carried out by or in the presence of a specified person who, according to the terms of the warrant, is suspected on reasonable grounds of having committed, or being likely to commit, a serious offence will be taken to authorise entry to or interference with any premises, vehicle or thing as reasonably
15 required to install, use, maintain or retrieve the device for that purpose;

(3) Section 6(7b)(b)—after "paragraph (a)" insert:

or (ab)

20 **8—Amendment of section 6AB—Use of information or material derived from use of listening or surveillance devices under warrants**

(1) Section 6AB—after "listening device" insert:

or a visual surveillance device

(2) Section 6AB—delete "surveillance" and substitute:

tracking

25 **9—Amendment of section 6B—Reports and records relating to warrants etc**

(1) Section 6B(1a)—after "listening devices" insert:

, warrants authorising the use of visual surveillance devices

(2) Section 6B(1b)(a)—after subparagraph (i) insert:

(ia) used a visual surveillance device otherwise than under a warrant; or

30 (3) Section 6B(1b)(a)(ii)—delete "surveillance" and substitute:

tracking

10—Amendment of section 6C—Control by police etc of certain records, information and material

(1) Section 6C(b)—after "listening device" insert:

35 or a visual surveillance device

(2) Section 6C(b)—delete "surveillance" and substitute:

tracking

11—Amendment of section 7—Lawful use of listening device or visual surveillance device

(1) Section 7(1) and (2)—delete subsections (1) and (2) and substitute:

(1) Section 4 does not apply to or in relation to the use of a listening device or a visual surveillance device by a person (including a person to whom a warrant is issued under this Act) if—

(a) in the case of a listening device, the device is used—

(i) to overhear, record, monitor or listen to a private conversation to which that person is a party; and

(ii) in the course of duty of that person, in the public interest or for the protection of the lawful interests of that person;

(b) in the case of a visual surveillance device, the device is used—

(i) to observe, record visually or monitor a private activity to which that person is a party; and

(ii) in the course of duty of that person, in the public interest or for the protection of the lawful interests of that person.

(2) An exemption from section 4 that applies under subsection (1) to —

(a) a member of the police force; or

(b) a member of the Board of the ACC; or

(c) a member of the staff of the ACC who is a member of the Australian Federal Police or of the police force of a State or Territory of the Commonwealth,

in relation to the use of a listening device or a visual surveillance device for the purposes of the investigation of a matter by the police or the ACC extends to any other such member who—

(d) in the case of a listening device—overhears, records, monitors or listens to the private conversation by means of that device for the purposes of that investigation; or

(e) in the case of a visual surveillance device—observes, records visually or monitors the private activity by means of that device for the purposes of that investigation.

(2) Section 7(3)—after "listening device" insert:

or a visual surveillance device

(3) Section 7(3)(a)—after "conversation" insert:

or private activity

(4) Section 7(3)(b)—after "conversation" insert:

or private activity

(5) Section 7(3)(c)—after "listening device" insert:

or a visual surveillance device

(6) Section 7(3)(d)—after "conversation" insert:

or private activity

5 **12—Insertion of section 7A**

After section 7 insert:

7A—Visual surveillance in public place

10 A person must not knowingly communicate or publish information or material derived from the use (whether by that person or another person) of a visual surveillance device installed in, or directed at, a public place for the security of people or property except—

(a) to a person to whom the information or material relates; or

(b) with the consent of each person to whom the information or material relates; or

15 (c) in the course of duty or in the public interest, including for the purposes of a relevant investigation or a relevant proceeding; or

(d) being a person to whom the information or material relates, as reasonably required for the protection of the person's lawful interests.

20 Maximum penalty: \$10 000 or imprisonment for 2 years.

13—Amendment of section 9—Power to seize listening devices or visual surveillance devices etc

Section 9(1)(e)—after "listening device" wherever occurring, insert:

25 or a visual surveillance device

14—Amendment of section 11—Forfeiture of listening devices or visual surveillance devices

(1) Section 11(1)—after "listening device" insert:

or visual surveillance device

30 (2) Section 11(2)—after "listening device" insert:

or visual surveillance device