

SOUTH AUSTRALIA

LISTENING DEVICES ACT, 1972

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 October 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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LISTENING DEVICES ACT, 1972

being

Listening Devices Act, 1972, No. 112 of 1972
[Assented to 23 November 1972]¹

as amended by

Listening Devices Act Amendment Act, 1974, No. 40 of 1975 [Assented to 10 April 1975]

Listening Devices Act Amendment Act, 1989, No. 29 of 1989 [Assented to 4 May 1989]²

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.

¹ Came into operation 2 April 1973: *Gaz.* 8 March 1973, p. 856.

² Came into operation 8 May 1989: *Gaz.* 4 May 1989, p. 1198.

An Act to regulate the Use of Listening Devices and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *Listening Devices Act, 1972*.

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears—

"declared listening device" means a listening device or a listening device of a class or kind to which for the time being, section 8 of this Act applies:

"listening device" means any electronic or mechanical instrument, apparatus, equipment or other device capable of being used to overhear, record, monitor or listen to a private conversation or words spoken to or by any person in private conversation but does not include a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and to permit him only to hear sounds ordinarily audible to the human ear:

"private conversation" means any conversation carried on in circumstances that may reasonably be taken to indicate that any party to the conversation desires it to be confined to the parties to the conversation.

Note: For definition of divisional penalties see Appendix 2.

Prohibition on use of listening device

4. Except as is provided in this Act a person shall not intentionally use any listening device to overhear, record, monitor or listen to any private conversation, whether or not he is a party thereto, without the consent, express or implied, of the parties to that conversation.

Penalty: Division 5 fine or division 5 imprisonment or both.

Prohibition on communication or publication

5. A person shall not knowingly communicate or publish any information or material derived from the use of a listening device in contravention of section 4 of this Act.

Penalty: Division 5 fine or division 5 imprisonment or both.

Warrants authorizing use of listening devices

6. (1) Section 4 does not apply in relation to the use of a listening device pursuant to a warrant issued by a judge of the Supreme Court.

(2) An application for a warrant under this Act may be made—

(a) by a member of the police force, for the purposes of the investigation of a matter by the police;

3.

or

(b) by—

(i) a member of the National Crime Authority;

or

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

for the purposes of the investigation of a matter by the Authority.

(3) Subject to subsection (4), an application for a warrant—

(a) must be in writing;

(b) must set out the grounds on which the application is based;

(c) must specify the period for which it is requested that the warrant be in force and give reasons for that specification;

and

(d) may request that the warrant authorize entry onto specified premises.

(4) If the applicant for a warrant believes it necessary to do so because of urgent circumstances, an application may be made by telephone and, if an application is made by telephone, the application must, in addition to the particulars required by subsection (3), include particulars of those urgent circumstances.

(5) A judge to whom an application for a warrant is made may require further information to be given in relation to the application.

(6) A judge may issue a warrant under this section if satisfied—

(a) in the case of a telephone application, that because of urgent circumstances it was necessary to make the application by telephone;

(b) that the issue of the warrant is justified having regard to—

(i) the extent to which the privacy of any person would be likely to be interfered with by use of a listening device pursuant to the warrant;

(ii) the gravity of the criminal conduct being investigated;

(iii) the extent to which information that would be likely to be obtained by use of a listening device under the warrant would be likely to assist the investigation;

4.

(iv) the extent to which that information would be likely to be obtained by methods of investigation not involving the use of a listening device;

and

(v) the extent to which those methods would be likely to assist the investigation or to prejudice the investigation, through delay or any other reason;

and

(c) in the case of a warrant authorizing entry onto premises, that it would be impracticable or inappropriate to use a listening device pursuant to the warrant without entry onto the premises.

(7) A warrant under this section—

(a) may specify conditions relating to the use of a listening device;

(b) if it authorizes entry—

(i) may restrict entry to within specified hours during a day;

(ii) may provide that entry may be made without permission first being sought or demand first being made and, if it does so, may specify the measures by which entry may be gained;

(c) must specify the period for which it is in force (not being a period greater than 90 days);

(d) may be renewed.

(8) Where the Commissioner of Police or a member of the National Crime Authority is satisfied that the grounds on which a warrant was issued have ceased to exist, the Commissioner or the member (as the case may require) must, if it is still in force, cancel the warrant by instrument in writing.

(9) A warrant may, at any time, be cancelled by instrument in writing—

(a) if issued to a member of the police force, by the Commissioner of Police;

(b) if issued to a member of the National Crime Authority or a member of the staff of the Authority, by a member of the National Crime Authority.

Unlawful communication of information obtained pursuant to warrant

6a. (1) A person to whom a warrant is issued under section 6 must not, except in the course of duty or as required by law, knowingly communicate or publish any information obtained by use of a listening device under the warrant.

Penalty: Division 5 fine or division 5 imprisonment or both.

(2) A person who uses a listening device pursuant to a warrant at the direction of the person to whom the warrant was issued must not, except to the extent necessary to give full effect to the purposes for which the warrant was issued or for the purposes of giving evidence, communicate or publish any information obtained by use of the listening device.

Penalty: Division 5 fine or division 5 imprisonment or both.

Reports on warrants under s. 6

6b. (1) The Commissioner of Police must, in relation to warrants issued to members of the police force, give to the Minister—

- (a) as soon as practicable after the issue or cancellation of a warrant, a copy of the warrant or instrument of cancellation;

- (b) within three months after a warrant ceases to be in force, a written report of—
 - (i) the use made of information obtained by use of a listening device pursuant to the warrant;

 - and

 - (ii) the communication of that information to persons other than members of the police force;

- (c) as soon as practicable (but not later than two months) after each 30 June, the following information relating to the year ending on that 30 June—
 - (i) in relation to—
 - (A) applications for warrants;

 - (B) telephone applications for warrants;

 - (C) renewal applications for warrants;

 - and

 - (D) applications for warrants that included a request that the warrant authorize entry onto premises,

how many such applications were made, how many were withdrawn or refused and how many were successful;

 - (ii) the average of the respective periods specified in original warrants issued on applications made during that year as the periods for which the warrants were to be in force;

 - (iii) the average of the respective periods for which those warrants were actually in force;

6.

(iv) the average of the respective periods specified in renewal warrants issued on applications made during that year as the periods for which the renewals were to be in force;

(v) —

(A) how many arrests were made during that year in connection with the performance by the police force of its functions;

and

(B) how many arrests were made during that year on the basis or partly on the basis of information that was obtained by use of a listening device pursuant to a warrant;

(vi) —

(A) how many prosecutions were instituted during that year in which information that was obtained by use of a listening device pursuant to a warrant was given in evidence;

and

(B) how many persons were found guilty of offences in consequence of those prosecutions;

and

(d) a report on any other matter specified by the Minister at a time specified by the Minister.

(2) The Commissioner of Police must keep such records as are necessary to enable compliance with this section.

(3) The Minister must cause a report to be prepared on or before 31 October in each year containing—

(a) the information furnished to the Minister under subsection (1)(c) in relation to the year ending on the previous 30 June;

(b) any similar information relating to warrants issued to members of the National Crime Authority or members of the staff of the Authority furnished to the Minister by the Authority in relation to the year ending on the previous 30 June;

and

7.

- (c) a general description of the uses made during that year of information obtained by use of listening devices pursuant to warrants and of the communication of that information to persons other than members of the police force (in the case of information obtained pursuant to warrants issued to members of the police force) or to persons other than members of the National Crime Authority or members of the staff of the Authority (in the case of information obtained pursuant to warrants issued to members of the National Crime Authority or members of the staff of the Authority).

(4) The Minister must, within 12 sitting days of receiving a report prepared under subsection (3), have copies of the report laid before both Houses of Parliament.

Dealings with records obtained by use of a listening device

6c. The Commissioner of Police and the National Crime Authority—

- (a) must keep any record of information obtained by use of a listening device pursuant to a warrant issued to a member of the police force or to a member of the National Crime Authority or a member of the staff of the Authority (as the case may be) in a secure place, being a place that is not accessible to persons who are not entitled to deal with the record;
- (b) must destroy any such record if satisfied that it is not likely to be required in connection with—
- (i) the investigation in respect of which the warrant was issued;
 - (ii) the making of a decision whether or not to prosecute for an offence;
- or
- (iii) the prosecution of an offence.

Lawful use of a listening device by a party to a private conversation

7. (1) Section 4 of this Act does not apply to or in relation to the use of a listening device by a person (including a person to whom a warrant is issued under section 6) where that listening device is used—

- (a) to overhear, record, monitor or listen to any private conversation to which that person is a party;
- and
- (b) in the course of duty of that person, in the public interest or for the protection of the lawful interests of that person.

(2) A person referred to in subsection (1) of this section shall not otherwise than in the course of his duty, in the public interest or for the protection of his lawful interests, communicate or publish any information or material derived from the use of a listening device under that subsection.

Penalty: Division 5 fine or division 5 imprisonment or both.

Possession, etc., of declared listening device

8. (1) The Minister may by notice published in the *Gazette* declare that this section shall apply to a listening device or a listening device of a class or kind specified in that notice and the Minister may by a notice published in a like manner revoke or amend any such declaration.

(2) A person shall not without the consent of the Minister (which the Minister is hereby empowered to give) have in his possession, custody or control any declared listening device.

Penalty: Division 5 fine or division 5 imprisonment or both.

(3) The consent of the Minister under subsection (2) of this section—

(a) may be expressed to relate to the possession, custody or control of a listening device or to any listening device of a class or kind;

(ab) may be expressed to apply to persons of a specified class;

and

(b) may be expressed to be subject to such conditions, limitations or restrictions as the Minister considers necessary or expedient.

(4) The Minister may at any time revoke any consent given under this section and upon that revocation that consent shall cease to have effect.

(5) For the purposes of this section having the possession, custody or control of any listening device in contravention of a condition, limitation or restriction imposed by the Minister shall be deemed to be having the possession, custody or control of that device without the consent of the Minister.

(6) The Minister may delegate any of his or her powers under this section to a Chief Executive Officer as defined in the *Government Management and Employment Act, 1985*.

(7) A delegation under subsection (6)—

(a) must be made by instrument in writing;

(b) may be absolute or conditional;

(c) is revocable at will;

and

(d) does not derogate from the power of the Minister to act in any matter himself or herself.

* * * * *

Offences

10. (1) Except as is provided in this section, proceedings for an offence against this Act shall be disposed of summarily.

(2) In proceedings for an offence against this Act the defendant may, at any time up to and including the close of the case for the prosecution, elect to have the offence treated as an indictable offence.

(3) Upon an election being made under subsection (2) of this section the defendant shall be dealt with in all respects as if—

(a) the offence were an indictable offence;

and

(b) the proceedings in relation to which the election was made were a preliminary examination of a person charged on an information with an indictable offence.

(4) Proceedings for an offence against this Act may be brought within two years from the day on which it is alleged that the act or omission constituting the offence was done or omitted.

Forfeiture of listening devices

11. (1) Where a person is convicted of an offence against this Act, the court before which that person was so convicted may in addition to imposing any other penalty order that any listening device or record of any information or material in connection with which the offence was committed shall be forfeited to the Crown.

(2) A listening device or record of information or material forfeited to the Crown pursuant to an order under subsection (1) of this section shall be destroyed or disposed of in a manner directed by the Minister.

APPENDIX 1

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 6 of The Public General Acts of South Australia 1837-1975 at page 38.

Section 4:	amended by 29, 1989, s. 3
Section 5:	amended by 29, 1989, s. 4
Section 6:	substituted by 29, 1989, s. 5
Sections 6a - 6c:	inserted by 29, 1989, s. 5
Section 7(1):	amended by 29, 1989, s. 6(a)
Section 7(2):	amended by 29, 1989, s. 6(b)
Section 8(2):	amended by 29, 1989, s. 7(a)
Section 8(3):	amended by 29, 1989, s. 7(b)
Section 8(6):	substituted by 29, 1989, s. 7(c)
Section 8(7):	inserted by 29, 1989, s. 7(c)
Section 9:	repealed by 29, 1989, s. 8

APPENDIX 2

Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	-	\$500
10	-	\$200
11	-	\$100
12	-	\$50

Note: This appendix is provided for convenience of reference only.