

South Australia

~

LISTENING AND SURVEILLANCE DEVICES ACT 1972

An Act to make provision relating to the use of listening and surveillance devices; and for other purposes.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **1 January 2003**.*

Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.

LISTENING AND SURVEILLANCE 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

Listening Devices (Miscellaneous) Amendment Act 2001 No. 15 of 2001 [Assented to 17 May 2001]³

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.

³ **Came into operation 1 January 2003: *Gaz.* 12 December 2002, p. 4554.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

SUMMARY OF PROVISIONS

1. Short title
3. Interpretation
4. Regulation of use of listening devices
5. Prohibition on communication or publication
6. Warrants—General provisions
- 6A. Warrant procedures in urgent circumstances
- 6AB. Use of information or material derived from use of listening or surveillance devices under warrants
- 6AC. Register of warrants
- 6B. Reports and records relating to warrants, etc.
- 6C. Control by police, etc., of certain records, information and material
- 6D. Inspection of records by Police Complaints Authority
- 6E. Powers of Police Complaints Authority
7. Lawful use of listening device by party to private conversation
8. Possession, etc., of declared listening device
9. Power to seize listening devices, etc.
10. Evidence
11. Forfeiture of listening devices
12. Regulations

**APPENDIX
LEGISLATIVE HISTORY**

The Parliament of South Australia enacts as follows:

Short title

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

* * * * *

Interpretation

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

"**associated equipment**", in relation to a listening device or surveillance device, means equipment or things used for, or in connection with, the operation of the device;

"**declared listening device**" means a listening device or a listening device of a class or kind to which for the time being section 8 applies;

"**listening device**" means—

- (a) an electronic or mechanical device capable of being used to listen to or record a private conversation or words spoken to or by any person in private conversation (whether or not the device is also capable of operating as a surveillance device); and
- (b) associated equipment (if any),

but does not include a device being used to assist a person with impaired hearing to hear sounds ordinarily audible to the human ear;

"**premises**" includes any land or structure;

"**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.

"**publish**" information or material includes display or deliver the information or material to another;

"**relevant investigation**" means—

- (a) investigation of an offence (whether under the law of this State or the law of the Commonwealth or another State or a Territory of the Commonwealth); or
- (b) investigation of alleged misbehaviour or improper conduct of a member of a police force or an officer or employee of the State, the Commonwealth or another State or a Territory of the Commonwealth;

"**relevant proceeding**" means any of the following proceedings (whether under the law of this State or the law of the Commonwealth or another State or a Territory of the Commonwealth):

- (a) a proceeding by way of a prosecution of an offence;
- (b) a proceeding by way of an application for bail;
- (c) a proceeding by way of an application for a warrant;

-
- (d) a proceeding for the confiscation or forfeiture of property or for the imposition of a pecuniary penalty;
 - (e) a proceeding for the taking of evidence on commission for use in criminal proceedings originating in Australia;
 - (f) a proceeding for the extradition of a person to or from Australia or a State or Territory of the Commonwealth;
 - (g) a police disciplinary proceeding;
 - (h) any other proceeding relating to alleged misbehaviour, or alleged improper conduct, of a member of a police force or an officer or employee of the State, the Commonwealth or another State or a Territory of the Commonwealth;

"serious offence" means any of the following offences (whether under the law of this State or the law of the Commonwealth or another State or a Territory of the Commonwealth):

- (a) murder (or an offence equivalent to murder);
- (b) kidnapping (or an offence equivalent to kidnapping);
- (c) an offence involving a drug or substance of a kind regulated under Part 5 of the *Controlled Substances Act 1984* punishable by imprisonment for a period, or maximum period, of at least 10 years;
- (d) an offence—
 - (i) of attempting or conspiring to commit any of the offences set out in paragraph (a), (b) or (c); or
 - (ii) of aiding, abetting, counselling or procuring any of the offences set out in paragraph (a), (b) or (c); or
 - (iii) of being an accessory after the fact to any of the offences set out in paragraph (a), (b) or (c);

"surveillance device" means a visual surveillance device or a tracking device;

"telephone" includes any telecommunication device;

"tracking device" means—

- (a) an electronic device capable of being used to determine the geographical location of a person or thing; and
- (b) associated equipment (if any);

"vehicle" includes any vessel or aircraft;

"visual surveillance device" means—

- (a) an electronic or mechanical device capable of being used to observe or record visually (whether for still or moving pictures) a person, place or activity; and

- (b) associated equipment (if any).

Regulation of use of listening devices

4. Except as provided by this Act, a person must not intentionally use any listening device to overhear, record, monitor or listen to any 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.

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

Prohibition on communication or publication

5. (1) A person must not knowingly communicate or publish information or material derived from the use (whether by that person or another person) of a listening device in contravention of section 4.

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

(2) This section does not prevent the communication or publication of information or material derived from the use of a listening device in contravention of section 4—

- (a) to a person who was a party to the conversation to which the information or material relates; or
- (b) with the consent of each party to the conversation to which the information or material relates; or
- (c) for the purposes of a relevant investigation or a relevant proceeding relating to that contravention of section 4 or a contravention of this section involving the communication or publication of that information or material.

Warrants—General provisions

6. (1) A judge of the Supreme Court may issue a warrant authorising one or more of the following:

- (a) the use of one or more listening devices;
- (b) entry to or interference with any premises, vehicle or thing for the purposes of installing, using, maintaining or retrieving one or more listening or surveillance devices.

(2) An application for a warrant under subsection (1) may be made—

- (a) where the Director for Public Prosecutions, being satisfied that the warrant is reasonably required, by written instrument approves the making of the application for the purposes of the investigation of a matter by the police—by a member of the police force; or
- (b) where the warrant is required for the purposes of the investigation of a matter by the National Crime Authority, by—
 - (i) a member of the Authority; or
 - (ii) a member of the staff of the Authority who is a member of the Australian Federal Police or the police force of a State or Territory of the Commonwealth.

(3) An application for a warrant must be made by personal appearance before a judge following the lodging of a written application except in urgent circumstances when it may be made in accordance with section 6A.

(4) The grounds of an application for a warrant must be verified by affidavit.

(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 if satisfied that there are, in the circumstances of the case, reasonable grounds for issuing the warrant, taking into account—

- (a) the extent to which the privacy of a person would be likely to be interfered with by use of the type of device to which the warrant relates; and
- (b) the gravity of the criminal conduct to which the investigation relates; and
- (c) the significance to the investigation of the information sought to be obtained; and
- (d) the likely effectiveness of the use of the listening or surveillance device in obtaining the information sought; and
- (e) the availability of alternative means of obtaining the information; and
- (f) any other warrants under this Act applied for or issued in relation to the same matter; and
- (g) any other matter that the judge considers relevant.

(7) A warrant under this Act—

- (a) must specify—
 - (i) the person authorised to exercise the powers conferred by the warrant; and
 - (ii) whether the type of device to which the warrant relates is a listening device, a visual surveillance device or a tracking device; and
 - (iii) the period for which the warrant will be in force (being a period not longer than 90 days); and
- (b) may contain conditions and limitations; and
- (c) may, on application by the person named in the warrant, be varied or renewed (and the provisions of this Act will apply in relation to such an application in the same way as if it were an application for the issue of a warrant).

(7a) A judge by whom a warrant is issued, varied or renewed on application under this Act must cause the warrant, or a copy of the warrant, as issued, varied or renewed and the affidavit verifying the grounds on which the application was made to be dealt with in accordance with the rules of the Supreme Court.

(7b) Subject to any conditions or limitations specified in the warrant—

- (a) a warrant authorising the use of a listening device to listen to or record words spoken by, to 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 required to install, use, maintain or retrieve the device for that purpose;
- (b) a warrant authorising (whether under the terms of the warrant or by force of paragraph (a)) entry to or interference with any premises, vehicle or thing will be taken to authorise—
 - (i) the use of reasonable force or subterfuge for that purpose; and
 - (ii) the extraction and use of electricity for that purpose or for the use of the listening or surveillance device to which the warrant relates;
- (c) a warrant authorising entry to specified premises will be taken to authorise non-forcible passage through adjoining or nearby premises (but not through the interior of any building or structure) as reasonably required for the purpose of gaining entry to those specified premises;
- (d) the powers conferred by any warrant may be exercised by the person named in the warrant at any time and with such assistance as is necessary.

(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.

Warrant procedures in urgent circumstances

6A. (1) An application for a warrant under section 6 may be made by facsimile or, if no facsimile facilities are readily available, by telephone, if, in the opinion of the applicant, the warrant is urgently required and there is not enough time to lodge a written application and appear before a judge.

(2) If an application for the issue of a warrant is made by facsimile, the following provisions apply:

- (a) the application must state the applicant's name, the police force or body to which the applicant belongs and the applicant's rank or position in that force or body, the purpose for which the warrant is required, the grounds on which it is sought and the circumstances giving rise to the urgency of the application;
- (b) the application must be accompanied (through facsimile transmission) by an affidavit made by the applicant verifying the facts referred to in the application;

- (c) the applicant must be available to speak to the judge by telephone;
 - (d) the judge is entitled to assume, without further inquiry, that a person who identifies himself or herself as the applicant during a telephone conversation with the judge is indeed the applicant;
 - (e) the judge may, on being satisfied as to the circumstances of urgency and the grounds for the issue of a warrant, make out and sign a warrant;
 - (f) the warrant is to be taken to have been issued, and comes into force, when signed by the judge;
 - (g) the judge must forward the warrant to the applicant by facsimile transmission.
- (3) If an application for a warrant is made by telephone, the following provisions apply:
- (a) the applicant must inform the judge of the applicant's name, the police force or body to which the applicant belongs and the applicant's rank or position in that force or body and the judge, on receiving that information, is entitled to assume its accuracy without further inquiry;
 - (b) the applicant must inform the judge of the purpose for which the warrant is required, the grounds on which it is sought and the circumstances giving rise to the urgency of the application;
 - (c) the judge may, on being satisfied as to the circumstances of urgency and the grounds for the issue of the warrant, inform the applicant of the facts on which the judge relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
 - (d) if the applicant gives such an undertaking, the judge may then make out and sign a warrant;
 - (e) the warrant is to be taken to have been issued, and comes into force, when signed by the judge;
 - (f) the judge must inform the applicant of the terms of the warrant;
 - (g) the applicant must fill out and sign a warrant form (the **duplicate warrant**) that—
 - (i) sets out the name of the judge who issued the original and the terms of the warrant; and
 - (ii) complies with any other requirements prescribed by regulation;
 - (h) the applicant must, as soon as practicable after the issue of the warrant, forward to the judge an affidavit verifying the facts referred to in paragraph (c) and a copy of the duplicate warrant.

Use of information or material derived from use of listening or surveillance devices under warrants

6AB. A person must not knowingly communicate or publish information or material derived from the use (whether by that person or another person) of a listening device under a warrant, or a surveillance device installed through the exercise of powers under a warrant, except—

- (a) to a person who was a party to the conversation or activity to which the information or material relates; or
- (b) with the consent of each party to the conversation or activity to which the information or material relates; or
- (c) for the purposes of a relevant investigation; or
- (d) for the purposes of a relevant proceeding; or
- (e) otherwise in the course of duty or as required by law; or
- (f) where the information or material has been taken or received in public as evidence in a relevant proceeding.

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

Register of warrants

6AC. (1) The Commissioner of Police must keep a register of warrants issued to members of the police force under this Act (other than warrants issued to members of the police force during any period of secondment to positions outside the police force).

- (2) The register must contain the following information in relation to each such warrant:
 - (a) the date of issue of the warrant and the period for which the warrant is to be in force;
 - (b) the name of the judge who issued the warrant;
 - (c) the name and rank of the member of the police force to whom the warrant was issued;
 - (d) the name or, if the name is not known, a description of the person subject to the investigation in relation to which the warrant was issued;
 - (e) if the application for the warrant was by telephone under section 6A, the date on which the applicant forwarded an affidavit and copy of the duplicate warrant to the judge as required under that section;
 - (f) if an application for variation of the warrant was made, the date of the application and details of the variation (if any) granted;
 - (g) the date of any renewal of the warrant and the period for which the renewed warrant is to be in force;
 - (h) the period for which the warrant was actually in force (including any periods for which it was in force following renewal) and the date on which the warrant ceased to be in force;
 - (i) the dates of any arrests made on the basis or partly on the basis of information obtained by use of the listening or surveillance device to which the warrant relates;
 - (j) the dates on which any prosecutions were instituted in which information obtained by use of the listening or surveillance device formed part of the basis of the decision to prosecute;

Listening and Surveillance Devices Act 1972

- (k) the dates on which any persons were found guilty of offences in consequence of those prosecutions;
- (l) the dates on which any persons pleaded guilty to the charge of an offence in consequence of those prosecutions;
- (m) such other matters as may be prescribed by regulation.

Reports and records relating to warrants, etc.

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, variation or cancellation of a warrant, a copy of the warrant, the warrant as varied or the instrument of cancellation (as the case may be); and
- (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 or surveillance device to which the warrant related; and
 - (ii) the communication of that information to persons other than members of the police force; and
- (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; and
 - (B) applications for warrants by telephone under section 6A; and
 - (BA) applications for variation of warrants; and
 - (C) renewal applications for warrants; and
 - (D) applications for warrants that included authorisation to enter or interfere with any premises, vehicle or thing,

how many such applications were made, how many were withdrawn or refused and how many were successful; and
 - (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; and
 - (iii) the average of the respective periods for which those warrants were actually in force; and
 - (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; and

- (v) a general description of—
 - (A) the uses made during that year of information obtained by use of listening or surveillance devices to which a warrant related; and
 - (B) the communication of that information to persons other than members of the police force; and
- (vi) —
 - (A) the number of arrests made during that year in connection with the performance by the police force of its functions; and
 - (B) the number of arrests made during that year on the basis or partly on the basis of information obtained by use of a listening or surveillance device to which a warrant related; and
- (vii) —
 - (A) the number of prosecutions instituted during that period in which information obtained by such use of a listening or surveillance device formed part of the basis of the decision to prosecute; and
 - (B) the number of occasions during that period on which information obtained by such use of a listening or surveillance device was given in evidence in the course of a prosecution; and
 - (C) the number of persons found guilty of an offence in consequence of those prosecutions during that period; and
 - (D) the number of persons who pleaded guilty to the charge of an offence in consequence of those prosecutions during that period; and

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

(1a) The reports and information required to be given to the Minister under subsection (1) must distinguish between warrants authorising the use of listening devices and other warrants.

(1b) Subject to the regulations and any determinations of the Minister, the Commissioner of Police must include in each report to the Minister under subsection (1)(c) the following information:

- (a) the number of occasions on which, in prescribed circumstances, a member of the police force—
 - (i) used a listening device otherwise than under a warrant; or
 - (ii) used a surveillance device that was not installed through the exercise of powers under a warrant,

during the period to which the report relates;

-
- (b) a general description of—
- (i) the uses made during that period of information obtained by such use of a listening or surveillance device; and
 - (ii) the communication of that information to persons other than members of the police force;
- (c) the number of arrests made during that period on the basis or partly on the basis of information obtained by such use of a listening or surveillance device;
- (d) the number of prosecutions instituted during that period in which information obtained by such use of a listening or surveillance device formed part of the basis of the decision to prosecute;
- (e) the number of occasions during that period on which information obtained by such use of a listening or surveillance device was given in evidence in the course of a prosecution;
- (f) the number of persons found guilty of an offence in consequence of those prosecutions during that period;
- (g) the number of persons who pleaded guilty to the charge of an offence in consequence of those prosecutions during that period;
- (h) any other information prescribed by regulation or specified by the Minister.

(2) The Commissioner of Police must keep such records as are necessary to enable compliance with this section, including records of the persons (other than members of the police force) to whom that information has been communicated.

(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; and
- (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
- (c) from reports made to the Minister by the National Crime Authority, a general description of—
 - (i) the uses made during that year of information obtained by use of listening or surveillance devices; and
 - (ii) the communication of that information to persons other than members of the 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.

Control by police, etc., of certain records, information and material

6C. The Commissioner of Police and the National Crime Authority must, in accordance with the regulations—

- (a) keep as records a copy of—
 - (i) each application for a warrant under this Act; and
 - (ii) each warrant issued under this Act; and
- (b) keep any information or material derived from the use of a listening device under a warrant, or the use of a surveillance device installed through the exercise of powers under a warrant; and
- (c) control, manage access to, and destroy, any such records, information and material.

Inspection of records by Police Complaints Authority

6D. (1) The Police Complaints Authority—

- (a) must, at least once in each period of six months, inspect the records of the police force for the purpose of ascertaining the extent of compliance with sections 6AC, 6B and 6C; and
- (b) must, not later than two months after completion of such an inspection, report in writing to the Minister on the results of the inspection.

(2) If, as a result of an inspection under subsection (1), the Police Complaints Authority is of the opinion that the Commissioner of Police has contravened section 6B(1)(a) or (b), the Authority must include a report on the contravention in the report under subsection (1).

(3) Before making a report on a contravention under subsection (2), the Police Complaints Authority must give the Commissioner of Police an opportunity to make comments in writing on the report and must include in or attach to the report any comments made.

Powers of Police Complaints Authority

6E. (1) For the purposes of an inspection under section 6D, the Police Complaints Authority, or an officer of the Authority authorised by the Authority for the purpose—

- (a) may, after notifying the Commissioner of Police, enter at any reasonable time premises occupied by the police force; and
- (b) is entitled to have full and free access at all reasonable times to all records of the police force; and
- (c) is, despite any other law, entitled to make copies of, and to take extracts from, records of the police force; and
- (d) may require a member of the police force to give the Authority or authorised officer such information as the Authority considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.

(2) If the Police Complaints Authority has reason to believe that a member of the police force is able to give information relevant to an inspection under section 6D, the Authority may, by written notice to the member, require the member to do one or both of the following:

Listening and Surveillance Devices Act 1972

- (a) give the information, in writing, signed by the member, at a specified place and within a specified period;
- (b) attend before a specified person at a specified place and within a specified period or at a specified time on a specified day, in order to answer questions relevant to the inspection.

(3) If the Police Complaints Authority has reason to believe that a member of the police force is able to give information relevant to an inspection under section 6D but does not know the member's identity, the Authority may, by written notice to the Commissioner of Police, require the Commissioner or a person nominated by the Commissioner to attend before a specified person at a specified place and within a specified period or at a specified time on a specified day, in order to answer questions relevant to the inspection.

(4) Despite any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required by or under this section, on the ground that it would contravene a law, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty.

(5) The following are not admissible in evidence against a person except in prosecution proceedings for an offence against this section:

- (a) information or an answer given by the person under this section;
- (b) the fact that the person has given access to a document under this section;
- (c) any information or thing (including a document) obtained in consequence of the person having given information or an answer, or access to a document, under this section.

(6) The Commissioner of Police must ensure that members of the police force provide the Police Complaints Authority with such assistance in relation to an inspection under section 6D as the Authority reasonably requires.

(7) A person who is required under this section—

- (a) to attend before a person; or
- (b) to furnish information; or
- (c) to answer a question,

and who, without reasonable excuse, refuses or fails to comply with that requirement is guilty of an offence.

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

(8) A person who—

- (a) without reasonable excuse, hinders a person exercising powers under this section; or
- (b) gives to a person exercising powers under this section information knowing it to be false or misleading in a material particular,

is guilty of an offence.

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

Lawful use of listening device by party to private conversation

7. (1) Section 4 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 this Act) 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) An exemption from section 4 that applies under subsection (1) to—

- (a) a member of the police force; or
- (b) a member of the National Crime Authority; or
- (c) 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,

in relation to the use of a listening device for the purposes of the investigation of a matter by the police or the Authority extends to any other such member who overhears, records, monitors or listens to the private conversation by means of that device for the purposes of that investigation.

(3) A person must not knowingly communicate or publish information or material derived from the use (whether by that person or another person) of a listening device under this section except—

- (a) to a person who was a party to the conversation to which the information or material relates; or
- (b) with the consent of each party to the conversation to which the information or material relates; or
- (c) in the course of duty or in the public interest, including, in the case of information or material derived from the use of a listening device in the course of an investigation by the police or the National Crime Authority, for the purposes of a relevant investigation or a relevant proceeding; or
- (d) being a party to the conversation to which the information or material relates, as reasonably required for the protection of the person's lawful interests; or
- (e) where the information or material has been taken or received in public as evidence in a relevant proceeding.

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

Possession, etc., of declared listening device

8. (1) The Minister may by notice published in the *Gazette* declare that this section applies 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 must not without the consent of the Minister have in his or her possession, custody or control any declared listening device.

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

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

Listening and Surveillance Devices Act 1972

- (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; and
- (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 a consent given under this section and, on revocation, the consent ceases 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 will be taken 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 (within the meaning of the *Public Sector Management Act 1995*).

(7) A delegation under this section—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any manner.

Power to seize listening devices, etc.

9. (1) If—

- (a) a member of the police force; or
- (b) a member of the National Crime Authority; or
- (c) 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 a Territory of the Commonwealth,

suspects on reasonable grounds that—

- (d) a person has possession, custody or control of a declared listening device without the consent of the Minister; or
- (e) any other offence against this Act has been, is being or is about to be committed with respect to a listening device or information derived from the use of a listening device,

the member may seize the device or a record of the information.

(2) A member referred to in subsection (1) may—

- (a) break into, enter and search any premises in which the member suspects on reasonable grounds there is a device or record liable to seizure under this section; and
- (b) stop, detain and search, or detain and search, any vehicle that the member suspects on

reasonable grounds contains a device or record liable to seizure under this section; and

- (c) detain and search any person who the member suspects on reasonable grounds has possession of a device or record liable to seizure under this section.

(3) If a device or record has been seized under this section, the device or record must, subject to any order of a court, be returned to its owner—

- (a) if no proceedings are instituted for an offence against this Act involving the device or record of information—at the expiration of two months from the date of seizure;
- (b) if such proceedings are instituted—when those proceedings are finally determined.

Evidence

10. In any proceedings for an offence, an apparently genuine document purporting to be signed by the Commissioner of Police or a member of the National Crime Authority certifying that specified action was taken in connection with executing a specified warrant issued under this Act will, in the absence of evidence to the contrary, be accepted as proof of the matters so certified.

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 is 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) must be destroyed or disposed of in a manner directed by the Minister.

Regulations

12. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the effect of subsection (1), those regulations may make provision—

- (a) relating to warrants, their form and proceedings in connection with warrants; and
- (b) relating to the control and management of information or material in the possession of the police force derived from the use of listening or surveillance devices, including access to and the destruction of such information or material; and
- (c) for the imposition of fines, not exceeding \$5 000, for offences against the regulations.

Listening and Surveillance Devices Act 1972

APPENDIX**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.
- Legislative history since 3 February 1976 (*entries in bold type indicate amendments incorporated since the last reprint*) is as follows:

Long title:	amended by 15, 2001, s. 3
Section 1:	amended by 15, 2001, s. 4
Section 2:	repealed by 15, 2001, s. 16 (Sched.)
Section 3:	definition of "associated equipment" inserted by 15, 2001, s. 5(a) definition of "declared listening device" amended by 15, 2001, s. 16 (Sched.) definition of "listening device" substituted by 15, 2001, s. 5(b) definition of "premises" inserted by 15, 2001, s. 5(b) definitions of "publish", "relevant investigation", "relevant proceeding", "serious offence", "surveillance device", "telephone", "tracking device", "vehicle" and "visual surveillance device" inserted by 15, 2001, s. 5(c)
Section 4:	amended by 29, 1989, s. 3; 15, 2001, ss. 6, 16 (Sched.)
Section 5:	amended by 29, 1989, s. 4; substituted by 15, 2001, s. 7
Section 6:	substituted by 29, 1989, s. 5
Section 6(1) - (4):	substituted by 15, 2001, s. 8(a)
Section 6(6) and (7):	substituted by 15, 2001, s. 8(b)
Section 6(7a) and (7b):	inserted by 15, 2001, s. 8(b)
Section 6A:	inserted by 29, 1989, s. 5; substituted by 15, 2001, s. 9
Sections 6AB and 6AC:	inserted by 15, 2001, s. 9
Section 6B:	inserted by 29, 1989, s. 5
Section 6B(1):	amended by 15, 2001, s. 10(a)-(e)
Section 6B(1a) and (1b):	inserted by 15, 2001, s. 10(f)
Section 6B(2):	amended by 15, 2001, s. 10(g)
Section 6B(3):	amended by 15, 2001, s. 10(h)
Section 6C:	inserted by 29, 1989, s. 5; substituted by 15, 2001, s. 11
Sections 6D and 6E:	inserted by 15, 2001, s. 11
Section 7(1):	amended by 29, 1989, s. 6(a); 15, 2001, ss. 12(a), 16 (Sched.)
Section 7(2):	amended by 29, 1989, s. 6(b); substituted by 15, 2001, s. 12(b)
Section 7(3):	inserted by 15, 2001, s. 12(b)
Section 8(1):	amended by 15, 2001, s. 16 (Sched.)
Section 8(2):	amended by 29, 1989, s. 7(a); 15, 2001, ss. 13, 16 (Sched.)
Section 8(3):	amended by 29, 1989, s. 7(b); 15, 2001, s. 16 (Sched.)
Section 8(4):	substituted by 15, 2001, s. 16 (Sched.)
Section 8(5):	amended by 15, 2001, s. 16 (Sched.)
Section 8(6):	substituted by 29, 1989, s. 7(c); amended by 15, 2001, s. 16 (Sched.)
Section 8(7):	inserted by 29, 1989, s. 7(c); substituted by 15, 2001, s. 16 (Sched.)
Section 9:	repealed by 29, 1989, s. 8; inserted by 15, 2001, s. 14
Section 10:	substituted by 15, 2001, s. 14
Section 11(1) and (2):	amended by 15, 2001, s. 16 (Sched.)
Section 12:	inserted by 15, 2001, s. 15