

South Australia

## Surveillance Devices Regulations 2017

under the *Surveillance Devices Act 2016*

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#### Legislative history

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### Part 1—Preliminary

#### 1—Short title

These regulations may be cited as the *Surveillance Devices Regulations 2017*.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

*Act* means the *Surveillance Devices Act 2016*;

*medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

*record* means—

- (a) an application for a surveillance device warrant under the Act;
- (b) a surveillance device warrant issued under the Act;
- (c) an application for a surveillance device (emergency) authority under the Act;
- (d) a surveillance device (emergency) authority issued under the Act;
- (e) any information or material (other than a notification or alert automatically generated by the surveillance device) derived from the use of a surveillance device under a warrant or authority issued under the Act,

and includes a copy of such a record;

*records authority* means—

- (a) in relation to SA Police records—the Commissioner of Police;
- (b) in relation to Independent Commissioner Against Corruption records—the Independent Commissioner Against Corruption;
- (c) in relation to ACC records—the Chief Executive Officer of the ACC;

*records register*—see regulation 5;

*relevant records register*, in relation to a particular record, means the records register maintained where the record is, or is to be, stored when it is not being accessed.

## Part 2—Management of records (sections 26 and 31 of Act)

### 4—Records must be stored securely

- (1) The records authority must ensure that at all times, except while being used in connection with a purpose authorised by the Act or these regulations, records are stored securely so as to prevent unauthorised access to them.
- (2) The records authority may authorise the removal of a record from storage for the purpose of—
  - (a) providing access to the record; or
  - (b) making a copy of the record; or
  - (c) destroying the record.

### 5—Records register

- (1) The records authority must keep and maintain a records register in which the details required by this Part relating to a particular record are to be recorded.

- (2) Each entry in a records register must be made by a person authorised by the records authority for the purpose, and the date of each entry noted in the register.
- (3) Each record must be provided with a unique identifier (comprising letters or numbers or a combination of letters and numbers) enabling the record to be linked to entries relating to the record in the relevant records register.
- (4) When a record is first stored, the following details must be entered in the relevant records register:

- (a) the unique identifier for the record;
- (b) the type of record;

**Example—**

The record may, for example, be in the form of an audio visual recording, an audio record, a transcript of a recording, or in some other form.

- (c) the date on which the record is first stored.

## **6—Access to records**

The following details must be entered in the relevant records register in relation to the accessing of a record by a person authorised to do so under the Act:

- (a) the name (and, if the person is a police officer, the rank and station) of the person who is provided access to the record;
- (b) the contact details of the person who is provided access to the record;
- (c) the reason the person requires access to the record;
- (d) the date or dates on which, or the period during which, access to the record is provided.

## **7—Copying records**

- (1) If a copy of a record is made, each copy must be provided with a unique identifier (comprising letters or numbers or a combination of letters and numbers) enabling the copy to be linked to entries relating to the copy in the relevant records register.

**Note—**

Once a copy of a record is made, the copy itself becomes a record (see definition of *record* in regulation 3).

- (2) The following details must be entered in the relevant records register in relation to the copying of a record:
  - (a) the name (and, if the person is a police officer, the rank and station) of the person who made the copy;
  - (b) the unique identifier for the copy;
  - (c) the type of record that the copy is;
  - (d) the date—
    - (i) on which the copy was made; and
    - (ii) on which the copy was first stored.

## 8—Destruction of records

- (1) The records authority may authorise the destruction of a record if satisfied that the record—
  - (a) is no longer—
    - (i) required for the purposes of a relevant action or proceeding; or
    - (ii) required for the purposes of a relevant investigation; or
    - (iii) otherwise required by law; and
  - (b) should be destroyed.
- (2) The following details must be entered in the relevant records register:
  - (a) the reason for the destruction;
  - (b) the date and time of the destruction;
  - (c) the method of destruction;
  - (d) the name (and, if the person is a police officer, the rank and station) of the person carrying out the destruction.

## 9—Offences relating to records

A person must not, unless authorised to do so by the records authority—

- (a) make, amend or delete an entry in a records register; or
- (b) remove, or cause or allow another person to remove, a record from storage; or
- (c) provide access, or cause or allow another person to provide access, to a record; or
- (d) copy, or cause or allow another person to copy, a record; or
- (e) destroy, or cause or allow another person to destroy, a record.

Maximum penalty: \$5 000.

## Part 3—Miscellaneous

### 10—Corresponding laws

For the purposes of the definition of *corresponding law* in section 3(1) of the Act, the following laws are declared to correspond to the Act:

- (a) *Crimes (Surveillance Devices) Act 2010* (Australian Capital Territory);
- (b) *Surveillance Devices Act 2004* (Commonwealth);
- (c) *Surveillance Devices Act 2007* (New South Wales);
- (d) *Surveillance Devices Act 2007* (Northern Territory);
- (e) *Police Powers and Responsibilities Act 2000* (Queensland);
- (f) *Police Powers (Surveillance Devices) Act 2006* (Tasmania);
- (g) *Surveillance Devices Act 1999* (Victoria);
- (h) *Surveillance Devices Act 1998* (Western Australia).

**10A—Prescribed circumstances (sections 4(2)(h) and 5(4)(f) of Act)**

- (1) For the purposes of sections 4(2)(h) and 5(4)(f) of the Act the following circumstances are prescribed:
- (a) the installation, use or maintenance of a listening device or an optical surveillance device by officers or agents of the Department for Infrastructure and Transport for the purpose of enforcing or ensuring compliance with a relevant Act provided that—
    - (i) the device is worn by the officer or agent when it is being used; and
    - (ii) the device is not concealed when it is being used; and
    - (iii) the officer or agent wearing the device advises any person that they are intentionally recording by the use of the device that they are wearing the device and that it is being so used;
  - (b) the installation, use or maintenance of a listening device or an optical surveillance device by a person for the purpose of recording any test conducted by or on behalf of the Registrar of Motor Vehicles under section 80 of the *Motor Vehicles Act 1959*;
  - (c) the installation, use or maintenance of a listening device or an optical surveillance device by a person for the purpose of recording any test conducted by or on behalf of the Registrar of Motor Vehicles under section 98A(5) of the *Motor Vehicles Act 1959*;
  - (d) the installation, use or maintenance of a listening device or an optical surveillance device by a person for the purpose of recording any test conducted by or on behalf of the Registrar of Motor Vehicles to determine the proficiency of a person to undertake the functions and duties of an authorised examiner under the *Motor Vehicles Act 1959*;
  - (e) the installation, use or maintenance of a listening device or an optical surveillance device by—
    - (i) the holder of an instructor's licence under section 98A of the *Motor Vehicles Act 1959* for the purpose of recording driver training activities undertaken pursuant to the licence; or
    - (ii) an authorised examiner under the *Motor Vehicles Act 1959* for the purpose of conducting practical driving tests under that Act,provided that the device is not installed, used or maintained contrary to any directions of the Registrar of Motor Vehicles under the *Motor Vehicles Act 1959* relating to the making of audio visual recordings of driver training activities or practical driving tests.
- (2) An Act is a **relevant Act** for the purposes of subregulation (1)(a) if the Department for Infrastructure and Transport is, under a Minister, responsible for the administration of the Act.

### **11—Tracking devices exemption—prescribed circumstances (section 7 of Act)**

For the purposes of section 7(2)(c) of the Act, the following circumstances are prescribed:

- (a) the Minister responsible for the administration of the *Highways Act 1926* may install, use or maintain a tracking device for the purpose of measuring transport system performance;
- (b) information obtained from the use of a tracking device under paragraph (a) must be de-identified so that the information is no longer about an identifiable person, vehicle or thing.

### **12—Communication or publication of information or material exemption (section 9(2) of Act)**

(1) For the purposes of section 9(2)(a) of the Act, the following persons and classes of persons are prescribed:

- (a) clients of the licensed investigation agent;
- (b) employers of the licensed investigation agent;
- (c) the legal representatives of clients or employers of the licensed investigation agent;
- (d) a medical practitioner providing services to clients or employers of the licensed investigation agent.

(2) For the purposes of section 9(2)(b) of the Act, the following circumstances are prescribed:

- (a) communicating information or material to another licensed investigation agent who is employed or engaged by the same employer or client as the licensed investigation agent for the purpose of briefing the other agent about matters relating to that employer or client;
- (b) communicating information or material to an officer of an investigating agency for the purposes of a relevant investigation or a relevant action or proceeding;
- (c) the reasonable communication of information or material to a person in order to assist the licensed investigation agent with an investigation.

### **13—Report to Minister—prescribed information (section 30 of Act)**

For the purposes of section 30(3)(i) of the Act, the chief officer of an investigating agency must include in each report to the Minister under section 30(1)(c) of the Act the number of occasions during the period to which the report relates on which a police officer acting in the course of duty used a surveillance device during undercover operations other than those authorised under the *Criminal Investigation (Covert Operations) Act 2009*.

## **14—Prescribed class of senior officer for purpose of delegation (section 35 of Act)**

For the purposes of paragraph (b) of the definition of *senior officer* in section 35(3) of the Act, the following classes of officers and employees of the Independent Commissioner Against Corruption are prescribed:

- (a) the Deputy Commissioner appointed under the *Independent Commissioner Against Corruption Act 2012*;
- (b) a person appointed by the Commissioner as an examiner under section 14 of the *Independent Commissioner Against Corruption Act 2012*.

## **Schedule 1—Revocation and transitional provisions**

### **1—Revocation and transitional provisions**

- (1) The *Listening and Surveillance Devices Regulations 2003* are revoked (the *revoked regulations*).
- (2) The records book maintained under Part 2 of the revoked regulations immediately before the commencement of this clause will, on that commencement, be taken to form part of a records register required to be maintained under Part 2 of these regulations.
- (3) An authorisation given by a records authority for a person to be provided access to a record under regulation 6 of the revoked regulations as in force immediately before the commencement of this clause will, on that commencement, be taken to be an authorisation for the purposes of regulation 6 of these regulations.
- (4) An authorisation given by a records authority for the making of a copy of a record for or on behalf of a person under regulation 7 of the revoked regulations as in force immediately before the commencement of this clause will, on that commencement, be taken to be an authorisation for the purposes of regulation 7 of these regulations.
- (5) An authorisation by a records authority for the destruction of a record under regulation 8 of the revoked regulations as in force immediately before the commencement of this clause will, on that commencement, be taken to be an authorisation for the purposes of regulation 8 of these regulations.

## **Schedule 2—Savings and transitional provisions (Schedule 1 clause 76 of *Independent Commissioner Against Corruption (CIPIC Recommendations) Amendment Act 2021*)**

### **1—Application of Act to continuing complaints etc**

The Act as in force before the commencement of Schedule 1 of the *Independent Commissioner Against Corruption (CIPIC Recommendations) Amendment Act 2021* continues to apply in connection with any complaint, report or investigation referred to in clause 70 of that Schedule.

## Legislative history

### Notes

- 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.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Surveillance Devices Regulations 2017* revoked the following:

*Listening and Surveillance Devices Regulations 2003*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2017	328	<i>Gazette 12.12.2017 p4984</i>	18.12.2017: r 2
2020	264	<i>Gazette 10.9.2020 p4562</i>	10.9.2020: r 2
2021	59	<i>Gazette 27.5.2021 p1499</i>	27.5.2021: r 2
<b>2021</b>	<b>152</b>	<b><i>Gazette 7.10.2021 p3706</i></b>	<b>7.10.2021: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>10.9.2020</i>
Pt 3		
r 10	varied by 59/2021 r 4(1), (2)	27.5.2021
r 10A	inserted by 264/2020 r 4	10.9.2020
<b>Sch 2</b>	<b>inserted by 152/2021 r 4</b>	<b>7.10.2021</b>

### Historical versions

10.9.2020

27.5.2021