

South Australia

Listening and Surveillance Devices Regulations 2003

under the *Listening and Surveillance Devices Act 1972*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—Records (sections 6C and 12)

- 4 Records must be stored securely
- 5 Records book
- 6 Access to records
- 7 Copying records
- 8 Destruction of records
- 9 Offences relating to records

Part 3—Miscellaneous

- 10 Applications for warrants (section 6)
- 11 Duplicate warrants (section 6A)
- 12 Register of warrants (section 6AC)
- 13 Reporting to Minister on use of devices in prescribed circumstances (section 6B)

Schedule 1—Applications for warrants

Schedule 2—Warrant

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Listening and Surveillance Devices Regulations 2003*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

- (1) In these regulations, unless the contrary intention appears—
Act means the *Listening and Surveillance Devices Act 1972*;
private activity means an activity that is not a public activity;
-

public activity means an activity that is being carried on—

- (a) in a public place; or
- (b) in circumstances in which a party to the activity is likely to hold a reasonable expectation that he or she may be observed;

record means—

- (a) an application for a warrant under the Act;
- (b) a warrant issued under the Act;
- (c) any information or material derived from the use of—
 - (i) listening device a—
 - (A) under a warrant; or
 - (B) in prescribed circumstances—otherwise than under a warrant; or
 - (ii) a surveillance device installed through the exercise of powers under a warrant;
- (d) the register of warrants required to be kept under section 6AC of the Act, and includes a copy of any such record;

records authority means—

- (a) in relation to police force records—the Commissioner of Police;
- (b) in relation to National Crime Authority records—the Chair of the National Crime Authority;

records book—see regulation 5;

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

- (2) For the purposes of Part 2, a record consisting of an audio or audiovisual recording will be regarded as having been destroyed if all material on the recording has been erased.

Part 2—Records (sections 6C and 12)

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 book

- (1) The records authority must ensure that, at each place where records are stored, a bound book (a records book) is maintained in which the details required by this Part relating to a particular record are entered in a legible manner.
- (2) Each entry in a records book must be made, signed and dated by a person authorised by the records authority for the purpose.
- (3) Each record must be clearly marked 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 book.
- (4) When a record is first stored, the following details must be entered in the relevant records book:
 - (a) the unique identifier for the record;
 - (b) the type¹ of record;
 - (c) the date on which the record is first stored.

Note—

- 1 For example, it may be an audio or audio-visual recording or a written transcript of a recording, etc.

6—Access to records

- (1) The records authority may authorise a person to be provided access to a record if the records authority is satisfied that the person requires access—
 - (a) for the purposes of a relevant investigation; or
 - (b) for the purposes of a relevant proceeding; or
 - (c) otherwise in the course of the person's duty or as required by law.
- (2) As soon as practicable after a person is provided access to a record, the following details must be entered in the relevant records book:
 - (a) the name (and, if the person is a member of the police force, the rank and station) of the person who was provided access to the record;
 - (b) the contact details of the person who was provided access to the record;
 - (c) the reason the person required access to the record;
 - (d) the date on which access to the record was provided;
 - (e) except where the person who was provided access to the record is a defendant (or the lawyer representing a defendant) in a relevant proceeding—the estimated date of return of the record to the records authority.
- (3) For the purposes of subregulation (2)(e), where the access is provided to the Minister or a court for the purposes of a relevant proceeding, the estimated date of return of the record will be the second anniversary of the day on which access was provided.
- (4) If a record is not returned to the records authority by the estimated date of return—
 - (a) the person who was provided access to the record must be asked to give an undertaking to the records authority to return the record either immediately or on a reviewed estimated date of return; and

- (b) the following details must be entered in the relevant records book:
 - (i) the undertaking given to the records authority as to the return of the record;
 - (ii) the date of the undertaking.
- (5) If the record is not returned within the time specified in an undertaking given under subregulation (4), the failure to return must be entered in the relevant records book.
- (6) As soon as practicable after a record is returned to storage, the following details must be entered in the relevant records book:
 - (a) the name (and, if the person is a member of the police force, the rank and station) of the person who returned the record;
 - (b) the date on which the record was returned to storage.

7—Copying records

- (1) The records authority may authorise the making of a copy¹ of a record for or on behalf of a person if satisfied that the copy is required by the person—
 - (a) for the purposes of a relevant investigation; or
 - (b) for the purposes of a relevant proceeding; or
 - (c) otherwise in the course of the person's duty or as required by law.
- (2) Each copy of a record must be clearly marked 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 book.
- (3) When a copy is first stored, the following details must be entered in the relevant records book:
 - (a) the unique identifier for the copy;
 - (b) the type² of record that the copy is;
 - (c) the date—
 - (i) on which the copy was made; and
 - (ii) on which the copy was first stored.

Note—

- 1 Once a copy of a record is made, the copy itself becomes a record (see definition of *record* in regulation 3).
- 2 For example, it may be an audio or audiovisual recording or a written transcript of a recording, etc.

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 investigation; or
 - (ii) required for the purposes of a relevant proceeding; or

- (iii) otherwise required by law; and
 - (b) should be destroyed.
- (2) As soon as practicable after the destruction of a record, the following details must be entered in the relevant records book:
 - (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 member of the police force, 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 book; 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—Applications for warrants (section 6)

- (1) The form for an application for a warrant under section 6 of the Act is set out in Form 1 of the Schedule.
- (2) The form for an application for renewal of a warrant under section 6 of the Act is set out in Form 2 of the Schedule.
- (3) The form for an application for variation of a warrant under section 6 of the Act is set out in Form 3 of the Schedule.
- (4) An applicant must fill out and sign the form for an application in accordance with the instructions contained in the form.

11—Duplicate warrants (section 6A)

Pursuant to section 6A(3)(g) of the Act, the applicant must include in a duplicate warrant the date and time at which the judge issued the warrant.

12—Register of warrants (section 6AC)

For the purposes of section 6AC(2)(m) of the Act, the prescribed matters that must be included in the register of warrants in relation to a listening or surveillance device to which a warrant relates are as follows:

- (a) the date on which the device was installed in any premises, vehicle or thing;

- (b) the date on which the device was retrieved from any premises, vehicle or thing;
- (c) the dates between which use was made of the device;
- (d) the dates on which there occurred any entry to or interference with any premises, vehicle or thing for the purposes of installing, using, maintaining or retrieving the device.

13—Reporting to Minister on use of devices in prescribed circumstances (section 6B)

For the purposes of section 6B(1b) of the Act, the prescribed circumstances are the following circumstances:

- (a) in the case of a listening device—
 - (i) where—
 - (A) the device is used—
 - by a member of the police force acting in the course of his or her duty or in the public interest; or
 - by a person authorised by a member of the police force acting in the course of his or her duty or in the public interest,to overhear, record, monitor or listen to a private conversation to which the member of the police force or the person (as the case may be) is a party; and
 - (B) the device is a listening device, or is a listening device of a class or kind, to which section 8 of the Act applies;
 - (ii) where—
 - (A) the device is used—
 - by a member of the police force acting in the course of his or her duty; or
 - by a person authorised by a member of the police force acting in the course of his or her duty,to overhear, record, monitor or listen to a private conversation to which the member of the police force or the person (as the case may be) is a party; and
 - (B) it is unlikely that any other party to the conversation holds a reasonable expectation that the conversation is being recorded; and
 - (C) the private conversation is being monitored in real time in a remote location by a member of the police force;
 - (iii) where—
 - (A) the device is used—

- by a member of the police force acting in the course of his or her duty in an undercover operation authorised under the *Criminal Law (Undercover Operations) Act 1995*; or
- by a person authorised by a member of the police force acting in the course of his or her duty in such an undercover operation,

to overhear, record, monitor or listen to a private conversation to which the member of the police force or the person (as the case may be) is a party; and

- (B) it is unlikely that any other party to the conversation holds a reasonable expectation that the conversation is being recorded; and

(b) in the case of a surveillance device—

(i) where the device is used—

- (A) by a member of the police force acting in the course of his or her duty in an undercover operation authorised under the *Criminal Law (Undercover Operations) Act 1995*; or
- (B) by a person authorised by a member of the police force acting in the course of his or her duty in such an undercover operation,

to observe or record visually a person carrying out a private activity;

- (ii) where the device used by a member of the police force, or a person authorised by a member of the police force, was installed, by or on behalf of the police force, on private property with the consent of the owner of the property (but not where the device was installed principally for the purpose of crowd surveillance).

Schedule 1—Applications for warrants

Form 1—Application for warrant

Listening and Surveillance Devices Act 1972

Applicant's name (*in full*)

1. I apply for a warrant under section 6 of the *Listening and Surveillance Devices Act 1972* for the purposes of the investigation of a matter by—

- the South Australia Police
- the National Crime Authority ¹.

2. I apply for the warrant to confer the following powers:

- (a) the power to use (*insert number sought*) listening device(s) ¹
- (b) the power to enter or interfere with ^{1,2}
for the purposes of installing, using, maintaining or retrieving—
 - listening device(s) ¹
 - surveillance devices ¹ as follows:
 - (*insert number*) visual surveillance device(s)
 - (*insert number*) tracking device(s).

3. I apply for the following persons to be authorised to exercise the powers conferred by the warrant ³:

.....

4. I apply for the warrant on the following grounds ⁴:

.....

The grounds for the application are verified in my accompanying affidavit.

5. I request that the warrant be in force for a period of (*insert number*) days ⁵.

Signature of applicant:

Dated:

Notes:

1. *Strike out whichever does not apply.*
2. *Provide details (eg address, registration number) of any premises, vehicle or thing sought to be entered or interfered with.*
3. *Provide details (eg name, rank and number) of the member of the police force etc seeking the authority to exercise the powers conferred by the warrant.*
4. *Grounds may include the gravity of the criminal conduct to which the investigation relates, the significance to the investigation of the information sought to be obtained, the likely effectiveness of the use of the device in obtaining the information sought, the availability of alternative means of obtaining the information etc.*
5. *Section 6(7) provides that a warrant may not be in force for a period longer than 90 days.*

Form 2—Application for renewal of warrant

Listening and Surveillance Devices Act 1972

Applicant's name (*in full*).....

1. I apply for renewal of the warrant under section 6 of the *Listening and Surveillance Devices Act 1972*
issued on (*insert date of issue*)
by (*insert name of Judge*),
a Judge of the Supreme Court of South Australia.

2. The warrant was issued for the purposes of the investigation of a matter by—
· the South Australia Police
· the National Crime Authority ¹.

3. The warrant conferred the following powers:
(a) the power to use (*insert number*) listening device(s) ¹
(b) the power to enter or interfere with ^{1,2}
for the purposes of installing, using, maintaining or retrieving—
· listening device(s) ¹
· surveillance devices ¹ as follows:
..... (*insert number*) visual surveillance device(s)
..... (*insert number*) tracking device(s).

4. The powers conferred by the warrant were authorised to be exercised by the following persons ³:
.....

5. I apply for renewal of the warrant on the following grounds ⁴:
.....
The grounds for the application are verified in my accompanying affidavit.

6. I request that the warrant be renewed for a further period of (*insert number*) days ⁵.

Signature of applicant:

Dated:

Notes:

1. *Strike out whichever does not apply.*
2. *Provide details (eg address, registration number) of any premises, vehicle or thing authorised to be entered or interfered with.*
3. *Provide details (eg name, rank and number) of the member of the police force etc authorised to exercise the powers conferred by the warrant.*
4. *Grounds may include the gravity of the criminal conduct to which the investigation relates, the significance to the investigation of the information sought to be obtained, the likely effectiveness of the use of the device in obtaining the information sought, the availability of alternative means of obtaining the information etc.*
5. *Section 6(7) provides that a warrant may not be in force for a period longer than 90 days.*

Form 3—Application for variation of warrant

Listening and Surveillance Devices Act 1972

Note: If the warrant has previously been renewed/ varied, this form should be modified so that the details of any previous renewals/ variations are set out clearly.

Applicant's name (*in full*)

1. I apply for variation of the warrant issued to me under section 6 of the *Listening and Surveillance Devices Act 1972* on (*insert date of issue*)
by (*insert name of Judge*),
a Judge of the Supreme Court of South Australia.

2. The warrant conferred the following powers:

- (a) the power to use (*insert number*) listening device(s) ¹
- (b) the power to enter or interfere with ^{1,2}
for the purposes of installing, using, maintaining or retrieving—
 - listening device(s) ¹
 - surveillance devices ¹ as follows:
 - (*insert number*) visual surveillance device(s)
 - (*insert number*) tracking device(s).

3. The powers conferred by the warrant are authorised to be exercised by the following persons ³:

.....

4. I apply for variation of the terms/conditions/limitations ¹ of the warrant as follows:

.....

5. The grounds for the application are as follows ⁴:

.....

The grounds for the application are verified in my accompanying affidavit.

6. The warrant will, unless cancelled earlier, remain in force until..... ⁵

Signature of applicant:

Dated:

NOTES:

- 1. *Strike out whichever does not apply.*
- 2. *Provide details (eg address, registration number) of any premises, vehicle or thing authorised to be entered or interfered with.*
- 3. *Provide details (eg name, rank and number) of the member of the police force etc authorised to exercise the powers conferred by the warrant.*
- 4. *Grounds may include the gravity of the criminal conduct to which the investigation relates, the significance to the investigation of the information sought to be obtained, the likely effectiveness of the use of the device in obtaining the information sought, the availability of alternative means of obtaining the information etc.*
- 5. *Insert date the warrant will cease to be in force.*

Schedule 2—Warrant

Form 1—Warrant

Listening and Surveillance Devices Act 1972

Supreme Court of South Australia

An application for a warrant under section 6 of the *Listening and Surveillance Devices Act 1972* has been made to me by

- a member of the South Australia Police
- a member of the National Crime Authority¹.

I, a Judge of the Supreme Court of South Australia, am satisfied that there are, in the circumstances of the case, reasonable grounds for issuing the warrant subject to the conditions/limitations specified in the warrant.

The powers conferred by the warrant are as follows:

- (a) the power to use (*insert number*) listening device(s)
- (b) the power to enter or interfere with.....²
for the purposes of installing, using, maintaining or retrieving—
 - listening device(s)¹
 - surveillance devices¹ as follows:
 - (*insert number*) visual surveillance device(s)
 - (*insert number*) tracking device(s).

The powers conferred by the warrant are subject to the following conditions/limitations³:

.....

The persons authorised to exercise the powers conferred by the warrant are as follows⁴:

.....

The period for which the warrant will be in force is days from the date of issue (being the date shown below).

Signed:
Judge of the Supreme Court

Dated:

Notes:

1. Strike out whichever does not apply.
2. Provide details (eg address, registration number) of any premises, vehicle or thing sought to be entered or interfered with.
3. Provide details of the conditions/limitations to which the powers conferred under the warrant are subject.
4. Provide details (eg name, rank and number) of the member of the police force etc seeking the authority to exercise the powers conferred by the warrant.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 16 October 2003

No 207 of 2003

AGO 0390/02 CS