

Version No. 001
Surveillance Devices Act 1999

Act No. 21/1999

Version as at 1 January 2000

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- (a) to regulate the installation, use and maintenance of surveillance devices;
- (b) to restrict the communication and publication of records of private conversations and activities obtained through the use of surveillance devices;
- (c) to establish procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation and use of surveillance devices;
- (d) to create offences relating to the improper installation or use of surveillance devices;
- (e) to impose requirements for the secure storage and destruction of records obtained by law enforcement officers through the use of surveillance devices;
- (f) to repeal the **Listening Devices Act 1969**.

2. *Commencement*

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.

- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 1 January 2000, it comes into operation on that day.

3. Definitions

- (1) In this Act—

"assistance order" means an order made under section 22;

"authorised police officer" means a person appointed by the Chief Commissioner of Police under sub-section (2);

"building" includes any structure;

"chief law enforcement officer" means—

- (a) in relation to a member of the police force—the Chief Commissioner of Police;
- (b) in relation to a member of staff of the National Crime Authority—the chairperson of the National Crime Authority;
- (c) in relation to an authorised officer within the meaning of the **Conservation, Forests and Lands Act 1987**—the Secretary;

"computer" means any electronic device for storing or processing information;

"data surveillance device" means any device capable of being used to record or monitor the input of information into or the output of information from a computer, but does not include an optical surveillance device;

"device" includes instrument, apparatus and equipment;

"disciplinary proceedings" means proceedings of a disciplinary nature under an Act of Victoria, the Commonwealth or another State or a Territory of the Commonwealth;

"emergency authorisation" means an emergency authorisation given under Division 3 of Part 4;

"enhancement equipment", in relation to a surveillance device, means equipment capable of enhancing a signal, image or other information obtained by the use of the surveillance device;

"install" includes attach;

"law enforcement officer" means—

- (a) a member of the police force;
- (b) a member of staff of the National Crime Authority who is a member of the Australian Federal Police or of the police force of a State or Territory of the Commonwealth;
- (c) except in Division 3 of Part 4, an authorised officer within the meaning of the **Conservation, Forests and Lands Act 1987**;

"listening device" means any 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 permit that person to hear

only sounds ordinarily audible to the human ear;

"maintain", in relation to a surveillance device, includes—

- (a) adjust, relocate, repair or service the device; and
- (b) replace a faulty device;

"member of the police force" means member of the force within the meaning of the **Police Regulation Act 1958**;

"National Crime Authority" means National Crime Authority established by the National Crime Authority Act 1984 of the Commonwealth;

"offence" means offence against the law of Victoria, the Commonwealth or another State or a Territory of the Commonwealth;

"optical surveillance device" means any device capable of being used to record visually or observe a private activity, but does not include spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment;

"party"—

- (a) to a private activity, means a person who takes part in the activity;
- (b) to a private conversation, means a person by or to whom words are spoken in the course of the conversation;

"premises" includes—

- (a) land; and
 - (b) a building or vehicle; and
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(c) a part of a building or vehicle; and

(d) any place, whether built on or not;

"private activity" means an activity carried on in circumstances that may reasonably be taken to indicate that the parties to it desire it to be observed only by themselves, but does not include—

(a) an activity carried on outside a building; or

(b) an activity carried on in any circumstances in which the parties to it ought reasonably to expect that it may be observed by someone else;

"private conversation" means a conversation carried on in circumstances that may reasonably be taken to indicate that the parties to it desire it to be heard only by themselves, but does not include a conversation made in any circumstances in which the parties to it ought reasonably to expect that it may be overheard by someone else;

"record" includes—

(a) an audio, visual or audio visual record; and

(b) a documentary record prepared from a record referred to in (a);

"relevant warrant", in relation to an assistance order, means the warrant in relation to which the order is applied for;

"report", in relation to a private conversation or activity, includes a report of the substance, meaning or purport of the conversation or activity;

"Secretary" means Secretary to the Department of Natural Resources and Environment;

"senior law enforcement officer" means—

- (a) in relation to a member of the police force—
 - (i) the Chief Commissioner of Police, a Deputy Commissioner or an Assistant Commissioner appointed under the **Police Regulation Act 1958**; or
 - (ii) a person appointed under sub-section (3);
- (b) in relation to a member of staff of the National Crime Authority—a member of the National Crime Authority (including the chairperson);
- (c) in relation to an authorised officer within the meaning of the **Conservation, Forests and Lands Act 1987**—the Secretary;

"serious drug offence" means an offence against any of the following sections of the **Drugs, Poisons and Controlled Substances Act 1981**—

- (a) section 71(1) (trafficking in a drug of dependence);
 - (b) section 71A (possession of substance, etc., for trafficking in a drug of dependence);
 - (c) section 71B(1) (supply of drug of dependence to a child);
 - (d) section 72(1) (cultivation of narcotic plants) other than an offence that is not
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committed for any purpose related to trafficking in a narcotic plant;

(e) section 73(1) (possession of a drug of dependence) other than—

(i) an offence committed in relation to a quantity of cannabis or tetrahydrocannabinol that is not more than the small quantity applicable to cannabis or tetrahydrocannabinol under section 70 of that Act and that is not committed for any purpose related to trafficking in cannabis or tetrahydrocannabinol; or

(ii) an offence that is not committed for any purpose related to trafficking in a drug of dependence;

(f) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a), (b), (c), (d) or (e);

(g) section 80(1) (aiding and abetting, etc.) in circumstances where the offence aided, abetted, counselled, procured, solicited or incited is an offence referred to in paragraph (a), (b), (c), (d) or (e);

"surveillance device" means a data surveillance device, a listening device, an optical surveillance device or a tracking device;

"tracking device" means an electronic device the primary purpose of which is to determine the geographical location of a person or an object;

"**vehicle**" includes aircraft and vessel;

"**warrant**" (except in sections 33, 34 and 35)
means warrant issued under Division 1 of
Part 4.

- (2) The Chief Commissioner of Police may appoint in writing members of the police force of or above the rank of inspector to be authorised police officers for the purpose of approving applications for warrants and authorising the use of surveillance devices under warrants.
- (3) Subject to sub-section (4), the Chief Commissioner of Police may appoint in writing authorised police officers to be senior law enforcement officers in relation to members of the police force.
- (4) The Chief Commissioner of Police may appoint an authorised police officer below the rank of commander to be a senior law enforcement officer only if satisfied that the special nature of the officer's responsibilities requires that appointment.
- (5) If under the **Public Sector Management and Employment Act 1998** the name of the Department of Natural Resources and Environment is changed, a reference in the definition of "Secretary" in sub-section (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

4. Act binds the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5. Act not to apply to certain Commonwealth agents

Nothing in this Act applies to anything done in the course of duty by—

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- (a) a member or member of staff of the Australian Competition and Consumer Commission;
 - (b) the Director General or an officer or employee of the Australian Security Intelligence Organisation;
 - (c) a member of the Australian Federal Police, other than in his or her capacity as a member of staff of the National Crime Authority;
 - (d) an officer of customs within the meaning of the Customs Act 1901 of the Commonwealth;
 - (e) the Minister administering the Migration Act 1958 of the Commonwealth or the Secretary or an officer or employee in the Department within the meaning of that Act.
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**PART 2—REGULATION OF INSTALLATION, USE AND
MAINTENANCE OF SURVEILLANCE DEVICES**

***6. Regulation of installation, use and maintenance of
listening devices***

- (1) Subject to sub-section (2), a person must not knowingly install, use or maintain a listening device to overhear, record, monitor or listen to a private conversation to which the person is not a party, without the express or implied consent of each party to the conversation.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1000 penalty units for a first offence
and 2000 penalty units for a subsequent
offence.

- (2) Sub-section (1) does not apply to—
- (a) the installation, use or maintenance of a listening device in accordance with a warrant or an emergency authorisation; or
 - (b) the installation, use or maintenance of a listening device in accordance with a law of the Commonwealth.

***7. Regulation of installation, use and maintenance of
optical surveillance devices***

- (1) Subject to sub-section (2), a person must not knowingly install, use or maintain an optical surveillance device to record visually or observe a private activity to which the person is not a party, without the express or implied consent of each party to the activity.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate, 1000 penalty units for a first offence and 2000 penalty units for a subsequent offence.

(2) Sub-section (1) does not apply to—

- (a) the installation, use or maintenance of an optical surveillance device in accordance with a warrant or an emergency authorisation; or
- (b) the installation, use or maintenance of an optical surveillance device in accordance with a law of the Commonwealth; or
- (c) the installation, use or maintenance of an optical surveillance device by a law enforcement officer in the performance of his or her duty on premises if—
 - (i) an occupier of the premises authorises that installation, use or maintenance; and
 - (ii) the installation, use or maintenance is reasonably necessary for the protection of any person's lawful interests.

8. Regulation of installation, use and maintenance of tracking devices

- (1) Subject to sub-section (2), a person must not knowingly install, use or maintain a tracking device to determine the geographical location of a person or an object—

- (a) in the case of a device to determine the location of a person, without the express or implied consent of that person; or
- (b) in the case of a device to determine the location of an object, without the express or implied consent of a person in lawful possession or having lawful control of that object.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1000 penalty units for a first offence
and 2000 penalty units for a subsequent offence.

- (2) Sub-section (1) does not apply to—
 - (a) the installation, use or maintenance of a tracking device in accordance with a warrant or an emergency authorisation; or
 - (b) the installation, use or maintenance of a tracking device in accordance with a law of the Commonwealth.

9. *Regulation of installation, use and maintenance of data surveillance devices by law enforcement officers*

- (1) Subject to sub-section (2), a law enforcement officer must not knowingly install, use or maintain a data surveillance device to record or monitor the input of information into, or the output of information from, a computer without the express or implied consent of the person on whose behalf that information is being input or output.

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

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- (2) Sub-section (1) does not apply to—
- (a) the installation, use or maintenance of a data surveillance device in accordance with a warrant or an emergency authorisation; or
 - (b) the installation, use or maintenance of a data surveillance device in accordance with a law of the Commonwealth.

10. *Authority for assistance and for others to use surveillance devices*

- (1) If a law enforcement officer is authorised by or under this Act to install, use, maintain or retrieve a surveillance device or enhancement equipment, that authorisation extends to any person who provides assistance or technical expertise to the officer in that installation, use, maintenance or retrieval.
 - (2) If a law enforcement officer is authorised by or under this Act to use a surveillance device, that authorisation extends to any person who is authorised by the chief law enforcement officer in relation to that law enforcement officer to use surveillance devices.
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**PART 3—RESTRICTION ON COMMUNICATION AND
PUBLICATION OF PRIVATE CONVERSATIONS AND
ACTIVITIES**

**11. *Prohibition on communication or publication of
private conversations or activities***

- (1) Subject to sub-section (2), a person must not knowingly communicate or publish a record or report of a private conversation or private activity that has been made as a direct or indirect result of the use of a listening device, an optical surveillance device or a tracking device.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate,
1000 penalty units for a first offence
and 2000 penalty units for a subsequent
offence.

- (2) Sub-section (1) does not apply—
- (a) to a communication or publication made with the express or implied consent of each party to the private conversation or private activity; or
 - (b) to a communication or publication that is no more than is reasonably necessary—
 - (i) in the public interest; or
 - (ii) for the protection of the lawful interests of the person making it; or
 - (c) to a communication or publication in the course of legal proceedings or disciplinary proceedings; or

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- (d) to a communication or publication made by a law enforcement officer—
- (i) to a person authorised by the chief law enforcement officer in relation to that officer and for the purpose of investigating or prosecuting an offence; or
 - (ii) to the occupier of premises of a record or report of a private activity that has been made as a direct or indirect result of the use on those premises of an optical surveillance device in the circumstances referred to in section 7(2)(c); or
 - (iii) to the sheriff or to a person employed in the Department of Justice in the administration of Schedule 7 to the **Magistrates' Court Act 1989** (enforcement of infringement penalties); or
 - (iv) otherwise in the performance of his or her duty; or
- (e) to a communication to a member of the police force by a person authorised to do so by an authorised police officer; or
- (f) to a communication or publication authorised by a law of the Commonwealth relating to the security of the Commonwealth.

12. *Communication and publication of information from the use of a data surveillance device*

- (1) Subject to sub-section (2), a law enforcement officer must not communicate or publish any information regarding the input of information into, or the output of information from, a

computer that has been obtained as a direct or indirect result of the use of a data surveillance device.

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

- (2) Sub-section (1) does not apply—
- (a) to a communication or publication made with the express or implied consent of the person on whose behalf the information is input into or output from the computer; or
 - (b) to a communication or publication made in the course of legal proceedings or disciplinary proceedings; or
 - (c) to a communication or publication made by a law enforcement officer—
 - (i) to a person authorised by the chief law enforcement officer in relation to that officer and for the purpose of investigating or prosecuting an offence; or
 - (ii) otherwise in the performance of his or her duty; or
 - (d) to a communication or publication authorised by a law of the Commonwealth relating to the security of the Commonwealth.
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**PART 4—AUTHORISATIONS FOR THE USE OF
SURVEILLANCE DEVICES**

Division 1—Warrants

13. *Types of warrant*

- (1) The following types of warrant may be issued under this Division—
 - (a) a listening device warrant;
 - (b) an optical surveillance device warrant;
 - (c) a data surveillance device warrant;
 - (d) a tracking device warrant;
 - (e) a composite warrant;
 - (f) a retrieval warrant.
- (2) A composite warrant may be issued in respect of more than one kind of surveillance device, or a surveillance device having more than one kind of function.

14. *Which court may issue warrants?*

- (1) The Supreme Court may issue any warrant under this Division.
- (2) The Magistrates' Court may issue—
 - (a) a tracking device warrant; or
 - (b) a retrieval warrant in respect of a tracking device if the Magistrates' Court issued the original tracking device warrant.

15. *Application for warrant*

- (1) A law enforcement officer, with the approval of a senior law enforcement officer in relation to that law enforcement officer or an authorised police officer, may apply to the court for the issue of a

warrant authorising the use of a surveillance device if the law enforcement officer suspects or believes—

- (a) that an offence has been, is being, is about to be or is likely to be committed; and
 - (b) that the use of a surveillance device is necessary for the purpose of an investigation into that offence or of enabling evidence to be obtained of the commission of that offence or the identity or location of the offender.
- (2) A law enforcement officer may apply to the court for the issue of a retrieval warrant in respect of a surveillance device that was lawfully installed on premises and which he or she suspects or believes is still on those premises.
- (3) Subject to this section, an application must be supported by an affidavit setting out the grounds on which the warrant is sought.
- (4) If—
- (a) a law enforcement officer believes that the immediate use of a surveillance device is necessary for a purpose referred to in sub-section (1)(b); and
 - (b) it is impractical for an affidavit to be prepared or sworn before an application for a warrant is made—
- an application for a warrant may be made before an affidavit is prepared or sworn.
- (5) If sub-section (4) applies, the applicant must—
- (a) provide as much information as the court considers is reasonably practicable in the circumstances; and

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- (b) not later than the day following the making of the application, send a duly sworn affidavit to the judge or magistrate constituting the court that determined the application, whether or not a warrant has been issued.
- (6) An application for a warrant (other than an application referred to in section 16) is to be heard in closed court.
- (7) A person must not publish a report of the whole or any part of a proceeding on an application for a warrant or any information derived from such a proceeding unless the court hearing the proceeding orders otherwise.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate, 1000 penalty units for a first offence and 2000 penalty units for a subsequent offence.

16. Telephone application

- (1) If it is impractical for a law enforcement officer to apply for a warrant in person, he or she may apply under section 15 for a warrant by telephone, facsimile or other form of communication.
- (2) If transmission by facsimile machine is available and an affidavit has been prepared, the officer must transmit a copy of the affidavit, whether sworn or unsworn, to the judge or magistrate constituting the court that is to determine the application.

17. Issue of warrant

- (1) A court may issue a warrant authorising the use of a surveillance device if the court is satisfied—
 - (a) that there are reasonable grounds for the suspicion or belief founding the application for the warrant; and
 - (b) in the case of an application referred to in section 15(4)—that it would have been impractical for an affidavit to have been sworn before the application was made; and
 - (c) in the case of an application referred to in section 16—that it would have been impractical for the applicant to have applied in person for the warrant.
 - (2) In determining whether a warrant authorising the use of a surveillance device should be issued, the court must have regard to—
 - (a) the nature and gravity of the alleged offence in respect of which the warrant is sought; and
 - (b) the extent to which the privacy of any person is likely to be affected; and
 - (c) alternative means of obtaining the evidence or information sought to be obtained; and
 - (d) the evidentiary value of any evidence sought to be obtained; and
 - (e) any previous warrant sought or issued under this Division in connection with the same offence.
 - (3) A warrant authorising the use of a surveillance device must specify—
 - (a) the alleged offence in respect of which the warrant is issued; and
 - (b) if practicable—
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- (i) in the case of a listening device warrant or optical surveillance device warrant, the name of any person whose private conversations or private activities may be overheard, recorded, monitored, listened to or observed;
 - (ii) in the case of a data surveillance device warrant, the name of any person on whose behalf information that may be recorded or monitored is input into or output from the computer, whether or not that person inputs or outputs it himself or herself;
 - (iii) in the case of a tracking device warrant, the name of any person, or a brief description of any object, whose geographical location is sought to be determined;
 - (iv) in the case of a composite warrant, the kind of surveillance device or devices authorised to be used; and
- (c) the period during which the warrant is in force, being a period not exceeding—
- (i) in the case of an application referred to in section 15(4) or 16—72 hours; or
 - (ii) in any other case—90 days; and
- (d) the name of any law enforcement officer who may use a surveillance device under the warrant; and
- (e) in the case of a listening device warrant or optical surveillance device warrant, the premises on which the listening device or optical surveillance device is to be installed (if known) or the place at which it is to be used (if known); and
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- (f) any conditions subject to which premises may be entered, or a surveillance device may be used, under the warrant; and
 - (g) the time within which the person to whom the warrant is issued must report to the court under section 20.
- (4) In determining whether a warrant authorising the retrieval of a surveillance device should be issued on an application under section 15, the court must have regard to—
- (a) the extent to which the privacy of any person is likely to be affected; and
 - (b) the public interest in retrieving the device sought to be retrieved.
- (5) A retrieval warrant must specify—
- (a) the period (not exceeding 90 days) during which the warrant is in force; and
 - (b) any conditions subject to which premises may be entered under the warrant; and
 - (c) the time within which the person to whom the warrant is issued must report to the court under section 20.
- (6) If the court issues a warrant on an application referred to in section 16—
- (a) the court must inform the applicant of—
 - (i) the terms of the warrant; and
 - (ii) the date on which and the time at which the warrant was issued—and cause those particulars to be entered in a register kept by the court for the purpose; and

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- (b) the court must provide the applicant with a copy of the warrant as soon as practicable.
 - (7) Nothing in this section prevents the issue of a further warrant in respect of an offence, or a surveillance device, in respect of which a warrant has previously been issued.

18. *What a warrant authorises*

- (1) A warrant may authorise the use of a surveillance device on specified premises. If it does so, the warrant authorises—
 - (a) the installation, use, maintenance and retrieval of the device and of any enhancement equipment in relation to the device; and
 - (b) the breaking open of any thing for the purpose of the installation, maintenance or retrieval of the device or equipment; and
 - (c) the connection of the device or equipment to an electricity supply system and the use of electricity from that system to operate the device or equipment; and
 - (d) the connection of the device or equipment to a telephone system and the use of that system in connection with the operation of the device or equipment; and
 - (e) the temporary removal of a vehicle or other object from the premises for the purpose of the installation, maintenance or retrieval of the device or equipment and the return of the vehicle or other object to the premises; and
 - (f) the entry, by force if necessary, onto the premises, or other specified premises adjoining or providing access to the premises, for any of the purposes referred to in paragraph (a), (b), (c), (d) or (e).
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- (2) A warrant may authorise the use of a surveillance device in or on a specified object. If it does so, the warrant authorises—
- (a) the installation, use, maintenance and retrieval of the device and any enhancement equipment in relation to the device; and
 - (b) the breaking open of any thing for the purpose of the installation, maintenance or retrieval of the device or equipment; and
 - (c) the temporary removal of the object from any place where it is situated for the purpose of the installation, maintenance or retrieval of the device or equipment and the return of the vehicle or other object to that place; and
 - (d) the entry, by force if necessary, onto any premises where the object is reasonably believed to be or is likely to be, or other premises adjoining or providing access to those premises, for any of the purposes referred to in paragraph (a), (b) or (c).
- (3) A warrant may authorise the use of a surveillance device in respect of the private conversations, private activities or geographical location of a specified person or a person whose identity is unknown. If it does so, the warrant authorises—
- (a) the installation, use and maintenance of the device, and any enhancement equipment in relation to the device, on premises or in a place where the person is reasonably believed to be or likely to be; and
 - (b) the retrieval of the device and equipment; and
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- (c) the entry, by force if necessary, onto the premises referred to in paragraph (a), or other premises adjoining or providing access to those premises, for any of the purposes referred to in paragraph (a) or (b).
- (4) A retrieval warrant authorises—
- (a) the retrieval of the surveillance device specified in the warrant and any enhancement equipment in relation to the device; and
- (b) the entry, by force if necessary, onto the premises where the surveillance device is reasonably believed to be, or other premises adjoining or providing access to those premises, for the purpose of retrieving the device and equipment.
- (5) Despite having his or her name specified in a warrant as a person who may use a surveillance device under the warrant, a law enforcement officer may only do so if he or she—
- (a) is acting in the performance of his or her duty; and
- (b) has been authorised in writing to use the device by a senior law enforcement officer in relation to the law enforcement officer or an authorised police officer.

19. *Revocation of warrant*

A court that issued a warrant under this Division may revoke the warrant at any time before the expiration of the period of validity specified in it.

20. Report to court

- (1) A person to whom a warrant is issued under this Division must, within the time specified in the warrant, furnish a report in accordance with this section to the court that issued the warrant.

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

- (2) In the case of a warrant other than a retrieval warrant, the report must—
- (a) state whether a surveillance device was used under the warrant; and
 - (b) if so—
 - (i) state the period during which the device was used; and
 - (ii) state the name, if known, of any person whose private conversations or private activities were overheard, recorded, monitored, listened to or observed by the use of the device; and
 - (iii) state the name, if known, of any person whose geographical location was determined by the use of a tracking device; and
 - (iv) give details of any premises on which the device was installed or any place at which the device was used; and
 - (v) give details of any object in or on which the device was installed or any premises where the object was located when the device was installed; and
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- (vi) give details of the general use made or to be made of any evidence or information obtained by the use of the device; and
 - (vii) give details of any previous use of a surveillance device under a warrant or emergency authorisation in connection with an offence in respect of which the warrant was issued.
- (3) In the case of a retrieval warrant, the report must—
- (a) give details of any premises entered under the warrant; and
 - (b) state whether the surveillance device was retrieved under the warrant.

Division 2—Assistance Orders

21. *Application for assistance order*

- (1) If a person who has applied or intends to apply for a warrant believes that it is necessary to obtain the assistance of another person for the effective execution of the warrant, he or she may apply to the Supreme Court for an order directing the other person to assist in the execution of the warrant.
- (2) An application for an assistance order—
 - (a) is to be made in the same manner as the application for the warrant; and
 - (b) may be made at the same time as the application for the warrant or subsequently.
- (3) Notice of an application for an assistance order is not required to be given to any person.

22. Assistance order

- (1) On an application under section 21, the court may make an assistance order if satisfied that there are reasonable grounds for doing so.
- (2) In determining whether or not to make an assistance order the court must take into account—
 - (a) the cost or difficulty of complying with the order; and
 - (b) the nature and gravity of the alleged offence in respect of which the relevant warrant is or was sought.
- (3) The court may make an assistance order subject to any conditions it thinks fit.
- (4) An assistance order—
 - (a) must be endorsed on the relevant warrant; and
 - (b) must specify—
 - (i) the person against whom it is made; and
 - (ii) the kind of assistance that the person must give; and
 - (iii) the manner in which the assistance must be given; and
 - (iv) any conditions subject to which it is made.
- (5) An assistance order has effect only during the period in which the relevant warrant is in force.

23. Failure to comply with assistance order

A person who is the subject of an assistance order must not knowingly contravene the order.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

24. Existence and operation of assistance order not to be disclosed

(1) A person who is, or has been, the subject of an assistance order must not knowingly disclose the existence or operation of the order to any person except—

- (a) a person who is or was authorised to use a surveillance device under the relevant warrant; or
- (b) another person for the purpose of ensuring that the order is complied with; or
- (c) a legal practitioner acting for the person, for the purpose of obtaining legal advice or representation in relation to the order.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

(2) A person to whom the existence or operation of an assistance order is disclosed in accordance with sub-section (1) must not knowingly disclose the existence or operation of the order to any person except—

- (a) in the case of a person referred to in sub-section (1)(a)—in the performance of his or her duty; or

- (b) in the case of a person referred to in sub-section (1)(b)—for the purpose of ensuring that the order is complied with; or
- (c) in the case of a person referred to in sub-section (1)(c)—for the purpose of giving legal advice or providing representation in relation to the order.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (3) Nothing in sub-section (2) prevents the disclosure by a person referred to in sub-section (1)(a) or (b) of the existence or operation of an assistance order in the course of legal proceedings or disciplinary proceedings.
- (4) A person referred to in sub-section (1)(a) or (b) must not be required to disclose to any court the existence or operation of an assistance order.
- (5) A reference in this section to disclosing the existence or operation of an assistance order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the assistance order.

Division 3—Emergency Authorisations

25. Application for emergency authorisation

- (1) A law enforcement officer¹ may apply to a senior law enforcement officer in relation to the law enforcement officer for an emergency authorisation for the use of a surveillance device if the law enforcement officer suspects or believes—

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- (a) that—
- (i) an imminent threat of serious violence to a person or substantial damage to property exists; or
 - (ii) a serious drug offence or an offence against a law of the Commonwealth or of another State or a Territory that corresponds to a serious drug offence has been, is being, is about to be or is likely to be committed; and
- (b) that the use of a surveillance device is immediately necessary for the purpose of dealing with that threat or investigating that offence, or of enabling evidence to be obtained of the commission of that offence or the identity or location of the offender; and
- (c) that the circumstances are so serious and the matter is of such urgency that the use of a surveillance device is warranted; and
- (d) that it is not practicable in the circumstances to apply for a warrant.
- (2) An application under this section may be made orally, in writing or by telephone, facsimile or other form of communication.

26. *Emergency authorisations*

- (1) A senior law enforcement officer may give an emergency authorisation for the use of a surveillance device on an application under section 25 if satisfied that there are reasonable grounds for the suspicion or belief founding the application.
- (2) An emergency authorisation may authorise the person to whom it is given to do anything that a warrant may authorise them to do.

- (3) A senior law enforcement officer may give a composite emergency authorisation having effect in accordance with its terms in respect of the installation, use or maintenance of more than one kind of surveillance device or a surveillance device that has more than one kind of function.

27. *Form and duration of emergency authorisation*

An emergency authorisation—

- (a) must be in writing; and
(b) remains in force for 72 hours or the shorter period specified in it.

28. *Report to court*

- (1) A person to whom an emergency authorisation is given under this Division must furnish a report to the Supreme Court in accordance with this section within 72 hours after the authorisation is given.

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

- (2) The report must contain the particulars referred to in section 20(2) as if a reference in that section to the warrant were a reference to the emergency authorisation.

29. *Information to be brought before court*

- (1) On the furnishing of a report under section 28, the Supreme Court may direct the person to whom the emergency authorisation was given to cause any evidence or information obtained by the use of the surveillance device to which the authorisation relates, or any record of it, to be brought before the Supreme Court within 72 hours after the direction is given.

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- (2) The person to whom an emergency authorisation is given under this Division must comply with a direction under sub-section (1).

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

- (3) Any evidence, information or record brought before the Supreme Court under sub-section (1) is to be kept in the custody of the Court and the Court may at any time on its own initiative order that it be returned or destroyed.

30. *Court may direct use of surveillance device to cease*

On consideration of a report under section 28 or of any evidence, information or record brought before it under section 29, the Supreme Court may, by order, direct that use of the surveillance device to which the report, evidence, information or record relates cease immediately.

PART 5—FURTHER OFFENCES AND ENFORCEMENT

31. *Unlawful interference with surveillance devices*

Unless authorised by or under this Act, a person must not knowingly interfere with, damage, remove or retrieve a surveillance device that has been lawfully installed on premises or in or on an object by a law enforcement officer—

- (a) in the circumstances referred to in section 7(2)(c); or
- (b) in accordance with a warrant or emergency authorisation.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate, 1000 penalty units for a first offence and 2000 penalty units for a subsequent offence.

32. *Offences by persons involved in management of bodies corporate*

- (1) If a body corporate is guilty of an offence against this Act, any person who is concerned in, or takes part in, the management of the body corporate is also guilty of that offence and liable to the penalty for it.
- (2) A person may be proceeded against for, and found guilty of, an offence in accordance with sub-section (1) whether or not the body corporate has been proceeded against for, or found guilty of, that offence.
- (3) It is a defence to a charge brought in accordance with sub-section (1) for the defendant to prove

that the offence was committed by the body corporate without his or her consent or knowledge and that he or she exercised due diligence to prevent the commission of the offence.

33. Search warrant

- (1) A member of the police force may apply to a magistrate for the issue of a search warrant in relation to particular premises if the member suspects on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of an offence against this Act.
- (2) If a magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of an offence against this Act, the magistrate may issue a search warrant authorising a member of the police force named in the warrant and any assistants the member considers necessary—
 - (a) to enter, by force if necessary, the premises or part of the premises named or described in the warrant; and
 - (b) to search the premises or any person found on the premises for any thing named or described in the warrant; and
 - (c) to seize any thing referred to in paragraph (b).
- (3) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) the offence suspected; and
 - (b) the premises to be searched; and

- (c) a description of the thing to be searched for; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (5) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

34. *Announcement before entry*

- (1) Before executing a search warrant, the member of the police force named in the warrant or a person assisting him or her must announce that he or she is authorised by the warrant to enter the premises and give any person at the premises an opportunity to allow entry to the premises.
- (2) The member of the police force or person assisting him or her need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

35. Copy of warrant to be given to occupier or person searched

- (1) If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the member of the police force must—
 - (a) identify himself or herself to that person; and
 - (b) give that person a copy of the execution copy of the warrant.
 - (2) If a person found on premises when a search warrant is being executed is to be searched under the warrant, the member of the police force must—
 - (a) identify himself or herself to that person; and
 - (b) give that person a copy of the execution copy of the warrant.
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PART 6—MISCELLANEOUS

36. *Dealing with records obtained by use of surveillance devices*

- (1) Each chief law enforcement officer—
- (a) must ensure that every record or report obtained by use of a surveillance device by a law enforcement officer in relation to whom he or she is chief law enforcement officer—
 - (i) in the circumstances referred to in section 7(2)(c); or
 - (ii) under a warrant or emergency authorisation—is kept in a secure place that is not accessible to people who are not entitled to deal with the record or report; and
 - (b) must destroy or cause to be destroyed any record or report referred to in paragraph (a) if satisfied that it is not likely to be required in connection with—
 - (i) the investigation of any offence; or
 - (ii) the making of a decision whether to prosecute for any offence; or
 - (iii) the prosecution of any offence; or
 - (iv) the making of an application under the **Confiscation Act 1997**; or
 - (v) any disciplinary proceedings.

Penalty: Level 8 fine (120 penalty units maximum).

- (2) Sub-section (1) does not apply to a record or report that is received into evidence in legal proceedings or disciplinary proceedings.

37. Annual reports

- (1) As soon as practicable after the end of each calendar year—
- (a) the Chief Commissioner of Police must submit a report to the Minister that includes the following information—
 - (i) the number of applications for warrants by and the number of warrants issued to members of the police force during that year; and
 - (ii) the number of applications for emergency authorisations by and the number of emergency authorisations given to members of the police force during that year; and
 - (iii) the name and rank of each person appointed as a senior law enforcement officer under section 3(3) (whether appointed during that year or previously); and
 - (iv) if any person referred to in subparagraph (iii) is below the rank of commander, the reason for the appointment of the person under section 3(3); and
 - (v) any other information relating to the use of surveillance devices and the administration of this Act that the Minister considers appropriate;
 - (b) the chairperson of the National Crime Authority must submit a report to the Minister that includes the following information—
 - (i) the number of applications for warrants by and the number of warrants issued to

- members of staff of the National Crime Authority during that year; and
- (ii) the number of applications for emergency authorisations by and the number of emergency authorisations given to members of staff of the National Crime Authority during that year; and
 - (iii) any other information relating to the use of surveillance devices and the administration of this Act that the Minister considers appropriate;
- (c) the Secretary must submit a report to the Minister that includes the following information—
- (i) the number of applications for warrants by and the number of warrants issued to authorised officers within the meaning of the **Conservation, Forests and Lands Act 1987** during that year; and
 - (ii) any other information relating to the use of surveillance devices and the administration of this Act that the Minister considers appropriate.
- (2) The Minister must cause each report under subsection (1) to be laid before each House of the Parliament within 12 sitting days of that House after it is received by the Minister.
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**PART 7—REPEALS, TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS**

38. *Repeal of Listening Devices Act 1969*

The **Listening Devices Act 1969** is repealed.

39. *Transitional provisions*

- (1) A warrant issued under section 4A of the **Listening Devices Act 1969** that was in force immediately before the commencement of section 38 of this Act continues in force after that commencement in accordance with its terms, as if it were a warrant issued under Division 1 of Part 4 of this Act.
- (2) A warrant or emergency authorisation may be issued or given under Part 4 in relation to an offence that was committed before the commencement of this section.

40. *Amendment of Evidence Act 1958*

In section 42T of the **Evidence Act 1958**, for "**Listening Devices Act 1969**" substitute "**Surveillance Devices Act 1999**".

Surveillance Devices Act 1999
Act No. 21/1999

NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 25 March 1999

Legislative Council: 5 May 1999

The long title for the Bill for this Act was "A Bill to regulate the installation, use and maintenance of surveillance devices and restrict the publication of information gained from their use, to repeal the **Listening Devices Act 1969**, to amend the **Evidence Act 1958** and for other purposes."

The **Surveillance Devices Act 1999** was assented to on 18 May 1999 and came into operation as follows:

Part 1 (sections 1–5) on 18 May 1999: section 2(1); rest of Act on 1 January 2000: section 2(3).

Surveillance Devices Act 1999
Act No. 21/1999

Notes

2. Table of Amendments

There are no amendments made to the **Surveillance Devices Act 1999** by Acts and subordinate instruments.

3. Explanatory Details

¹ S. 25(1): This Division does not apply to law enforcement officers who are authorised officers under the **Conservation, Forests and Lands Act 1987** (see paragraph (c) of the definition of "law enforcement officer" in section 3(1)).