

NORTHERN TERRITORY OF AUSTRALIA
SURVEILLANCE DEVICES ACT 2000

No. 56 of 2000

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NORTHERN TERRITORY OF AUSTRALIA

No. 56 of 2000

AN ACT

to regulate the use of surveillance devices to record, monitor or listen to persons' private conversations, to record, monitor or observe persons' private activities, to record or monitor information put on to or retrieved from computers or to determine or monitor the location of persons or objects, and for related purposes

[Assented to 14 November 2000]

[Second reading 16 August 2000]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Surveillance Devices Act 2000*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

"authorised person" means –

(a) the Commissioner of Police;

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- (b) a member of the Police Force of the Northern Territory who is the Deputy Commissioner of Police or an Assistant Commissioner of Police;
- (c) the highest ranking officer of the police force of a State or another Territory of the Commonwealth; or
- (d) the chief executive officer of a prescribed authority or, in the case of a prescribed authority that is a police force, the highest ranking officer of the prescribed authority;

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

"connection device" means an apparatus, device, instrument, machine or piece of equipment that is not a surveillance device or a part of a surveillance device but is ancillary to the attachment, installation, use, maintenance or retrieval of a surveillance device;

"data surveillance device" means an apparatus, device, instrument, machine or piece of equipment capable of being used to record or monitor the information being put on to or retrieved from a computer;

"Judge" means a Judge within the meaning of the *Supreme Court Act*;

"law enforcement officer" means —

- (a) a member of the Police Force of the Northern Territory;
- (b) a member or officer (however described) of the police force of a State or another Territory of the Commonwealth; or
- (c) an employee, officer or member (however described) of a prescribed authority;

"listening device" means an apparatus, device, instrument, machine or piece of equipment capable of being used to record, monitor or listen to a private conversation or words spoken to or by a person in a private conversation, but does not include a hearing aid or similar device used by a person with impaired hearing to overcome his or her impairment and enable him or her to hear only sounds ordinarily audible to the human ear;

"maintain", in relation to a surveillance device, means adjust, maintain, repair, reposition, relocate, service or, if malfunctioning, replace;

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"offence" means an offence or an element of an offence against a law of the Commonwealth or of a State or Territory of the Commonwealth that is being, about to be or has been committed or allegedly committed or that is likely to be committed in the Territory;

"optical surveillance device" means an apparatus, device, instrument, machine or piece of equipment capable of being used to visually record, monitor 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 his or her impairment and enable him or her to see only sights ordinarily visible to the human eye;

"party" means –

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

but does not include a law enforcement officer who in the course of his or her duty is using a surveillance device to record, listen to, observe or monitor the conversation or activity;

"premises" includes –

- (a) an area of land (whether built on or not);
- (b) a structure or building or part of a structure or building;
- (c) a vehicle or part of a vehicle; and
- (d) any other place (whether built on or not);

"prescribed authority" means an authority, body or organisation prescribed by the Regulations to be a prescribed authority referred to in the definitions of "authorised person" and "law enforcement officer";

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

"private conversation" means a conversation carried on in circumstances that may reasonably be taken to indicate that the parties to the conversation desire it to be listened to only by themselves, but does

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not include a conversation carried on in circumstances in which the parties to the conversation ought reasonably to expect that the conversation may be overheard;

"record" includes a visual recording and a sound recording;

"report" includes a statement prepared from a record obtained by the use of a surveillance device that summarises the substance or meaning of the record;

"serious drug offence" means an offence involving the possession, use, manufacture, production or supply of a dangerous drug within the meaning of the *Misuse of Drugs Act*.

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

"tracking device" means an apparatus, device, instrument, machine or piece of equipment capable of being used to determine or monitor the geographical location of a person, vehicle or object;

"urgent authorisation" means authorisation issued under Division 3 of Part 2 to attach, install, use, maintain or retrieve a surveillance device in urgent circumstances;

"vehicle" means any means of transport whether by land or water or through the air;

"warrant" means a warrant issued under section 12 or 30 authorising the attachment, installation, use, maintenance or retrieval of a surveillance device.

(2) A reference in this Act to a law enforcement officer attaching, installing, using, maintaining or retrieving a surveillance device is a reference to a law enforcement officer attaching, installing, using, maintaining or retrieving a surveillance device in the course of his or her duty as a law enforcement officer.

4. Act binds Crown

This Act binds the Crown not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly permits, in all its other capacities.

PART 2 – AUTHORISATION TO USE SURVEILLANCE DEVICES

Division 1 – General principles

5. No use etc. of surveillance device without authorisation

A person must not attach, install, use, maintain or retrieve a surveillance device unless –

- (a) the person is authorised to do so under section 6;
- (b) the person is a law enforcement officer or a person assisting a law enforcement officer who is authorised to do so under this Part and who does so in accordance with the authorisation; or
- (c) the person is authorised to do so under a law of the Commonwealth and does so in accordance with the authorisation.

Penalty: For a first offence –

- (a) if the offender is a natural person – 100 penalty units or imprisonment for 2 years; or
- (b) if the offender is a body corporate – 1000 penalty units.

For a second or subsequent offence –

- (a) if the offender is a natural person – 100 penalty units or imprisonment for 2 years; or
- (b) if the offender is a body corporate – 2000 penalty units.

6. Authorisation to use etc. surveillance device in certain circumstances

A person may attach, install, use, maintain or retrieve a surveillance device in the following circumstances:

- (a) in the case of a data surveillance device – if the person on whose behalf the information that is recorded or monitored is put on to or retrieved from a computer expressly or impliedly consents to the attachment, installation, use, maintenance or retrieval of the device;
- (b) in the case of a listening device or an optical surveillance device –
 - (i) if each party to the private activity or private conversation recorded, monitored, listened to or observed expressly or impliedly consents to the attachment, installation, use, maintenance or retrieval of the device;

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- (ii) if the person who uses the device is a party to the private activity or private conversation recorded, monitored, listened to or observed by the device;
 - (iii) if the person is a law enforcement officer who is attaching, installing, using, maintaining or retrieving the device, in a public place;
- (c) in the case of a tracking device –
- (i) if the person whose geographical location is being determined or monitored or who is in possession or has control of the vehicle or object that is being tracked expressly or impliedly consents to the attachment, installation, use, maintenance or retrieval of the tracking device;
 - (ii) if the person is a law enforcement officer who is attaching, installing, using, maintaining or retrieving the device in, on, to or from a vehicle or object that is situated in a public place;
 - (iii) if the person using the device is a law enforcement officer and the device was attached or installed in, on or to a vehicle or object when the vehicle or object was situated in a public place;
 - (iv) if the person attaches, installs, uses, maintains or retrieves the device in the prescribed circumstances.

7. Authorisation regarding information unintentionally obtained

If the attachment, installation, use, maintenance or retrieval of a surveillance device by a person referred to in section 5(b) or (c) results in the unintentional recording, hearing, monitoring or observation of a private activity or private conversation or obtaining of other information that the authorisation is not expressed to authorise, the person's authorisation is to be taken to apply to or in relation to the recording, hearing, monitoring or observation of that private activity or private conversation or the obtaining of that information.

8. Requirement for law enforcement officers to be authorised to use etc. surveillance devices

(1) Unless section 6(a) applies, a law enforcement officer who intends to attach, install, use or maintain a data surveillance device to record or monitor the information put on to or retrieved from a computer, or to retrieve a data surveillance device, without the express or implied consent of the person on

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whose behalf that information is put on to or retrieved from the computer must apply for and be issued a warrant or urgent authorisation to do so.

(2) Unless section 6(b) applies, a law enforcement officer who intends to attach, install, use or maintain a listening device to record, monitor or listen to a private conversation, or to retrieve a listening device, without the express or implied consent of each party to the conversation must apply for and be issued a warrant or an urgent authorisation to do so.

(3) Unless section 6(b) applies, a law enforcement officer who intends to install, use or maintain an optical surveillance device to record, monitor or observe a private activity, or to retrieve an optical surveillance device, without the express or implied consent of each party to the activity must apply for and be issued a warrant or an urgent authorisation to do so.

(4) Unless section 6(c) applies, a law enforcement officer who intends to attach, install, use or maintain a tracking device to determine or monitor the geographical location of a person, vehicle or object, or to retrieve a tracking device, without the express or implied consent of that person or the person in possession or having control of that vehicle or object must, unless the tracking device is to be attached, installed or maintained in, on or to or be retrieved from a vehicle or object that is in a public place, apply for and be issued a warrant or urgent authorisation to do so.

Division 2 – Authorisation by warrant

9. Application for warrant

(1) A law enforcement officer may apply for a warrant in respect of an offence that he or she or another law enforcement officer is investigating.

(2) A law enforcement officer may apply for a warrant –

(a) in person; or

(b) if it is not practical for him or her to do so in person – by radio, telephone, facsimile transmission or any other available means of communication.

(3) An application for a warrant is to be made –

(a) in the case of a warrant for a tracking device – to a magistrate or a Judge; or

(b) in the case of a warrant for any other surveillance device – to a Judge.

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(4) If the law enforcement officer wants to be issued one warrant that authorises the use of more than one kind of surveillance device including a tracking device, the law enforcement officer may apply to a Judge for the warrant.

(5) An application for a warrant –

(a) may be made by a law enforcement officer for or on behalf of another law enforcement officer;

(b) is to specify the name of the law enforcement officer making the application and, in the case of an application referred to in paragraph (a), the name of the law enforcement officer on whose behalf the application is made;

(c) is to specify the nature of the warrant required and state, or have attached to it, the reasons for requiring the warrant;

(d) is to specify the period of not more than 90 days during which the warrant is required to have effect and the reasons for requiring that period; and

(e) may be made for the attachment, installation, use, maintenance or retrieval of a surveillance device in relation to a specified person, premises, vehicle or object or a person whose identity is not known.

(6) The Judge or magistrate who receives the application may require the law enforcement officer making the application or another person to provide, either orally or by affidavit, further information in support of the application.

10. Application by telephone etc.

(1) A law enforcement officer who makes an application for a warrant by telephone, radio, facsimile transmission or another means of communication must comply with this section as well as section 9.

(2) Before making the application the law enforcement officer must prepare an affidavit setting out the details of the application required under section 9(5).

(3) Despite subsection (2), if it is necessary to do so, the law enforcement officer may make the application for the warrant before the affidavit is sworn.

11. Consideration of application for warrant

In considering an application for a warrant, the Judge or magistrate must have regard to –

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- (a) the nature of the offence or suspected offence in respect of which the warrant is sought and whether the offence has been, is being, is about to be or is likely to be committed;
- (b) the extent to which the privacy of any person is likely to be interfered with by the use of a surveillance device pursuant to the warrant applied for;
- (c) the intelligence value and the evidentiary value of any evidence or other information sought to be obtained and the extent to which it is likely that the use of the surveillance device would assist the investigation of the offence or enable evidence to be obtained of the commission of the offence or the identity or location of the offender;
- (d) the extent to which evidence or information is likely to be obtained by methods of investigation not involving the use of a surveillance device and the extent to which that evidence or information is likely to assist the investigation of the offence; and
- (e) any other warrants applied for or issued in respect of the offence under this Act or the *Listening Devices Act* as in force from time to time before the commencement of this Act.

12. Issue of warrant

(1) If, after considering an application for a warrant, the Judge or magistrate is satisfied that there are reasonable grounds for believing that –

- (a) an offence has been, is being, is about to be or is likely to be committed; and
- (b) the use of a surveillance device is likely to assist in the investigation of the offence or enable evidence to be obtained of the commission of the offence or the identity or location of the offender,

the Judge or magistrate may, subject to this section and sections 13, 15 and 16, issue a warrant authorising the use of a surveillance device.

(2) The warrant issued under subsection (1) may, as the Judge or magistrate considers appropriate and specifies in the warrant, authorise the law enforcement officer to do any one or more of the following:

- (a) attach, install, use or maintain a data surveillance device to record or monitor information put on to or retrieved from a computer;

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- (b) attach install, use or maintain a listening device or an optical surveillance device to record, monitor, listen to, or observe a private conversation or a private activity;
- (c) attach, install, use or maintain a tracking device to determine or monitor the geographical location of a person, vehicle or object;
- (d) retrieve a surveillance device;
- (e) in the case of the maintenance of a surveillance device –
 - (i) reposition or relocate the device in, on or at the premises, vehicle or object in, on, at or to which it is attached or installed or temporarily remove the device from the premises, vehicle or object in, on, at or to which it is attached or installed so it may be maintained;
 - (ii) on removing the device – maintain the device or, if the device is found to be malfunctioning, replace it with another of the same kind and function; and
 - (iii) re-attach or re-install the device or, in the case of a replacement device, attach or install the device in, on, at or to the premises, vehicle or object;
- (f) temporarily remove a vehicle or object from premises for the purpose of the attachment, installation, maintenance or retrieval of a surveillance device in, on or to the vehicle or object and return the vehicle or object to the premises or, if the law enforcement officer believes on reasonable grounds that to do that would be dangerous or would cause the surveillance operation to fail, to other suitable premises;
- (g) enter, with the force that is necessary and reasonable, premises where a particular person, vehicle or object is reasonably believed to be or likely to be in, on or at for a purpose referred to in paragraph (a), (b), (c), (d), (e) or (f);
- (h) enter, with the force that is necessary and reasonable, premises that adjoin, overlook or by which access to premises where a particular person, vehicle or object is reasonably believed to be or likely to be in, on or at for a purpose referred to in paragraph (a), (b), (c), (d) (e) or (f);
- (j) remain on premises referred to in paragraph (g) or (h) for a purpose referred to in paragraph (a), (b), (c), (d), (e) or (f);

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- (k) break open any thing for the purpose of installing, using, maintaining or retrieving a surveillance device;
- (m) connect a surveillance device to an electricity supply system and use electricity from that system to operate the device.

(3) The Judge may issue the warrant to authorise the attachment, installation, use, maintenance or retrieval of more than one surveillance device (whether or not of the same kind) or a surveillance device that has more than one kind of function.

(4) The magistrate may issue the warrant to authorise the attachment, installation, use, maintenance or retrieval of more than one tracking device.

13. Conditions and restrictions of warrant

(1) The Judge or magistrate may issue the warrant subject to any conditions or restrictions relating to the entry of premises or the attachment, installation, use, maintenance or retrieval of a surveillance device that the Judge or magistrate considers necessary in the public interest.

(2) It is a condition of a warrant that the warrant remains in force for 21 days after the day it would, but for this subsection, expire for the purpose only of authorising the retrieval of a surveillance device specified in the warrant.

(3) In the event of an inconsistency between a condition or restriction referred to in subsection (1) and the condition imposed under subsection (2), the condition or restriction referred to in subsection (1) is to be complied with.

14. Judge or magistrate must keep record of warrant issued

If a Judge or magistrate issues a warrant, the Judge or magistrate must keep a written record of—

- (a) the name of the law enforcement officer to whom the Judge or magistrate issues the warrant;
- (b) if the warrant is obtained on behalf of another law enforcement officer — the name of that law enforcement officer;
- (c) the date and time of issuing the warrant;
- (d) his or her reasons for issuing the warrant; and
- (e) the terms and conditions and restrictions of the warrant.

15. Form of warrant

A warrant is to specify —

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- (a) the name of the law enforcement officer to whom it is issued and, if the warrant is obtained on behalf of another law enforcement officer, the name of that law enforcement officer;
- (b) the date it is issued;
- (c) each kind of surveillance device it relates to;
- (d) the purpose for which it is issued and the person (if known) or the premises, vehicle or object in respect of which each surveillance device is to be used;
- (e) the premises, vehicle or object in, on, at, to or from which each surveillance device is to be attached, installed, used, maintained, or retrieved;
- (f) the name and signature of the Judge or magistrate who issues it; and
- (g) any conditions and restrictions imposed by the Judge or magistrate.

16. Additional matters regarding issue of warrant applied for by telephone etc.

(1) When issuing a warrant applied for by telephone, radio, facsimile transmission or another means of communication, the Judge or magistrate must –

- (a) complete and sign the warrant in compliance with sections 12 and 15;
- (b) record on the warrant his or her reasons for issuing the warrant; and
- (c) inform the applicant of the terms, conditions and restrictions of the warrant.

(2) On being informed of the terms, conditions and restrictions of the warrant, the applicant must –

- (a) complete, in duplicate, a form of warrant in those terms, conditions and restrictions; and
- (b) write on the form of the warrant the name of the Judge or magistrate who issued the warrant and the date and time when it was issued.

(3) A form of warrant completed in accordance with subsection (2) is, if it is in accordance with the terms, conditions and restrictions of the warrant signed by the Judge or magistrate under subsection (1), authorisation for the

attachment, installation, use, maintenance or retrieval of a surveillance device as it specifies.

17. Refusal to issue warrant and consideration of further applications

If a Judge or magistrate refuses to issue a warrant because the Judge or magistrate is not satisfied that there are grounds to issue the warrant, no subsequent application for a warrant may be considered by a Judge or magistrate in respect of the same matter unless that Judge or magistrate is satisfied that that application contains information or evidence material to the application in addition to or instead of the information or evidence contained in the application that failed.

18. Procedures relating to expiry of warrant applied for by telephone etc.

(1) If a warrant that was applied for by telephone, radio, facsimile transmission or another means of communication expires, a law enforcement officer must, within one day after the day on which the warrant expired, send the affidavit prepared in respect of the warrant under section 10 and the form of warrant completed in respect of the warrant in accordance with section 16(2) to –

- (a) the Judge or magistrate who issued the warrant; or
- (b) if that Judge or magistrate is absent from duty or the Territory, unable to perform his or her duties or no longer holds office – any other Judge or magistrate.

(2) On receiving the documents referred to in subsection (1), the Judge or magistrate must –

- (a) compare the copy of the form of warrant with the warrant signed under section 16(1) and, if satisfied that they are in substance in identical terms, note this fact on the warrant; and
- (b) send the warrant together with the copy and the affidavit to the Commissioner of Police.

(3) If the Judge or magistrate is not satisfied that the copy of the form of the warrant and the warrant signed under section 16(1) are in substance in identical terms, the Judge or magistrate must make an order that –

- (a) any information recorded, listened to, observed or monitored by a surveillance device pursuant to the warrant is to be destroyed within 7 days after the date of the order; and
- (b) any evidence obtained by or as a consequence of the use of the surveillance device is not admissible in any legal proceedings.

19. Amendment of term of warrant specifying premises etc. in respect of use etc. of surveillance device

(1) If, for whatever reason, the premises, vehicle or object specified in a warrant as the premises, vehicle or object in, on, at, to, from or in respect of which the surveillance device to which the warrant relates is to be attached, installed, used, maintained or retrieved can no longer be used to achieve the purpose for which the warrant was issued, a law enforcement officer may apply to a Judge or, in the case of a warrant for a tracking device issued by a magistrate, a magistrate to amend the terms of the warrant to substitute another premises, vehicle or object.

(2) Sections 9, 10 and 11 apply, with the necessary changes and to the extent necessary, to and in relation to the application.

(3) The Judge or magistrate may amend the warrant by substituting another premises, vehicle or object for the premises, vehicle or object specified in the warrant.

(4) If the Judge or magistrate amends the warrant, the Judge or magistrate must endorse the address of the substitute premises or a description of the substitute vehicle or object on the warrant.

(5) The Judge or magistrate must keep a written record of the amendment made.

(6) Nothing in this section limits the number of applications that may be made under subsection (1) in respect of a warrant or the number of amendments that may be made under this section to a warrant while it is in force.

20. Extension of warrant

(1) A law enforcement officer may apply to a Judge or, in the case of a warrant for a tracking device issued by a magistrate, a magistrate for an extension of the period for which a warrant is in force.

(2) An application for the extension of a warrant is to be made before the date the warrant expires.

(3) Sections 9, 10 and 11 apply, with the necessary changes and to the extent necessary, to and in relation to the application.

(4) The Judge or magistrate may extend the period for which a warrant is in force by not more than 90 days.

(5) If the Judge or magistrate extends the period for which the warrant is in force, the Judge or magistrate must endorse the new expiry date on the warrant.

(6) The Judge or magistrate must keep a written record of the extension made to the period the warrant is in force.

(7) Nothing in this section limits the number of applications that may be made under subsection (1) in respect of a warrant or the number of extensions that may be made to the period for which a warrant is in force.

21. Hearing of application not to be heard in open court etc.

(1) An application for a warrant is not to be heard in open court.

(2) The following are not to be available to be searched by a person except by direction of the Chief Magistrate in the case of an application for a warrant made to a magistrate or by direction of the Chief Justice in the case of an application for a warrant made to a Judge:

- (a) a notice or report relating to an application for a warrant or the hearing of the application;
- (b) a record or other material relating to an application for a warrant or the hearing of the application;
- (c) an order given or made under this Division;
- (d) a warrant issued under this Division.

Division 3 – Urgent authorisations

22. Application for use etc. of surveillance device in urgent circumstances

If a law enforcement officer believes on reasonable grounds that –

- (a) there is an imminent threat of serious violence to a person or substantial damage to property or a serious drug offence has been, is being, is about to be or is likely to be committed;
- (b) the attachment, installation, use, maintenance or retrieval of a surveillance device is immediately necessary for the purpose of obtaining evidence or information in connection with or otherwise investigating the threat of violence or damage or the commission of the offence; and
- (c) an application for and issue of a warrant under Division 2 is not practicable,

the law enforcement officer may apply to an authorised person for an urgent authorisation to attach, install, use, maintain or retrieve the surveillance device.

23. Application for urgent authorisation

- (1) A law enforcement officer may apply for an urgent authorisation –
 - (a) orally, whether in person or by radio, telephone or any other available means of communication; or
 - (b) in writing, including by facsimile transmission or any other available electronic means of communication.
- (2) A law enforcement officer is not required to apply for an urgent authorisation in person if it is not practical for him or her to do so.
- (3) An application for an urgent authorisation –
 - (a) may be made by a law enforcement officer for or on behalf of another law enforcement officer;
 - (b) is to specify the name of the law enforcement officer making the application and, in the case of an application referred to in paragraph (a), the name of the law enforcement officer on whose behalf the application is made;
 - (c) is to specify the nature of the urgent authorisation required and state, or have attached to it a statement of, the reasons for requiring the urgent authorisation; and
 - (d) may be made for the attachment, installation, use, maintenance or retrieval of a surveillance device in relation to a specified person, premises, vehicle or object or a person whose identity is not known.
- (4) The authorised person who receives the application may require the law enforcement officer making the application to provide him or her with further information in support of the application.

24. Consideration of application

In considering the application for an urgent authorisation, the authorised person must have regard to –

- (a) the nature of the threat of serious violence to a person or substantial damage to property or whether the serious drug offence has been, is being, is about to be or is likely to be committed;
- (b) the intelligence value and the evidentiary value of any evidence or other information sought to be obtained and the extent to which it is likely that the use of the surveillance device would assist the investigation of the offence or enable evidence to be obtained of the

commission of the offence or the identity or location of the offender; and

- (c) the urgency or seriousness of the situation.

25. Issue of urgent authorisation

(1) An authorised person who receives an application for an urgent authorisation may, subject to this Division, issue the urgent authorisation if he or she is satisfied on reasonable grounds that the matter is of such urgency or is so serious that it is immediately necessary for the law enforcement officer making the application to attach, install, use, maintain or retrieve the surveillance device specified in the application.

(2) An urgent authorisation issued under subsection (1) may, as the authorised person considers appropriate and specifies in the urgent authorisation, authorise the law enforcement officer to do any one or more of the following:

- (a) attach, install, use or maintain a data surveillance device to record or monitor information put on to or retrieved from a computer;
- (b) attach install, use or maintain a listening device or an optical surveillance device to record, monitor, listen to, observe a private conversation or a private activity;
- (c) attach, install, use or maintain a tracking device to determine or monitor the geographical location of a person, vehicle or object;
- (d) retrieve a specified surveillance device;
- (e) in the case of the maintenance of a surveillance device –
 - (i) reposition or relocate the device in, on or at the premises, vehicle or object in, on, at or to which it is attached or installed or temporarily remove the device from the premises, vehicle or object in, on, at or to which it is attached or installed so it may be maintained;
 - (ii) on removing the device – maintain the device or, if the device is found to be malfunctioning, replace it with another of the same kind and function; and
 - (iii) re-attach or re-install the device or, in the case of a replacement device, attach or install the device in, on, at or to the premises, the vehicle or object;
- (f) temporarily remove a vehicle or object from premises for the purpose of the attachment, installation, maintenance or retrieval of a surveillance device in, on or to the vehicle or object and return the

vehicle or object to the premises or, if the law enforcement officer believes on reasonable grounds that to do so would be dangerous or would cause the surveillance operation to fail, to other suitable premises;

- (g) enter, with the force that is necessary and reasonable, premises where a particular person, vehicle or object is reasonably believed to be or likely to be in, on or at for a purpose referred to in paragraph (a), (b), (c), (d), (e) or (f);
- (h) enter, with the force that is necessary and reasonable, premises that adjoin, overlook or provide access to other premises where a particular person, vehicle or object is reasonably believed to be or likely to be in, on or at for a purpose referred to in paragraph (a), (b), (c), (d), (e) or (f);
- (j) remain on premises referred to in paragraph (g) or (h) for a purpose referred to in paragraph (a), (b), (c), (d), (e) or (f);
- (k) break open any thing for the purpose of installing, using, maintaining or retrieving a surveillance device;
- (m) connect a surveillance device to an electricity supply system and use electricity from that system to operate the device.

(3) The authorised person may issue one urgent authorisation to authorise the attachment, installation, use, maintenance or retrieval of more than one surveillance device (whether or not of the same kind) or a surveillance device that has more than one kind of function.

26. Conditions and restrictions of urgent authorisation

(1) The authorised person may issue the urgent authorisation subject to any conditions and restrictions relating to the entry of premises or the attachment, installation, use, maintenance or retrieval of a surveillance device that the authorised person considers necessary in the public interest.

(2) It is a condition of an urgent authorisation that the urgent authorisation remains in force for 21 days after the day it would, but for this subsection, expire for the purpose only of authorising the retrieval of a surveillance device specified in the urgent authorisation.

(3) In the event of an inconsistency between a condition or restriction referred to in subsection (1) and the condition imposed under subsection (2), the condition or restriction referred to in subsection (1) is to be complied with.

27. Authorised person to keep record of urgent authorisation issued

If an authorised person issues an urgent authorisation, he or she must keep a written record of –

- (a) the name of the law enforcement officer to whom he or she issues the urgent authorisation;
- (b) if the urgent authorisation is obtained on behalf of another law enforcement officer – the name of that law enforcement officer;
- (c) the date and time of issuing the urgent authorisation;
- (d) the grounds on which he or she issued the urgent authorisation; and
- (e) the terms and conditions and restrictions of the urgent authorisation.

28. Form of urgent authorisation

An urgent authorisation is to specify –

- (a) the name of the law enforcement officer to whom it is issued and, if the urgent authorisation is obtained on behalf of another law enforcement officer, the name of that law enforcement officer;
- (b) the date it is issued;
- (c) the number of surveillance devices that may be attached, installed, used, maintained or retrieved pursuant to the urgent authorisation;
- (d) each kind of surveillance device it relates to;
- (e) the purpose for which it is issued and the person (if known) or the premises, vehicle or object in respect of which each surveillance device is to be used;
- (f) the premises, vehicle or object in, on, at, to or from which each surveillance device is to be attached, installed, used, maintained or retrieved;
- (g) the name and signature of the authorised person who issued it; and
- (h) any conditions and restrictions imposed by the authorised person.

29. Application for warrant to authorise use etc. of surveillance device pursuant to urgent authorisation

(1) A law enforcement officer who is issued an urgent authorisation or, if the law enforcement officer obtained the urgent authorisation on behalf of

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another law enforcement officer, that other law enforcement officer must, not later than 24 hours after commencing to attach, install, use, maintain or retrieve a surveillance device pursuant to the urgent authorisation, apply for a warrant to –

- (a) authorise the attachment, installation, use, maintenance or retrieval of each surveillance device that was attached, installed, used, maintained or retrieved pursuant to the urgent authorisation; and
- (b) if the law enforcement officer will be investigating an offence in respect of which the urgent authorisation was issued – authorise any further attachment, installation, use, maintenance or retrieval of a surveillance device referred to in paragraph (a) or the attachment, installation, use, maintenance or retrieval of another surveillance device specified in the application.

(2) Subject to this section, sections 9, 10 and 21 apply to and in relation to the application.

(3) A Judge or magistrate (as the case may require) may extend the period within which an application referred to in subsection (1) may be made if the Judge or magistrate is satisfied that there were no means available to the law enforcement officer by which he or she would have been able to make the application within the 24 hour period referred to in that subsection.

(4) When making the application, the law enforcement officer must provide the Judge or magistrate with a written report in respect of the urgent authorisation –

- (a) giving details of the –
 - (i) attachment, installation, use, maintenance or retrieval of each surveillance device pursuant to the urgent authorisation; and
 - (ii) the act of violence or damage or the offence in respect of which the urgent authorisation was issued;
- (b) specifying the name, if known, of any person on whose behalf information that was recorded or monitored was put on to or retrieved from a computer, whose private conversation or private activity was recorded, monitored, listened to or observed or whose geographical location was determined or monitored by use of each surveillance device;
- (c) containing particulars of any premises, vehicle or object that was monitored or observed by use of each surveillance device;

- (d) containing particulars of any premises, vehicle or object in, on, at or to which each surveillance device was attached, installed, used, maintained or from which or where it was retrieved;
- (e) containing particulars of the intelligence or evidentiary value of or use made or to be made of any evidence or information obtained by the use of each surveillance device or likely to be obtained by the continued use of a surveillance device or the use of another surveillance device; and
- (f) containing particulars of any previous use of a surveillance device in connection with the matter in respect of which the urgent authorisation was issued.

30. Determination of application made under section 29

(1) After considering the application and report, the Judge or magistrate must determine whether there were sufficient grounds to issue the urgent authorisation and make an order accordingly.

(2) If the Judge or magistrate makes an order that there were sufficient grounds to issue an urgent authorisation, he or she must issue a warrant authorising –

- (a) the attachment, installation, use, maintenance or retrieval of each surveillance device that occurred pursuant to the urgent authorisation; and
- (b) if the law enforcement officer made an application for the further attachment, installation, use, maintenance or retrieval of a surveillance device the subject of the urgent authorisation or the attachment, installation, use, maintenance or retrieval of another surveillance device – the further attachment, installation, use, maintenance or retrieval of the surveillance device or the attachment, installation, use, maintenance or retrieval of another surveillance device as the Judge or magistrate considers appropriate and specifies in the warrant.

(3) If the Judge or magistrate makes an order that there were insufficient or no grounds for the issue of the urgent authorisation, he or she must make a further order that any attachment, installation, use or maintenance of a surveillance device pursuant to the urgent authorisation is to cease immediately.

(4) If the Judge or magistrate makes an order under subsection (3) and it is necessary to retrieve the surveillance device to which the order relates, he or she must issue a warrant authorising its retrieval.

(5) Division 2 applies to and in relation to the issue of a warrant under subsection (2) or (4) and the warrant issued.

31. Effect of order made under section 30(3)

If the Judge or magistrate makes an order under section 30(3) –

- (a) the law enforcement officer must comply with the order;
- (b) any information recorded, listened to, observed or monitored by a surveillance device to which it relates is to be destroyed within 7 days after the order is made; and
- (c) any evidence obtained by or as a consequence of the use of the surveillance device is not admissible in any legal proceedings.

32. Authorisation by warrant of action taken pursuant to urgent authorisation required

If any information is recorded, listened to, observed or monitored by a surveillance device attached, installed, used, maintained or retrieved pursuant to an urgent authorisation or any evidence is obtained by or as a consequence of the use of such a surveillance device, the information or evidence is not admissible in any legal proceedings unless the attachment, use, maintenance or retrieval of the surveillance device is authorised by a warrant issued under section 30(2).

Division 4 – Miscellaneous

33. Authorisation of warrant or urgent authorisation extends to persons other than law enforcement officer and to connection devices

(1) The authorisation of a warrant or urgent authorisation to attach, install, use, maintain or retrieve a surveillance device extends to authorising not only the law enforcement officer named for that purpose in the warrant but also the following persons:

- (a) a person providing necessary assistance or technical expertise to the law enforcement officer in attaching, installing, using, maintaining or retrieving of the surveillance device;
- (b) any other law enforcement officer who is properly involved in the investigation of the offence in respect of which the warrant is issued.

(2) The authorisation of a warrant or urgent authorisation extends to authorising the necessary and reasonable use of a connection device for the purpose of attaching, installing, using, maintaining or retrieving a surveillance device specified in the warrant or urgent authorisation.

34. Withdrawal of warrant or urgent authorisation

(1) A law enforcement officer may, before a warrant or urgent authorisation is executed –

- (a) in the case of a warrant issued by a magistrate – apply to a magistrate;
- (b) in the case of a warrant issued by a Judge – apply to a Judge; or
- (c) in the case of an urgent authorisation – apply to an authorised person,

to withdraw the warrant or urgent authorisation.

(2) On receiving an application under subsection (1), the Judge, magistrate or authorised person must withdraw the warrant or urgent authorisation.

PART 3 – DEALINGS WITH INFORMATION ETC. OBTAINED BY SURVEILLANCE DEVICES

35. Interpretation

A reference in this Part to a record or report obtained by use of a surveillance device does not include a reference to a record or report of information or evidence referred to in section 18(3) or 31.

36. Dealings with records obtained by surveillance devices

The Commissioner of the Police, the highest ranking officer of a police force of a State or another Territory of the Commonwealth and the chief executive officer or highest ranking officer of each prescribed authority –

- (a) must respectively keep every record or report obtained by use of a surveillance device under a warrant or urgent authorisation issued to a member of the Police Force of the Northern Territory, a member or officer of the police force of the State or other Territory of the Commonwealth or an employee, officer or member of the prescribed authority (as the case requires) in a secure place that is not accessible to persons who are not entitled to deal with the record or report; and
- (b) may, if satisfied that a record or report referred to in paragraph (a) is not likely to be required in connection with –
 - (i) the investigation of an offence in respect of which the warrant or urgent authorisation was issued or the investigation of another offence;

- (ii) the making of a decision whether to prosecute an offence; or
 - (iii) the prosecution of an offence,
- destroy the record or report.

37. Use of information obtained by surveillance devices

A record or report of information determined, recorded, monitored, listened to or observed by a surveillance device is not to be used unless for the purposes of—

- (a) the investigation or prosecution of an offence;
- (b) a proceeding for the confiscation or forfeiture of property or for the imposition of a pecuniary penalty;
- (c) a proceeding for the taking of evidence on commission for use in Australia or New Zealand;
- (d) a proceeding for the extradition of a person to or from Australia or a State or Territory of the Commonwealth;
- (e) a police disciplinary proceeding; or
- (f) any other investigation or proceeding (other than a prosecution for an offence) to the extent that it relates to alleged misbehaviour or alleged improper conduct of a member of a police force or an officer of the Commonwealth or a State or Territory of the Commonwealth.

PART 4 – OFFENCES, EVIDENTIARY MATTERS, ETC.

Division 1 – Offences

38. Possession of surveillance device for unlawful use

A person must not possess a surveillance device which he or she knows is intended to be used without authorisation under this Act or a law of the Commonwealth.

Penalty: For a first offence –

- (a) if the offender is a natural person – 100 penalty units or imprisonment for 2 years; or
- (b) if the offender is a body corporate – 1000 penalty units.

For a second or subsequent offence –

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- (a) if the offender is a natural person – 100 penalty units or imprisonment for 2 years; or
- (b) if the offender is a body corporate – 2000 penalty units.

39. Unlawful removal or retrieval of surveillance device

A person must not, unless authorised to do so under this Act or a law of the Commonwealth, remove or otherwise interfere with or retrieve a surveillance device that has been attached or installed in, on, at or to premises, a vehicle or an object pursuant to and in accordance with a warrant or urgent authorisation.

Penalty: For a first offence –

- (a) if the offender is a natural person – 100 penalty units or imprisonment for 2 years; or
- (b) if the offender is a body corporate – 1000 penalty units.

For a second or subsequent offence –

- (a) if the offender is a natural person – 100 penalty units or imprisonment for 2 years; or
- (b) if the offender is a body corporate – 2000 penalty units.

40. Communication or publication of information obtained by use etc. of surveillance device prohibited

- (1) A person must not knowingly –
 - (a) communicate to another person; or
 - (b) publish,

information obtained by the use of a surveillance device, or a record or report of such information, that has come to the person's knowledge as a direct or indirect result of the use of the surveillance device or another surveillance device.

(2) Subsection (1) does not apply if the information is obtained by the lawful use of a surveillance device and one or more of the following apply:

- (a) in the case of a data surveillance device – the person does so with the express or implied consent of the person on whose behalf the information was put on to or retrieved from a computer;
- (b) in the case of a listening device or an optical surveillance device –

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- (i) the communication or publication is made to a party to the private conversation or private activity; or
 - (ii) the person does so with the express or implied consent of each party to the conversation or private activity;
- (c) in the case of a tracking device – the person does so with the express or implied consent of the person whose location was being determined or monitored or who is in possession or has control of the vehicle or object that was tracked;
- (d) the person does so for a purpose specified in section 37;
- (e) the communication or publication is made –
- (i) in the public interest;
 - (ii) in the course of the person's duty;
 - (iii) for the protection of the person's lawful interests; or
 - (iv) in the course of legal proceedings,
- and is not more than is reasonably necessary in the circumstances.

Penalty: For a first offence –

- (a) if the offender is a natural person – 100 penalty units or imprisonment for 2 years; or
- (b) if the offender is a body corporate – 1000 penalty units.

For a second or subsequent offence –

- (a) if the offender is a natural person – 100 penalty units or imprisonment for 2 years; or
- (b) if the offender is a body corporate – 2000 penalty units.

41. Report on finding surveillance device

(1) A person who discovers a surveillance device attached or installed in, on, at or to premises, a vehicle or an object must immediately report the discovery and the location of the device to the Commissioner of Police.

Penalty: 100 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply to an authorised person or a law enforcement officer.

Division 2 – Evidentiary

42. Presumption as to evidence obtained under warrant or urgent authorisation

If evidence that is alleged to have been obtained as a direct or indirect result of the use of a surveillance device pursuant to a warrant or urgent authorisation is given by a law enforcement officer in a civil proceeding or, in the case of evidence other than evidence of a private conversation or a private activity, in a criminal proceeding, it is presumed in that proceeding that, unless the contrary is proved –

- (a) the application on which the warrant or urgent authorisation was issued was made in good faith; and
- (b) the evidence was properly obtained pursuant to and in accordance with the warrant or urgent authorisation.

43. Admissibility in criminal proceedings of information inadvertently obtained

(1) If a private conversation or a private activity has inadvertently or unexpectedly come to the knowledge of a person as a direct or indirect result of the use of a surveillance device pursuant to a warrant or an urgent authorisation, the person may give in any criminal proceeding –

- (a) evidence of the conversation or activity; or
- (b) evidence obtained as a consequence of the conversation or activity coming to the knowledge of the person.

(2) Subsection (1) applies whether or not the warrant or urgent authorisation was issued for a purpose that allowed evidence referred to in that subsection to be obtained.

(3) Subsection (1) does not render any evidence admissible if, in the opinion of the court, the application on which the warrant or urgent authorisation was issued was not made in good faith.

44. Evidentiary matters in relation to warrants applied for by telephone etc.

(1) In this section, "warrant" means a warrant issued on an application made by telephone, radio, facsimile transmission or another means of communication.

(2) If in any proceeding it is necessary for a court to be satisfied that the attachment, installation, use, maintenance or retrieval of a surveillance device was authorised by a warrant and the warrant signed by a Judge or magistrate in respect of that surveillance device under section 16(1) is not produced in evidence, the court must assume that, unless the contrary is proved, the attachment, installation, use, maintenance or retrieval of the surveillance device was not authorised by the warrant.

45. Offences by body corporates

(1) If a body corporate commits or allegedly commits an offence against this Act, each person who is a director of the body corporate or who is concerned in the management of the body corporate is to be taken to have committed or allegedly committed the offence to the same extent as the body corporate unless the person satisfies the court that –

- (a) the commission or alleged commission of the offence occurred without the person's knowledge;
- (b) the person was not in a position to influence the conduct of the body corporate in relation to the offence; or
- (c) the person used all due diligence to prevent the commission or alleged commission of the offence by the body corporate.

(2) A proceeding may be brought against a person and an order or finding of guilt may be made in respect of the person by virtue of subsection (1), whether or not the body corporate has been or is being proceeded against in respect of the offence.

Division 3 – Seizure, detention and forfeiture of devices

46. Power to search and seize

(1) A member of the Police Force of the Northern Territory who believes on reasonable grounds that a person possesses a surveillance device that is intended to be used without authorisation under this Act or a law of the Commonwealth is authorised by this provision, with the force that is necessary and reasonable –

- (a) to stop and search the person;
- (b) to stop, detain and search a vehicle that the member reasonably suspects may contain the surveillance device or evidence concerning the possession or intended use of the surveillance device; or
- (c) at any time, to enter and search premises where the member reasonably believes the surveillance device is being kept or may

contain evidence of the possession or intended use of the surveillance device.

(2) If a member of the Police Force of the Northern Territory who is exercising a power under subsection (1) believes on reasonable grounds that a surveillance device has been, is being, is about to be or is likely to be used in connection with the commission of an offence against this Act, the member may seize and remove the surveillance device and any connection device ancillary to the attachment, installation, use, maintenance or retrieval of the surveillance device.

47. Detention of devices seized

(1) A member of the Police Force of the Northern Territory who seizes a surveillance device or a connection device under section 46(2) must, as soon as reasonably possible after doing so, deliver it to the Commissioner of Police.

(2) The Commissioner of Police may retain in his or her possession or under his or her control a surveillance device or a connection device referred to in subsection (1) until institution of a proceeding for an offence against this Act in relation to the device and, if necessary, during the proceeding.

(3) A person claiming to have an interest (whether as owner or otherwise) in the surveillance device or connection device may apply to a magistrate for the return of the device to him or her or for the device to be otherwise dealt with.

(4) The magistrate to whom an application is made under subsection (3) may make an order –

- (a) for the release of or other dealing with the device subject to the conditions relating to its production as evidence at a proceeding relating to an offence against this Act; or
- (b) for the detention of the device,

as he or she considers just.

48. Orders on finding of guilt

(1) If a person is found guilty of an offence against this Act, the court may make either or both of the following orders:

- (a) subject to subsection (3) – that any surveillance device or connection device used in connection with the commission of the offence is forfeited to the Territory;

- (b) that any report or record of information that was obtained by the use of a surveillance device to which the offence relates is forfeited to the Territory.

(2) A forfeiture under subsection (1) is in addition to any penalty imposed on the person found guilty of the offence and the existence or possibility of a forfeiture order and its nature must not be taken into account by a court when imposing the penalty on the person.

(3) Before making an order under subsection (1)(a), the court may require that notice be given to, and may hear, the persons it considers appropriate.

(4) If an order for the forfeiture of a surveillance device or a connection device is made under this section, a law enforcement officer is, for the purpose of giving effect to the order, authorised to seize the device forfeited and to enter premises, with the force that is necessary and reasonable, and remain on those premises to seize the device.

PART 5 – MISCELLANEOUS

Division 1 – Reporting

49. Annual reports

(1) The Commissioner of Police must, at the end of each financial year, report to the Minister in respect of that financial year on –

- (a) the number of applications for warrants and urgent authorisations made during that year;
- (b) the number of warrants that were applied for by telephone, radio and other communication devices, and a description of the other communication devices used to make the applications;
- (c) the number and nature of warrants and urgent authorisations issued and the respective periods for which they were issued;
- (d) the number of applications for warrants or urgent authorisations made during that year that were refused and the reasons why they were refused;
- (e) the number of applications for the extension of the period for which a warrant is in force, the number of extensions granted and the reasons why the extensions were granted and the number of extensions refused and the reasons why they were refused;
- (f) the number of arrests made during that year on the basis or at least partly on the basis of information obtained by the use of a surveillance device;

- (g) the number of prosecutions that were commenced during that year in which information obtained by the use of a surveillance device was given in evidence;
- (h) the number of persons found guilty of an offence the subject of a prosecution referred to in paragraph (g); and
- (j) any other matter relating to the use of surveillance devices or the administration of this Act as directed by the Minister.

(2) The Commissioner of Police must forward the report to the Minister within 3 months after the end of the financial year.

(3) The Minister must lay the report before the Legislative Assembly within 3 sitting days of the Legislative Assembly after the report is received by the Minister.

50. Other reports

(1) The Minister may at any time request the Commissioner of Police to report to him or her on a matter in relation to the operation of this Act.

(2) The Commissioner of Police must comply with the request of the Minister.

51. Keeping of records

The Commissioner of Police must keep the records that are necessary to comply with the reporting requirements under this Division.

Division 2 – Other

52. Protection from prosecution

No civil or criminal proceeding lies against a person for or in relation to an act or thing done or omitted to be done in good faith in the exercise or purported exercise of a power under and in accordance with this Act, the Regulations, a warrant or an urgent authorisation.

53. Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters –

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the Regulations may –

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- (a) prescribe an authority, body or organisation to be a prescribed authority referred to in the definitions of "authorised person" and "law enforcement officer" in section 3(1);
- (b) provide for the control and management of information obtained through the use of surveillance devices;
- (c) provide for the storage and destruction of records of information and other evidence obtained through the use of surveillance devices;
- (d) prescribe penalties not exceeding 100 penalty units for offences against the Regulations; and
- (e) designate an offence against a regulation as a regulatory offence.

54. Acquisition to be on just terms

(1) If the application of a provision of this Act or an instrument of a legislative or administrative character made under this Act would, but for this section, result in an acquisition of property otherwise than on just terms, the person from whom the property is acquired is entitled to receive just compensation for the acquisition.

(2) A court may determine the amount of the compensation or make the order that, in its opinion, is necessary to ensure that the acquisition is on just terms.

55. Repeal

The *Listening Devices Act 1990* (Act No. 25 of 1990) and the *Listening Devices Amendment Act 1991* (Act No. 66 of 1991) are repealed.

56. Savings and transitional

(1) A warrant in force under the *Listening Devices Act* immediately before the commencement of this Act –

- (a) continues in force until the time when it would have expired under that Act; and
- (b) is subject to and may be dealt with under this Act,

as if it were a warrant issued under this Act and this Act is, with the necessary changes, to be construed accordingly.

(2) On the commencement of this Act, the use of a listening device in urgent circumstances by an authorised person under and in accordance with section 11 of the *Listening Devices Act* in force before that commencement –

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- (a) may continue as if it were the attachment, installation, use, maintenance or retrieval of a listening device (as the case requires) authorised by an urgent authorisation issued under this Act; and
- (b) is subject to and may be dealt with under this Act as if it were the attachment, installation, use, maintenance or retrieval of a listening device authorised by an urgent authorisation issued under this Act,

and this Act is, with the necessary changes, to be construed accordingly.

(3) If an application for a warrant is made under the *Listening Devices Act* in force before the commencement of this Act and, on that commencement, the warrant has not been issued or refused, the application is to be taken to be an application for a warrant made under this Act and is subject to and is to be dealt with under this Act and the warrant is to be issued or refused under this Act accordingly.