

NORTHERN TERRITORY OF AUSTRALIA

LISTENING DEVICES ACT 1990

No. 25 of 1990

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NORTHERN TERRITORY OF AUSTRALIA

No. 25 of 1990

AN ACT

to regulate the use of listening devices, and
for related purposes

[Assented to 7 June 1990]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Listening Devices Act 1990*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. INTERPRETATION

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

"listening device" means any instrument, apparatus, equipment or device capable of being used to record or listen to a private conversation;

"offence" means -

- (a) a crime;
- (b) an indictable offence against a law of the Commonwealth, a State or another Territory of the Commonwealth; or

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- (c) an offence against a law of the Territory, the Commonwealth, a State or another Territory of the Commonwealth prescribed for the purpose of this paragraph;

"party", in relation to a private conversation, means a person -

- (a) by or to whom words are spoken in the course of the conversation; or
- (b) who, with the consent, express or implied, of any of the persons by or to whom words are spoken in the course of the conversation, records or listens to those words;

"place" includes a vessel, vehicle and aircraft;

"private conversation" means any conversation carried on in such circumstances as may reasonably indicate that the parties to the conversation desire it to be confined to those parties, but does not include a conversation made in any circumstances in which the parties to the conversation ought reasonably to expect that the conversation may be overheard.

(2) A reference in this Act to a listening device does not include a reference to a hearing aid or similar device used by a person with impaired hearing to overcome that impairment and to permit that person to hear only sounds ordinarily audible to the human ear.

PART II - WARRANTS

4. WARRANTS TO USE LISTENING DEVICE

(1) On an application on oath by a member of the Police Force that there are reasonable grounds for believing that -

- (a) an offence has been, is being or is about to be, or is likely to be, committed; and
- (b) 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, the use of a listening device is necessary,

the Supreme Court may issue a warrant authorizing the use of a listening device.

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(2) The Supreme Court shall not issue a warrant under this section unless -

- (a) the application sets out, or has attached to it, a written statement of the grounds on which the issue of the warrant is sought;
- (b) the applicant, or some other person, has given to the Court, either orally or by affidavit, such further information, if any, as the Court requires concerning the grounds on which the issue of the warrant is being sought; and
- (c) the Court is satisfied that there are reasonable grounds for issuing the warrant.

(3) In considering an application under subsection (1) the Supreme Court shall have regard to -

- (a) the gravity of the offence being investigated;
- (b) the extent to which the privacy of any person is likely to be interfered with by use of a listening device under the warrant;
- (c) the extent to which information that is likely to be obtained by use of a listening device under the warrant is likely to assist the investigation of the offence;
- (d) the extent to which information is likely to be obtained by methods of investigation not involving the use of a listening device;
- (e) the evidentiary value of any information sought to be obtained; and
- (f) any other warrants applied for or issued under this Act in respect of the same offence.

(4) Where the Supreme Court issues a warrant under this section it shall record in writing the grounds on which it relied to justify the issue of the warrant.

(5) A warrant issued under this section shall be subject to such conditions as the Supreme Court considers necessary in the public interest and specifies in the warrant.

(6) The Supreme Court, when issuing a warrant under this section, may authorize the use of a listening device in, on or at a specified place, and where it does so, it shall, by the warrant, authorize -

- (a) the installation, relocation, repair and retrieval of the listening device; and

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- (b) the entry into or onto the specified place or another specified place adjoining or providing access to the first-mentioned specified place, by force if necessary and with such assistance as is necessary, for the purposes specified in paragraph (a).

(7) A warrant issued under this section shall specify -

- (a) the offence in respect of which the warrant is issued;
- (b) where practicable, the name of any person whose private conversation may be recorded and listened to by the use of a listening device pursuant to the warrant;
- (c) the period (being not longer than 21 days) during which the warrant will remain in force;
- (d) the name of the member of the Police Force to whom the warrant is issued;
- (e) where practicable, the place in, on or at which a listening device is to be installed, or the place at which a listening device is to be used, pursuant to the warrant; and
- (f) the conditions and restrictions subject to which a place may be entered, or a listening device may be used, pursuant to the warrant.

(8) A warrant issued under this section authorizes -

- (a) the use of a listening device by -

- (i) the member of the Police Force named in the warrant; and
 - (ii) any other person authorized under subsection (9); and
- (b) the use of more than one listening device.

(9) A member of the Police Force of or above the rank of Superintendent may, where a warrant has been issued under this section, authorize in writing other persons (including other members of the Police Force) to use a listening device under the warrant.

(10) A member of the Police Force may, before a warrant issued under this section is executed, apply to the Supreme Court to withdraw the warrant, and the Court on receiving the application may withdraw the warrant.

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5. EXTENSION OF WARRANTS

(1) A member of the Police Force may apply, on or before the date on which a warrant issued under section 4 or extended under this section is to expire, for an extension of the period during which the warrant is to remain in force.

(2) Section 4, with the necessary changes, applies to and in relation to an application under subsection (1) and to the consideration of the application by the Supreme Court as if the application were for the issue of a warrant under that section.

(3) Where the Supreme Court under this section extends the period during which a warrant issued under section 4 shall remain in force it shall endorse on the warrant the date on which the warrant will expire.

(4) The period during which a warrant issued under section 4 remains in force shall not be extended under this section for longer than 21 days, but nothing in this subsection shall be construed as preventing another application under subsection (1) being made for a further extension of the warrant.

6. TELEPHONE WARRANTS

(1) In this section, "telephone" includes a radio or other communication device.

(2) Where it is impracticable for a member of the Police Force to make an application for a warrant under section 4 in person, the member may, subject to this section, make an application for a warrant to a Judge by telephone.

(3) Before making an application under subsection (2), the member of the Police Force shall prepare an application on oath of a kind referred to in section 4 and, where required by the Judge to whom the application is made, an affidavit setting out the grounds on which the issue of the warrant is sought, but may, if it is necessary to do so, make the application before the application and the affidavit, if required, have been sworn.

(4) Where a Judge to whom an application under subsection (2) is made is satisfied that there are reasonable grounds for issuing a warrant, the Judge may issue such a warrant as the Supreme Court could issue under section 4 if the application had been made to the Court in accordance with that section.

(5) Where a Judge issues a warrant under subsection (4) -

(a) the Judge shall complete and sign the warrant;

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- (b) the Judge shall inform the applicant of the terms of the warrant signed by the Judge, and record on the warrant the Judge's reasons for issuing it; and
 - (c) the applicant shall complete, in duplicate, a form of warrant in the terms furnished by the Judge and write on it the name of the Judge who issued the warrant and the date on which and time at which it was issued.
- (6) Where a Judge issues a warrant under subsection (4) the member of the Police Force who made the application under subsection (2) shall, not later than the day next following the date of the expiry of the warrant, forward to the Judge who issued the warrant the form of warrant prepared by the member and the information and affidavit, if any, duly sworn in connection with the issue of the warrant.
- (7) On receipt of the documents referred to in subsection (6) the Judge shall compare the copy of the form of warrant forwarded under that subsection with the warrant signed by the Judge and, if satisfied that they are in substance identical, shall note this fact on the warrant signed by the Judge and forward the warrant together with the copy of the form of warrant and the information and affidavit, if any, to the Commissioner of Police.
- (8) A form of warrant completed in accordance with subsection (5) is, if it is in accordance with the terms of the warrant signed by the Judge, authority for the use it authorizes.
- (9) Where it is necessary for a court in any proceeding to be satisfied that the use of a listening device was authorized by a warrant issued in accordance with this section, and the warrant signed by the Judge in accordance with this section is not produced in evidence, the court shall assume, unless the contrary is proved, that the use was not authorized by such warrant.
- (10) Subject to subsection (11), where an application under this section has been refused neither the applicant nor any other member of the Police Force who has any cause to suspect that an application has been made by another member under subsection (2) in respect of the same matter shall make a further application to a Judge pursuant to subsection (2) in respect of that matter.
- (11) Where an application under subsection (2) has been made and refused a further application may be made where a member of the Police Force satisfies a Judge that the member has, since the time of the original application, received further information or evidence which is material to an application under subsection (2).

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7. HEARING OF APPLICATIONS

(1) An application under section 4 shall not be heard in open court.

(2) A notice or report relating to an application and a record of any such application or order given or made under this Part shall not be available for search except by direction of the Chief Justice.

PART III - MISCELLANEOUS

8. OFFENCES IN RELATION TO LISTENING DEVICES

(1) Subject to subsection (2), a person shall not use, or cause to be used, a listening device to record or listen to a private conversation to which the person is not a party.

Penalty: Where the offender is a natural person -
\$5,000 or imprisonment for 2 years.

Where the offender is a body corporate -
\$100,000.

(2) Subsection (1) does not apply to -

- (a) the use of a listening device pursuant to a warrant issued under this Act;
- (b) the use of a listening device pursuant to a law of the Commonwealth;
- (c) the use of a listening device in accordance with section 11; or
- (d) the unintentional hearing of a private conversation by means of a listening device.

9. COMMUNICATION OR PUBLICATION OF PRIVATE CONVERSATIONS PROHIBITED

(1) In this section, "offence" means any indictable or non indictable offence against a law of the Territory, the Commonwealth, a State or another Territory of the Commonwealth.

(2) A person shall not knowingly communicate to another person or publish a private conversation, or a report of a private conversation, that has come to the person's knowledge as a result, direct or indirect, of the use of a listening device in contravention of section 8.

(3) A person shall not use a report of a private conversation recorded or listened to in accordance with this Act other than for the following purposes:

- (a) the investigation or prosecution of an offence;

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- (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;
- (f) any other investigation or proceeding (not being a proceeding by way of a prosecution for an offence) in so far as it relates to alleged misbehaviour, or alleged improper conduct, of a member of a police force or an officer of the Territory, the Commonwealth, a State or another Territory of the Commonwealth.

(4) A person shall not knowingly communicate to another person or publish a private conversation, or a report of a private conversation, recorded or listened to by use of a listening device, except -

- (a) with the consent, express or implied, of the parties to the conversation;
- (b) for a purpose specified in subsection (3); or
- (c) where the communication or publication is no more than is reasonably necessary -
 - (i) in the public interest;
 - (ii) in the course of that person's duty; or
 - (iii) for the protection of that person's lawful interests.

Penalty: Where the offender is a natural person -
\$5,000 or imprisonment for 2 years.

Where the offender is a body corporate -
\$100,000.

10. OFFENCES BY CORPORATIONS

(1) Where a body corporate contravenes, whether by act or omission, a provision of this Act, each person who is a director, or who is concerned in the management, of the body corporate shall be deemed to have contravened the provision unless that person satisfies the court that -

- (a) the body corporate contravened the provision without the knowledge of that person;

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- (b) the person was not in a position to influence the conduct of the body corporate in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention of the provision by the body corporate.

(2) A person may be proceeded against and convicted under this Act pursuant to subsection (1) whether or not the body corporate has been proceeded against or been convicted under this Act.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by this Act on any body corporate by which an offence against this Act is actually committed.

11. USE OF LISTENING DEVICES IN URGENT CIRCUMSTANCES

(1) In this section, "serious drug offence" means an offence involving the importation, use, possession or supply of a dangerous drug within the meaning of the *Misuse of Drugs Act*.

(2) Notwithstanding anything to the contrary in this Act, but subject to this section, an authorized member of the Police Force may use a listening device to obtain evidence or information in connection with -

- (a) any threat of violence which, if carried out, may, or is likely to, cause the death of or grievous harm to a person; or
- (b) a serious drug offence,

where it is necessary to use the device immediately to obtain that evidence or information.

(3) Where a listening device is used in pursuance of subsection (2), the Commissioner of Police shall, not later than 24 hours after its initial use, make or cause to be made an application under section 4 for the issue of a warrant.

(4) Where an application under section 4, made in pursuance of subsection (3), is refused -

- (a) the member of the Police Force acting pursuant to subsection (2) shall forthwith, and in any event, not later than 24 hours after the initial use, cease to use the listening device;

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- (b) any information recorded pursuant to the use of a listening device under subsection (2) shall be destroyed not later than 7 days after the initial use of the listening device; and
- (c) any evidence recorded pursuant to the use of a listening device under subsection (2) shall not be admissible in any legal proceedings.

(5) A member of the Police Force of or above the rank of Superintendent may authorize a member of the Police Force to use a listening device under subsection (2).

12. DESTRUCTION OF RECORDS OF PRIVATE CONVERSATIONS

(1) If the Commissioner of Police is satisfied that a recording made in pursuance of the use of a listening device under this Act is not likely to be required in connection with -

- (a) the investigation of an offence in respect of which the warrant was issued;
- (b) the making of a decision whether to prosecute for an offence; or
- (c) the prosecution of an offence,

the Commissioner shall report that fact to the Minister.

(2) The Minister, on receiving a report under subsection (1), may direct the Commissioner of Police to destroy the recording referred to in the report.

13. REPORTS TO MINISTER ON WARRANTS

(1) The Commissioner of Police shall furnish to the Minister, in respect of each warrant issued under this Act, a report in writing of the use made of information obtained by use of a listening device under the warrant.

(2) A report under subsection (1) shall be furnished to the Minister not later than 28 days after the warrant expires.

14. ANNUAL REPORTS

(1) The Commissioner of Police shall, as soon as practicable but in any event not later than 2 months after 30 June of each year, furnish to the Minister a report containing, in respect of the year ending on that 30 June, information relating to -

- (a) applications for warrants, telephone warrants and extensions of warrants, including the number of such applications and the orders made in respect of such applications;

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- (b) the respective periods specified in original warrants issued on applications made during that year;
- (c) the respective periods specified in extensions of warrants issued on applications made during that year;
- (d) how many arrests were made during that year on the basis, or partly on the basis, of information that was obtained by use of a listening device pursuant to a warrant;
- (e) how many prosecutions were instituted during that year in which information that was obtained by use of a listening device pursuant to a warrant was given in evidence; and
- (f) how many persons were found guilty of offences in consequence of those prosecutions.

(2) The Minister shall table in the Legislative Assembly a report furnished under subsection (1) not later than 6 sitting days of the Assembly after the furnishing of the report.

(3) In addition to any other report required to be furnished under this Act, the Commissioner of Police shall report on any other matter specified by the Minister by a time specified by the Minister.

(4) The Commissioner of Police shall keep such records as are necessary to enable compliance with this Act in respect of the furnishing of reports under this Act.

15. PROTECTION FROM PROSECUTION

No proceeding, civil or criminal, shall lie against a person for or in respect of -

- (a) any act or thing done under and in accordance with this Act or a warrant issued under this Act; or
- (b) anything done by a member of the Police Force in good faith and in the belief that the member's actions were in accordance with section 11.

16. APPLICATION OF ACT

This Act does not apply to or in relation to the use of a listening device -

- (a) pursuant to a warrant granted under the *Customs Act 1901* of the Commonwealth;

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- (b) in accordance with the *Telecommunications (Interception) Act 1979* of the Commonwealth; or
- (c) in accordance with any other law of the Commonwealth.

17. REGULATIONS

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.
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