

## LISTENING DEVICES BILL, 1984

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### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to regulate the use of certain devices capable of being used for listening to private conversations.

The Bill contains the following provisions:—

#### PART I.—PRELIMINARY.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is an interpretation provision. In particular, “private conversation” is defined as a conversation which any of the parties to the conversation desires to be confidential.

Clause 4 provides that the Crown is bound by the proposed Act.

#### PART II.—OFFENCES RELATING TO LISTENING DEVICES.

Clause 5 prohibits, except in certain circumstances, the use of a listening device to record or listen to a private conversation (including its use by a party to the conversation).

Clause 6 prohibits, except in certain circumstances, the communication or publication of private conversations which have come to a person’s knowledge as a result of the unlawful use of a listening device.

Clause 7 prohibits, except in certain circumstances, the communication or publication of a record of a private conversation made by a party to the conversation by the use of a listening device.

Clause 8 prohibits, except in certain circumstances, a person from being in possession of a record of a private conversation knowing that it has been obtained by the unlawful use of a listening device.

Clause 9 prohibits the manufacture, supply or possession of a listening device for an unlawful use.

Clause 10 provides that a person who contravenes a provision of Part II is guilty of an offence against that Part.

Clause 11 specifies the penalty for an offence against Part II.

## PART III.—ADMISSIBILITY OF EVIDENCE.

Clause 12 is an interpretation provision.

Clause 13 renders evidence inadmissible in civil or criminal proceedings if it was obtained by the unlawful use of a listening device, whether directly or indirectly. The clause, however, enables any such evidence to be admissible if, among other things, the parties consent or, in the case of certain serious offences, the court in special circumstances so determines.

Clause 14 renders admissible in criminal proceedings evidence obtained inadvertently or unexpectedly by the use pursuant to a warrant of a listening device for the purpose of some other offence.

## PART IV.—WARRANTS.

Clause 15 is an interpretation provision. For the purpose of Part IV, "prescribed offence" is defined to mean an indictable offence or a summary offence of a class or description prescribed by regulation.

Clause 16 authorises the Supreme Court to grant a warrant for the use of a listening device in connection with a prescribed offence.

Clause 17 provides that the Attorney General is to be notified of the particulars of an application for a warrant under clause 16 and is to be given an opportunity to be heard in relation to the application.

Clause 18 provides for the granting of a warrant by telephone in urgent circumstances.

Clause 19 requires a person to whom a warrant has been granted to report on its use to the Supreme Court and to the Attorney General and enables the Supreme Court to direct that any records obtained be placed in the custody of the Supreme Court.

Clause 20 gives the Supreme Court a discretion, in certain circumstances, to direct that the person who was the subject of surveillance by a listening device be notified of that fact.

Clause 21 makes provision with respect to proceedings in the Supreme Court under Part IV.

## PART V.—MISCELLANEOUS.

Clause 22 provides for the destruction of certain irrelevant records obtained by the use of a listening device.

Clause 23 requires the Attorney General to report to Parliament on the granting of warrants for the use of listening devices and certain other matters.

Clause 24 enables proceedings for offences to be disposed of summarily before a court of petty sessions or the Supreme Court.

Clause 25 enables offences to be prosecuted on indictment.

Clause 26 authorises certain summary proceedings to be treated as committal proceedings.

Clause 27 extends the time for instituting summary proceedings for certain offences.

Clause 28 provides that the Attorney General's consent is required for proceedings for an offence to be instituted.

Clause 29 deals with the liability of directors, or other persons concerned in the management, of a corporation which is guilty of an offence.

Clause 30 enables a court to order the forfeiture or destruction of listening devices or records to which an offence relates.

Clause 31 authorises the making of regulations.

Clause 32 repeals the Listening Devices Act, 1969.

Clause 33 and Schedule 1 enact savings and transitional provisions and, in particular, make provision with respect to the admissibility of evidence obtained before the commencement of the proposed Act and offences relating to the use or possession of records of private conversations that were unlawfully made before that commencement.

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NEW SOUTH WALES.

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**TABLE OF PROVISIONS.**

**PART I.—PRELIMINARY.**

1. Short title.
2. Commencement.
3. Interpretation.
4. Act to bind the Crown.

**PART II.—OFFENCES RELATING TO LISTENING DEVICES.**

5. Prohibition on use of listening devices.
6. Prohibition on communication or publication of private conversations unlawfully listened to.
7. Prohibition on communication or publication of records of private conversations by parties thereto.
8. Possession of record of private conversation.
9. Manufacture, supply, etc., of listening device for unlawful use.
10. Offence against this Part.
11. Penalty for offence against this Part.

**PART III.—ADMISSIBILITY OF EVIDENCE.**

12. Interpretation.
13. Inadmissibility of evidence of private conversations **when unlawfully obtained.**
14. Admissibility of evidence of private conversation **when obtained inadvertently** pursuant to warrant.

**PART IV.—WARRANTS.**

15. Interpretation.
16. Warrants authorising use of listening devices.
17. Particulars of warrants sought under section 16 to be **notified to Attorney General.**
18. Radio/telephone warrants.
19. Report to Court and Attorney General, etc.
20. Requirement to inform subject of surveillance.
21. Proceedings under this Part.

**PART V.—MISCELLANEOUS.**

22. Destruction of irrelevant records made by the use of a **listening device.**
23. Annual report by Attorney General.
24. Offences punishable summarily.
25. Offences punishable on indictment.
26. Certain summary proceedings to become **committal proceedings.**
27. Time for instituting proceedings for certain offences.
28. Consent of Attorney General to prosecutions.
29. Offences by corporations.
30. Orders for forfeiture.
31. Regulations.
32. Repeal of Act No. 70, 1969.
33. Savings and transitional provisions.

**SCHEDULE 1.—SAVINGS AND TRANSITIONAL PROVISIONS.**

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