



ANNO TRICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1989

No. 29 of 1989

An Act to amend the Listening Devices Act, 1972.

[Assented to 4 May 1989]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Listening Devices Act Amendment Act, 1989*.
- (2) The *Listening Devices Act, 1972*, is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Prohibition on use of listening device

3. Section 4 of the principal Act is amended by striking out "Two thousand dollars or imprisonment for six months or both" and substituting "Division 5 fine or division 5 imprisonment or both".

Prohibition on communication or publication

4. Section 5 of the principal Act is amended by striking out "Two thousand dollars or imprisonment for six months or both" and substituting "Division 5 fine or division 5 imprisonment or both".

Substitution of s. 6

5. Section 6 of the principal Act is repealed and the following sections are substituted:

Warrants authorizing use of listening devices

6. (1) Section 4 does not apply in relation to the use of a listening device pursuant to a warrant issued by a judge of the Supreme Court.

(2) An application for a warrant under this Act may be made—

(a) by a member of the police force, for the purposes of the investigation of a matter by the police;

or

(b) by—

(i) a member of the National Crime Authority;

or

(ii) a member of the staff of the Authority who is a member of the Australian Federal Police or of the police force of a State or Territory of the Commonwealth,

for the purposes of the investigation of a matter by the Authority.

(3) Subject to subsection (4), an application for a warrant—

(a) must be in writing;

(b) must set out the grounds on which the application is based;

(c) must specify the period for which it is requested that the warrant be in force and give reasons for that specification;

and

(d) may request that the warrant authorize entry onto specified premises.

(4) If the applicant for a warrant believes it necessary to do so because of urgent circumstances, an application may be made by telephone and, if an application is made by telephone, the application must, in addition to the particulars required by subsection (3), include particulars of those urgent circumstances.

(5) A judge to whom an application for a warrant is made may require further information to be given in relation to the application.

(6) A judge may issue a warrant under this section if satisfied—

(a) in the case of a telephone application, that because of urgent circumstances it was necessary to make the application by telephone;

(b) that the issue of the warrant is justified having regard to—

(i) the extent to which the privacy of any person would be likely to be interfered with by use of a listening device pursuant to the warrant;

(ii) the gravity of the criminal conduct being investigated;

(iii) the extent to which information that would be likely to be obtained by use of a listening device under the warrant would be likely to assist the investigation;

(iv) the extent to which that information would be likely to be obtained by methods of investigation not involving the use of a listening device;

and

(v) the extent to which those methods would be likely to assist the investigation or to prejudice the investigation, through delay or any other reason;

and

(c) in the case of a warrant authorizing entry onto premises, that it would be impracticable or inappropriate to use a listening device pursuant to the warrant without entry onto the premises.

(7) A warrant under this section—

(a) may specify conditions relating to the use of a listening device;

(b) if it authorizes entry—

(i) may restrict entry to within specified hours during a day;

(ii) may provide that entry may be made without permission first being sought or demand first being made and, if it does so, may specify the measures by which entry may be gained;

(c) must specify the period for which it is in force (not being a period greater than 90 days);

(d) may be renewed.

(8) Where the Commissioner of Police or a member of the National Crime Authority is satisfied that the grounds on which a warrant was issued have ceased to exist, the Commissioner or the member (as the case may require) must, if it is still in force, cancel the warrant by instrument in writing.

(9) A warrant may, at any time, be cancelled by instrument in writing—

(a) if issued to a member of the police force, by the Commissioner of Police;

(b) if issued to a member of the National Crime Authority or a member of the staff of the Authority, by a member of the National Crime Authority.

Unlawful communication of information obtained pursuant to warrant

6a. (1) A person to whom a warrant is issued under section 6 must not, except in the course of duty or as required by law, knowingly communicate or publish any information obtained by use of a listening device under the warrant.

Penalty: Division 5 fine or division 5 imprisonment or both.

(2) A person who uses a listening device pursuant to a warrant at the direction of the person to whom the warrant was issued must not, except to the extent necessary to give full effect to the purposes for which the warrant was issued or for the purposes of giving evidence, communicate or publish any information obtained by use of the listening device.

Penalty: Division 5 fine or division 5 imprisonment or both.

Reports on warrants under s. 6

6b. (1) The Commissioner of Police must, in relation to warrants issued to members of the police force, give to the Minister—

(a) as soon as practicable after the issue or cancellation of a warrant, a copy of the warrant or instrument of cancellation;

(b) within three months after a warrant ceases to be in force, a written report of—

(i) the use made of information obtained by use of a listening device pursuant to the warrant;

and

(ii) the communication of that information to persons other than members of the police force;

(c) as soon as practicable (but not later than two months) after each 30 June, the following information relating to the year ending on that 30 June—

(i) in relation to—

(A) applications for warrants;

(B) telephone applications for warrants;

(C) renewal applications for warrants;

and

(D) applications for warrants that included a request that the warrant authorize entry onto premises,

how many such applications were made, how many were withdrawn or refused and how many were successful;

(ii) the average of the respective periods specified in original warrants issued on applications made during that year as the periods for which the warrants were to be in force;

(iii) the average of the respective periods for which those warrants were actually in force;

(iv) the average of the respective periods specified in renewal warrants issued on applications made during that year as the periods for which the renewals were to be in force;

(v) —

(A) how many arrests were made during that year in connection with the performance by the police force of its functions;

and

(B) 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;

(vi) —

(A) 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

(B) how many persons were found guilty of offences in consequence of those prosecutions;

and

(d) a report on any other matter specified by the Minister at a time specified by the Minister.

(2) The Commissioner of Police must keep such records as are necessary to enable compliance with this section.

(3) The Minister must cause a report to be prepared on or before 31 October in each year containing—

(a) the information furnished to the Minister under subsection (1) (c) in relation to the year ending on the previous 30 June;

(b) any similar information relating to warrants issued to members of the National Crime Authority or members of the staff of the Authority furnished to the Minister by the Authority in relation to the year ending on the previous 30 June;

and

- (c) a general description of the uses made during that year of information obtained by use of listening devices pursuant to warrants and of the communication of that information to persons other than members of the police force (in the case of information obtained pursuant to warrants issued to members of the police force) or to persons other than members of the National Crime Authority or members of the staff of the Authority (in the case of information obtained pursuant to warrants issued to members of the National Crime Authority or members of the staff of the Authority).

(4) The Minister must, within 12 sitting days of receiving a report prepared under subsection (3), have copies of the report laid before both Houses of Parliament.

Dealings with records obtained by use of a listening device

6c. The Commissioner of Police and the National Crime Authority—

- (a) must keep any record of information obtained by use of a listening device pursuant to a warrant issued to a member of the police force or to a member of the National Crime Authority or a member of the staff of the Authority (as the case may be) in a secure place, being a place that is not accessible to persons who are not entitled to deal with the record;
- (b) must destroy any such record if satisfied that it is not likely to be required in connection with—
 - (i) the investigation in respect of which the warrant was issued;
 - (ii) the making of a decision whether or not to prosecute for an offence;
 - or
 - (iii) the prosecution of an offence.

Lawful use of a listening device by a party to a private conversation

6. Section 7 of the principal Act is amended—

- (a) by striking out from subsection (1) “(including a member of the police force)” and substituting “(including a person to whom a warrant is issued under section 6)”;
- and
- (b) by striking out from subsection (2) “Two thousand dollars or imprisonment for six months or both” and substituting “Division 5 fine or division 5 imprisonment or both”.

Possession, etc., of declared listening device

7. Section 8 of the principal Act is amended—

- (a) by striking out from subsection (2) “Two thousand dollars or imprisonment for six months or both” and substituting “Division 5 fine or division 5 imprisonment or both”;
- (b) by inserting after paragraph (a) of subsection (3) the following paragraph:
 - (ab) may be expressed to apply to persons of a specified class;
- and
- (c) by striking out subsection (6) and substituting the following subsections:

(6) The Minister may delegate any of his or her powers under this section to a Chief Executive Officer as defined in the *Government Management and Employment Act, 1985*.

(7) A delegation under subsection (6)—

(a) must be made by instrument in writing;

(b) may be absolute or conditional;

(c) is revocable at will;

and

(d) does not derogate from the power of the Minister to act in any matter himself or herself.

Repeal of s. 9

8. Section 9 of the principal Act is repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor