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Robyn Webb
Chief Parliamentary Counsel
Dated 5 February 2019



TASMANIA

**POLICE POWERS (SURVEILLANCE DEVICES)
ACT 2006**

No. 22 of 2006

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SCHEDULE 1 –



**POLICE POWERS (SURVEILLANCE DEVICES)
ACT 2006**

No. 22 of 2006

An Act to provide for the installation, use, maintenance and retrieval of surveillance devices in criminal investigations within and extending beyond this jurisdiction, for the use by police officers of personal cameras that are hand-held or worn and of information obtained by the use of such cameras, and for other matters

[Royal Assent 18 December 2006]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Police Powers (Surveillance Devices) Act 2006*.

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2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

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

applicant, for a warrant, means the law enforcement officer who applies, or on whose behalf an application is made, for the warrant;

Australian Crime Commission means the Australian Crime Commission established by the *Australian Crime Commission Act 2002* of the Commonwealth;

business day means a day other than a Saturday, a Sunday or a statutory holiday under the *Statutory Holidays Act 2000*;

chief officer means the person for the time being holding office as –

- (a) in relation to the Police Service, the Commissioner of Police; or
- (b) in relation to the Australian Crime Commission, the Chief Executive Officer of the Australian Crime Commission;

computer means any electronic device for storing or processing information;

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corresponding emergency authorisation means an authorisation given under the provisions of a corresponding law that correspond to Part 3;

corresponding law means a law of another jurisdiction that corresponds to this Act, and includes a law of another jurisdiction that is declared by the regulations to correspond to this Act;

corresponding warrant means a warrant issued under the provisions of a corresponding law that correspond to Part 2;

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

device includes instrument, apparatus and equipment;

disciplinary proceeding means a proceeding of a disciplinary nature under a law of any jurisdiction or of the Commonwealth;

emergency authorisation means an emergency authorisation given under Part 3;

enhancement equipment, in relation to a surveillance device, means equipment

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capable of enhancing a signal, image or other information obtained by the use of the surveillance device;

install includes attach;

jurisdiction means a State or Territory of the Commonwealth;

law enforcement agency means –

- (a) the Police Service; or
- (b) the Australian Crime Commission;

law enforcement officer means –

- (a) in relation to the Police Service, a police officer; and
- (b) in relation to the Australian Crime Commission, a member of staff of the Australian Crime Commission –

and includes a person who is seconded to a law enforcement agency, including (but not limited to) a member of the police force or police service, and a police officer (however described), of another jurisdiction;

listening device means any device capable of being used to overhear, record, monitor or listen to a conversation or words spoken to or by any person in conversation, but does not include a

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hearing aid or similar device used by a person with impaired hearing to overcome the impairment and permit that person to hear only sounds ordinarily audible to the human ear;

maintain, in relation to a surveillance device, includes –

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

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

participating jurisdiction means a jurisdiction in which a corresponding law is in force;

personal camera means –

- (a) a device that is capable of recording visual images or sound, or both, and that is usually used by being held in a person's hand, whether or not the device is being held when the recording takes place; and
- (b) a device that is capable of recording visual images or sound,

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or both, and that is usually worn on the body, whether or not the device is being worn when the recording takes place;

premises includes –

- (a) land and a structure, building, caravan, vehicle or vessel, whether temporary or not and whether under construction or not; and
- (b) a place, whether enclosed or built on or not and whether on, within, over or under land or water; and
- (c) a part of premises, including premises referred to in paragraph (a) or (b);

private conversation has the same meaning as in the *Listening Devices Act 1991*;

protected information has the meaning given in section 32;

public officer means a person employed by, or holding an office established by or under a law of, this jurisdiction or a person employed by a public authority of this jurisdiction, and includes a law enforcement officer;

record includes –

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- (a) an audio, visual or audio-visual record; and
 - (b) a record in digital form; and
 - (c) a documentary record prepared from a record referred to in paragraph (a) or (b);

relevant offence means –

- (a) an offence against the law of this jurisdiction punishable by a maximum term of imprisonment of 3 years or more; or
- (b) an offence against the law of this jurisdiction that is prescribed by the regulations;

relevant proceeding means –

- (a) the prosecution of a relevant offence; or
- (b) a bail application, or a review of a decision to grant or refuse a bail application, in relation to a relevant offence; or
- (c) a proceeding with a view to the committal of a person to stand for trial for a relevant offence; or
- (d) an application for the exercise of a power in relation to a relevant offence –

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- (i) to a court or judicial officer; or
 - (ii) by a law enforcement officer to anyone under this Act; or
- (e) a proceeding for the confiscation, forfeiture or restraint of property or for the imposition of a pecuniary penalty in connection with a relevant offence; or
- (f) a proceeding for the protection of a child or a person with a disability within the meaning of the *Guardianship and Administration Act 1995*; or
- (g) a proceeding concerning the validity of a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
- (h) a disciplinary proceeding against a public officer; or
- (i) a coronial inquest or inquiry if, in the opinion of the coroner, the event that is the subject of the inquest or inquiry may have resulted from the commission of a relevant offence; or
- (j) a proceeding under section 13 of the *Mutual Assistance in*

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Criminal Matters Act 1987 of the Commonwealth in relation to a criminal matter that concerns an offence against the laws of the foreign country that made the request resulting in the proceeding, being an offence punishable by a maximum term of imprisonment of 3 years or more; or

- (k) a proceeding for the taking of evidence under section 43 of the *Extradition Act 1988* of the Commonwealth, in so far as the proceeding relates to a relevant offence; or
- (l) a proceeding for the extradition of a person from another jurisdiction to this jurisdiction, in so far as the proceeding relates to a relevant offence; or
- (m) a proceeding under Division 1 of Part 4 of the *International War Crimes Tribunals Act 1995* of the Commonwealth; or
- (n) a proceeding of the International Criminal Court;

remote application, for a warrant, means an application referred to in section 10 or 18;

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report, of a conversation or activity, includes a report of the substance, meaning or purport of the conversation or activity;

retrieval warrant means a warrant issued under Division 3 of Part 2;

senior officer means a person for the time being holding office as –

- (a) in relation to the Police Service, a police officer of or above the rank of inspector; or
- (b) in relation to the Australian Crime Commission, the Chief Executive Officer of the Australian Crime Commission or an examiner within the meaning of the *Australian Crime Commission Act 2002* of the Commonwealth;

surveillance device means –

- (a) a data surveillance device, a listening device, an optical surveillance device or a tracking device; or
- (b) a device that is a combination of any 2 or more of the devices referred to in paragraph (a); or
- (c) a device of a kind prescribed by the regulations;

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surveillance device warrant means a warrant issued under Division 2 of Part 2 or under section 27(3);

this jurisdiction means Tasmania;

tracking device means any electronic device capable of being used to determine or monitor the geographical location of a person or an object;

unsworn application, for a warrant, means an application referred to in section 9(4) or section 17(4);

use, of a surveillance device, includes use of the device to monitor or record a conversation or other activity;

vehicle includes aircraft and vessel;

warrant means surveillance device warrant or retrieval warrant.

- (2) For the purposes of this Act, an investigation into a relevant offence is taken to be conducted in this jurisdiction (whether or not it is also conducted in another jurisdiction) if a law enforcement officer participates in the investigation.

Note: Subsection (2) is intended to cover the situation where an officer of this jurisdiction is conducting or participating in an investigation wholly in another jurisdiction for the purposes of an offence of this jurisdiction (e.g. Tasmanian officer is investigating a conspiracy to import drugs into Tasmania from Victoria, and all the evidence of the offence is in Victoria).

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- (3) A note included in this Act does not form part of the Act.

4. Meaning of “reckless”

- (1) A person is “reckless” in relation to a circumstance if –
- (a) the person is aware of a substantial risk that the circumstance exists or will exist; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) A person is “reckless” in relation to a result if –
- (a) the person is aware of a substantial risk that the result will happen; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (3) It is a question of fact as to whether taking a risk is unjustifiable.

5. Relationship to other laws and matters

- (1) This Act is not intended to affect any other law of this jurisdiction that prohibits or regulates the use of surveillance devices wholly within this jurisdiction.

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- (2) This Act is not intended to limit a discretion that a court has –
- (a) to admit or exclude evidence in any proceedings; or
 - (b) to stay criminal proceedings in the interests of justice.
- (3) For the avoidance of doubt, it is intended that a warrant may be issued, or an emergency authorisation given, in this jurisdiction under this Act for the installation, use, maintenance or retrieval of a surveillance device in this jurisdiction or a participating jurisdiction, or both.
- (4) A function conferred under this Act in relation to the activities of the Australian Crime Commission is only conferred for the purpose of the function conferred on the Australian Crime Commission under the *Australian Crime Commission (Tasmania) Act 2004* relating to suspected serious and organised crime as defined under that Act.
- (5) This Act does not stop a law enforcement officer from using an optical surveillance device in a place where the presence of a police officer is not an offence.
- (6) The following Acts do not apply to activities and records under this Act:
- (a) the *Archives Act 1983*;
 - (b) the *Right to Information Act 2009*;

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(c) the *Personal Information Protection Act 2004*.

6. Act binds Crown

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) Nothing in this Act makes the Crown liable to be prosecuted for an offence.

PART 2 – WARRANTS

Division 1 – Introduction

7. Types of warrant

- (1) The following types of warrant may be issued under this Part:
 - (a) a surveillance device warrant;
 - (b) a retrieval warrant.
- (2) A warrant may be issued in respect of one or more kinds of surveillance device.
- (3) Nothing in this Act is to be taken to require the use of a personal camera, in accordance with section 44A, by a police officer to be authorised under a warrant under this Act.

8. Who may issue warrants?

- (1) The Supreme Court may issue any warrant under this Part.
- (2) A magistrate may issue –
 - (a) a surveillance device warrant, other than a warrant that authorises the use of a surveillance device outside Tasmania; or
 - (b) a retrieval warrant in respect of a surveillance device authorised under a warrant referred to in paragraph (a).

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Division 2 – Surveillance device warrants

9. Application for surveillance device warrant

- (1) A law enforcement officer (or another person on his or her behalf) may apply for the issue of a surveillance device warrant if the law enforcement officer on reasonable grounds suspects or believes that –
 - (a) a relevant offence has been, is being, is about to be or is likely to be committed; and
 - (b) an investigation into that offence is being, will be or is likely to be conducted in this jurisdiction, in this and one or more participating jurisdictions or in one or more participating jurisdictions; and
 - (c) the use of a surveillance device in this jurisdiction, in this and one or more participating jurisdictions or in one or more participating jurisdictions is or will be necessary in the course of that investigation for the purpose of enabling evidence or information to be obtained of the commission of the relevant offence or the identity or location of the offender.
- (2) The application may be made to –
 - (a) the Supreme Court in any case; or
 - (b) a magistrate in the case of an application for a surveillance device warrant that

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authorises the use, only in this jurisdiction, of a device for the purpose of investigating a relevant offence.

- (3) An application –
- (a) must specify –
 - (i) the name of the applicant; and
 - (ii) the nature and duration of the warrant sought, including the kind of surveillance device sought to be authorised; and
 - (b) subject to this section, must be supported by an affidavit setting out the grounds on which the warrant is sought and the prescribed information (if any).
- (4) If a law enforcement officer believes that –
- (a) the immediate use of a surveillance device is necessary for a purpose referred to in subsection (1)(c); and
 - (b) it is impracticable for an affidavit to be prepared or sworn before an application for a warrant is made –
- an application for a warrant may be made before an affidavit is prepared or sworn.
- (5) If subsection (4) applies, the applicant must –
- (a) provide as much information as the Supreme Court or magistrate considers is

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- reasonably practicable in the circumstances; and
- (b) not later than 72 hours following the making of the application, send a duly sworn affidavit to the Supreme Court or magistrate, whether or not a warrant has been issued.
- (6) The Supreme Court or a magistrate must hear an application for a warrant in the absence of anyone other than the following:
- (a) the applicant;
 - (b) someone the judge or magistrate permits to be present;
 - (c) an Australian legal practitioner representing anyone mentioned in paragraphs (a) and (b).
- (7) Also the Supreme Court or magistrate must hear the application –
- (a) in the absence of the person proposed to be placed under surveillance (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and
 - (b) without the relevant person having been informed of the application.

10. Remote application

- (1) If a law enforcement officer believes that it is impracticable for an application for a surveillance device warrant to be made in person, the application may be made under section 9 by telephone, fax, email or any other means of communication.
- (2) If transmission by fax is available and an affidavit has been prepared, the person applying must transmit a copy of the affidavit, whether sworn or unsworn, to the Supreme Court or magistrate who is to determine the application.

11. Determining the application

- (1) The Supreme Court or a magistrate may issue a surveillance device warrant if satisfied –
 - (a) that there are reasonable grounds for the suspicion or belief founding the application for the warrant; and
 - (b) in the case of an unsworn application, that it would have been impracticable for an affidavit to have been prepared or sworn before the application was made; and
 - (c) in the case of a remote application, that it would have been impracticable for the application to have been made in person.

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- (2) In determining whether a surveillance device warrant should be issued, the judge or magistrate must have regard to –
- (a) the nature and seriousness of the alleged offence in respect of which the warrant is sought; and
 - (b) the extent to which the privacy of any person is likely to be affected; and
 - (c) the existence of any alternative means of obtaining the evidence or information sought to be obtained and the extent to which those means may assist or prejudice the investigation; and
 - (d) the evidentiary or intelligence value of any information sought to be obtained; and
 - (e) any previous warrant sought or issued under this Division, a corresponding law (if known) or the *Listening Devices Act 1991* in connection with the same offence.

12. What must a surveillance device warrant contain?

- (1) A surveillance device warrant must –
- (a) state that the Supreme Court or magistrate is satisfied of the matters referred to in section 11(1) and has had regard to the matters referred to in section 11(2); and

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- (b) specify –
- (i) the name of the applicant; and
 - (ii) the alleged offence in respect of which the warrant is issued; and
 - (iii) the date on which and the time at which the warrant is issued; and
 - (iv) the kind of surveillance device authorised to be used; and
 - (v) if the warrant authorises the use of a surveillance device on premises, the premises on which the use of the surveillance device is authorised or to which entry is authorised in relation to the use of a surveillance device on other premises; and
 - (vi) if the warrant authorises the use of a surveillance device in or on an object or class of objects, the object or class of objects in or on which the use of the surveillance device is authorised; and
 - (vii) if the warrant authorises the use of a surveillance device in respect of the conversations, activities or geographical location of a person, the name of the person (if known); and

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- (viii) if the warrant authorises the use of a surveillance device in a participating jurisdiction, the participating jurisdiction in which it may be used; and
 - (ix) the period during which the warrant is in force, being a period not exceeding 90 days; and
 - (x) the name of the law enforcement officer primarily responsible for executing the warrant; and
 - (xi) any conditions subject to which premises may be entered, or a surveillance device may be used, under the warrant; and
 - (xii) the time within which a report in respect of the warrant must be made to the Supreme Court or magistrate under section 29.
- (2) In the case of a warrant referred to in subsection (1)(b)(vii), if the identity of the person is unknown, the warrant must state that fact.
- (3) A warrant must be signed by the person issuing it and include their name.
- (4) If the Supreme Court or a magistrate issues a warrant on a remote application –
- (a) the Supreme Court or magistrate must inform the applicant of –

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- (i) the terms of the warrant; and
 - (ii) the date on which and the time at which the warrant was issued –
and cause those details to be recorded and kept by the Supreme Court or magistrate; and
- (b) the Supreme Court or magistrate must provide the applicant with a signed copy of the warrant as soon as practicable.

13. What a surveillance device warrant authorises

- (1) A surveillance device warrant may authorise, as specified in the warrant, any one or more of the following:
- (a) the use of a surveillance device on specified premises;
 - (b) the use of a surveillance device in or on a specified object or class of objects;
 - (c) the use of a surveillance device in respect of the conversations, activities or geographical location of a specified person or a person whose identity is unknown.
- (2) A surveillance device warrant authorises –
- (a) for a warrant of a kind referred to in subsection (1)(a) –

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- (i) the installation, use and maintenance of a surveillance device of the kind specified in the warrant on the specified premises; and
 - (ii) the entry, by force if necessary, onto the premises, or other specified premises adjoining or providing access to the premises, for any of the purposes referred to in subparagraph (i) or subsection (3); and
- (b) for a warrant of a kind referred to in subsection (1)(b) –
 - (i) the installation, use and maintenance of a surveillance device of the kind specified in the warrant in or on the specified object or an object of the specified class; and
 - (ii) the entry, by force if necessary, onto any premises where the object, or an object of the class, is reasonably believed to be or is likely to be, or other premises adjoining or providing access to those premises, for any of the purposes referred to in subparagraph (i) or subsection (3); and

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- (c) for a warrant of a kind referred to in subsection (1)(c) –
- (i) the installation, use and maintenance of a surveillance device of the kind specified in the warrant, on premises where the person is reasonably believed to be or likely to be; and
 - (ii) the entry, by force if necessary, onto the premises referred to in subparagraph (i) or subsection (3).
- (3) Each surveillance device warrant also authorises –
- (a) the retrieval of the surveillance device; and
 - (b) the installation, use, maintenance and retrieval of any enhancement equipment in relation to the surveillance device; and
 - (c) the temporary removal of an object from any place where it is situated for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment and the return of the object to that place or another appropriate place; and
 - (d) the breaking open of anything for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment; and

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- (e) the connection of the device or equipment to an electricity supply system and the use of electricity from that system to operate the surveillance device or enhancement equipment; and
 - (f) the connection of the surveillance device or enhancement equipment to any object or system that may be used to transmit information in any form and the use of that object or system in connection with the operation of the device or equipment; and
 - (g) the provision of assistance or technical expertise to the law enforcement officer primarily responsible for executing the warrant in the installation, use, maintenance or retrieval of the surveillance device or enhancement equipment.
- (4) A surveillance device warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the installation, use, maintenance or retrieval of a surveillance device or enhancement equipment under the warrant.
- (5) A law enforcement officer may use a surveillance device under a warrant only if he or she is acting in the performance of his or her duty.
- (6) This section applies to a warrant subject to any conditions specified in the warrant.

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- (7) Nothing in this section authorises the doing of anything for which a warrant would be required under the *Telecommunications (Interception) Act 1979* of the Commonwealth.

14. Extension and variation of surveillance device warrant

- (1) A law enforcement officer to whom a surveillance device warrant has been issued (or another person on his or her behalf) may apply, at any time before the expiry of the warrant –
- (a) for an extension of the warrant for a period not exceeding 90 days from the day on which it would otherwise expire; or
 - (b) for a variation of any of the other terms of the warrant.
- (2) The application is to be made to –
- (a) the Supreme Court, if the warrant was issued by a judge or the extension or variation of the terms of the warrant was to authorise the investigation into a relevant offence that is being, will be or is likely to be conducted wholly or partly in a participating jurisdiction; or
 - (b) a magistrate, if the warrant was issued by a magistrate.

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- (3) Sections 9 and 10 apply, with any necessary changes, to an application under this section as if it were an application for the warrant.
- (4) The Supreme Court or magistrate may grant an application, subject to any conditions he or she thinks fit, if satisfied that the matters referred to in section 11(1) still exist, having regard to the matters in section 11(2).
- (5) If the Supreme Court or magistrate grants the application, the Supreme Court or magistrate must endorse the new expiry date or the other varied term on the original warrant.
- (6) An application may be made under this section more than once.

15. Revocation of surveillance device warrant

- (1) A surveillance device warrant may be revoked at any time before the expiration of the period of validity specified in it by –
 - (a) the Supreme Court, if the Supreme Court issued the warrant or the extension or variation of the warrant; or
 - (b) a magistrate, if a magistrate issued the warrant.
- (2) The Supreme Court or a magistrate may revoke a surveillance device warrant after receiving a report under section 29 in respect of the warrant.
- (3) The Supreme Court or magistrate who revokes a warrant must give notice of the revocation to the

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chief officer of the law enforcement agency of which the law enforcement officer to whom the warrant was issued is a member.

- (4) If the chief officer is notified that the warrant has been revoked, he or she must take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued immediately.

16. Discontinuance of use of surveillance device under warrant

- (1) This section applies if a surveillance device warrant is issued to a law enforcement officer of a law enforcement agency.
- (2) If the law enforcement officer to whom the warrant is issued, or who is primarily responsible for executing the warrant, believes that use of a surveillance device under the warrant is no longer necessary for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender, he or she must inform the chief officer of the law enforcement agency immediately.
- (3) If the chief officer of the law enforcement agency is satisfied that the use of a surveillance device under the warrant is no longer necessary for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender, the chief officer must take the steps necessary to ensure that use of the surveillance

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device authorised by the warrant is discontinued as soon as practicable.

Division 3 – Retrieval warrants

17. Application for retrieval warrant

- (1) A law enforcement officer (or another person on his or her behalf) may apply for the issue of a retrieval warrant in respect of a surveillance device that was lawfully installed on premises, or in or on an object, under a surveillance device warrant or a surveillance device warrant issued under a corresponding law and which the law enforcement officer on reasonable grounds suspects or believes is still on those premises or in or on that object, or on other premises or in or on another object.
- (2) The application may be made to –
 - (a) the Supreme Court in the case of a device installed under a warrant issued by the Supreme Court; or
 - (b) a magistrate in the case of a device installed under a warrant issued by a magistrate.
- (3) Subject to this section, an application must be supported by an affidavit setting out the grounds on which the warrant is sought.
- (4) If a law enforcement officer believes that –
 - (a) the immediate retrieval of a surveillance device is necessary; and

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- (b) it is impracticable for an affidavit to be prepared or sworn before an application for a warrant is made –

an application for a warrant may be made before an affidavit is prepared or sworn.

- (5) If subsection (4) applies, the applicant must –
 - (a) provide as much information as the Supreme Court or magistrate considers is reasonably practicable in the circumstances; and
 - (b) not later than 72 hours following the making of the application, send a duly sworn affidavit to the Supreme Court or magistrate who determined the application, whether or not a warrant has been issued.
- (6) The Supreme Court or a magistrate must hear an application for a warrant in the absence of anyone other than the following:
 - (a) the applicant;
 - (b) someone the Supreme Court or magistrate permits to be present;
 - (c) an Australian legal practitioner representing anyone mentioned in paragraphs (a) and (b).
- (7) Also the Supreme Court or magistrate must hear the application –

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- (a) in the absence of the person who was proposed to be placed under surveillance (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and
- (b) without the relevant person having been informed of the application.

18. Remote application

- (1) If a law enforcement officer believes that it is impracticable for an application for a retrieval warrant to be made in person, the application may be made under section 17 by telephone, fax, email or any other means of communication.
- (2) If transmission by fax is available and an affidavit has been prepared, the person applying must transmit a copy of the affidavit, whether sworn or unsworn, to the Supreme Court or magistrate who is to determine the application.

19. Determining the application

- (1) A Supreme Court or a magistrate may issue a retrieval warrant if the Supreme Court or magistrate is satisfied –
 - (a) that there are reasonable grounds for the suspicion or belief founding the application for the warrant; and
 - (b) in the case of an unsworn application, that it would have been impracticable for an affidavit to have been prepared or

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sworn before the application was made;
and

- (c) in the case of a remote application, that it would have been impracticable for the application to have been made in person.

(2) In determining whether a retrieval warrant should be issued, the Supreme Court or magistrate must have regard to –

- (a) the extent to which the privacy of any person is likely to be affected; and
- (b) the public interest in retrieving the device sought to be retrieved.

20. What must a retrieval warrant contain?

(1) A retrieval warrant must –

- (a) state that the Supreme Court or magistrate is satisfied of the matters referred to in section 19(1) and has had regard to the matters referred to in section 19(2); and
- (b) specify –
 - (i) the name of the applicant; and
 - (ii) the date the warrant is issued; and
 - (iii) the kind of surveillance device authorised to be retrieved; and

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- (iv) the premises or object from which the surveillance device is to be retrieved; and
 - (v) the period (not exceeding 90 days) during which the warrant is in force; and
 - (vi) the name of the law enforcement officer primarily responsible for executing the warrant; and
 - (vii) any conditions subject to which premises may be entered under the warrant; and
 - (viii) the time within which a report in respect of the warrant must be made to the Supreme Court or magistrate under section 29.
- (2) A warrant must be signed by the person issuing it and include their name.
- (3) If the Supreme Court or a magistrate issues a warrant on a remote application –
- (a) the Supreme Court or magistrate must inform the applicant of –
 - (i) the terms of the warrant; and
 - (ii) the date on which and the time at which the warrant was issued –

and cause those details to be entered in a register kept by the Supreme Court or magistrate for the purpose; and

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- (b) the Supreme Court or magistrate must provide the applicant with a copy of the warrant as soon as practicable.

21. What a retrieval warrant authorises

- (1) A retrieval warrant (subject to any conditions specified in it) authorises –
 - (a) the retrieval of the surveillance device specified in the warrant and any enhancement equipment in relation to the device; and
 - (b) the entry, by force if necessary, onto the premises where the surveillance device is reasonably believed to be, or other premises adjoining or providing access to those premises, for the purpose of retrieving the device and equipment; and
 - (c) the breaking open of any thing for the purpose of the retrieval of the device and equipment; and
 - (d) if the device or equipment is installed on or in an object, the temporary removal of the object from any place where it is situated for the purpose of the retrieval of the device and equipment and the return of the object to that place or another appropriate place; and
 - (e) the provision of assistance or technical expertise to the law enforcement officer primarily responsible for executing the

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warrant in the retrieval of the device or equipment.

- (2) If the retrieval warrant authorises the retrieval of a tracking device, the warrant also authorises the use of the tracking device and any enhancement equipment in relation to the device solely for the purposes of the location and retrieval of the device or equipment.
- (3) A retrieval warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the retrieval of a surveillance device or enhancement equipment under the warrant.

22. Revocation of retrieval warrant

- (1) A retrieval warrant may be revoked at any time before the expiration of the period of validity specified in it by –
 - (a) the Supreme Court, if the Supreme Court issued the warrant; or
 - (b) a magistrate, if a magistrate issued the warrant.
- (2) The Supreme Court or a magistrate may revoke a retrieval warrant after receiving a report under section 29 in respect of the warrant.
- (3) If the law enforcement officer to whom a retrieval warrant has been issued, or who is primarily responsible for executing a retrieval warrant, believes that the grounds for issue of

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the warrant no longer exist, he or she must inform the chief officer of the law enforcement agency immediately.

- (4) If the chief officer of a law enforcement agency is satisfied that the grounds for issue of a retrieval warrant to a law enforcement officer of the agency no longer exist, the chief officer must cause an application to be made for the revocation of the warrant under this section.
- (5) The Supreme Court or magistrate who revokes a warrant must give notice of the revocation to the chief officer of the law enforcement agency of which the law enforcement officer to whom the warrant was issued is a member.
- (6) If notice is given under subsection (5) for a retrieval warrant, the warrant ceases to have effect.

PART 3 – EMERGENCY AUTHORISATIONS

23. Emergency authorisation – risk of serious personal violence or substantial property damage

- (1) A law enforcement officer of a law enforcement agency may apply to a senior officer of the agency for an emergency authorisation for the use of a surveillance device if, in the course of an investigation, the law enforcement officer on reasonable grounds suspects or believes that –
 - (a) an imminent threat of serious violence to a person or substantial damage to property exists; and
 - (b) the use of a surveillance device is immediately necessary for the purpose of dealing with that threat; and
 - (c) the circumstances are so serious and the matter is of such urgency that the use of a surveillance device is warranted; and
 - (d) it is not practicable in the circumstances to apply for a surveillance device warrant.
- (2) An application may be made orally, in writing or by telephone, fax, email or any other means of communication.
- (3) A senior officer may give an emergency authorisation for the use of a surveillance device on an application under subsection (1) if

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satisfied that there are reasonable grounds for the suspicion or belief founding the application.

- (4) An emergency authorisation given under this section may authorise the law enforcement officer to whom it is given to do anything that a surveillance device warrant may authorise law enforcement officers to do.

24. Emergency authorisation – continued use of authorised surveillance device in participating jurisdiction

- (1) A law enforcement officer of a law enforcement agency may apply to a senior officer of the agency for an emergency authorisation for the use of a surveillance device if –
- (a) use of the surveillance device in this jurisdiction was authorised under a law of this jurisdiction, in connection with an investigation into a relevant offence; and
 - (b) the law enforcement officer on reasonable grounds suspects or believes that –
 - (i) the investigation in relation to which the surveillance device is authorised in this jurisdiction is likely to extend to a participating jurisdiction; and
 - (ii) the use of the surveillance device in a participating jurisdiction is

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- immediately necessary to prevent the loss of any evidence; and
- (iii) the circumstances are so serious and the matter is of such urgency that the use of the surveillance device in the participating jurisdiction is warranted; and
 - (iv) it is not practicable in the circumstances to apply for a surveillance device warrant.
- (2) An application may be made orally, in writing or by telephone, fax, email or any other means of communication.
 - (3) A senior officer may give an emergency authorisation for the use of a surveillance device on an application under subsection (1) if satisfied that –
 - (a) use of the surveillance device in this jurisdiction is authorised under a law of this jurisdiction, in connection with an investigation into a relevant offence; and
 - (b) there are reasonable grounds for the suspicion or belief founding the application.
 - (4) An emergency authorisation given under this section may authorise the law enforcement officer to whom it is given to do anything that a surveillance device warrant may authorise him or her to do.

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25. Application for approval after use of surveillance device under emergency authorisation

- (1) Within 2 business days after giving an emergency authorisation, a senior officer (or another person on his or her behalf) must apply to the Supreme Court or a magistrate for approval of the exercise of powers under the emergency authorisation.
- (2) The application may be made to –
 - (a) the Supreme Court in any case; or
 - (b) a magistrate in the case of an application for the exercise of powers under the emergency authorisation authorising the use of a device within this jurisdiction only.
- (3) An application –
 - (a) must specify –
 - (i) the name of the applicant; and
 - (ii) the kind of surveillance device sought to be approved and, if a warrant is sought, the nature and duration of the warrant; and
 - (b) must be supported by an affidavit setting out the grounds on which the approval (and warrant, if any) is sought.
- (4) The Supreme Court or magistrate may refuse to consider the application until the applicant gives the Supreme Court or magistrate all the

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information the Supreme Court or magistrate requires about the application in the way the Supreme Court or magistrate requires.

- (5) The Supreme Court or a magistrate must hear an application for the approval of the exercise of powers under an emergency authorisation in the absence of anyone other than the following:
 - (a) the applicant;
 - (b) someone the Supreme Court or magistrate permits to be present;
 - (c) an Australian legal practitioner representing anyone mentioned in paragraphs (a) and (b).
- (6) Also the Supreme Court or magistrate must hear the application –
 - (a) in the absence of the person placed under or proposed to be placed under surveillance (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and
 - (b) without the relevant person having been informed of the application.

26. Consideration of application

- (1) Before deciding an application for approval in respect of an emergency authorisation given under section 23, the Supreme Court or a magistrate must, in particular, and being mindful

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of the intrusive nature of using a surveillance device, consider the following:

- (a) the nature of the risk of serious violence to a person or substantial damage to property;
 - (b) the extent to which issuing a surveillance device warrant would have helped reduce or avoid the risk;
 - (c) the extent to which law enforcement officers could have used alternative methods of investigation to help reduce or avoid the risk;
 - (d) how much the use of alternative methods of investigation could have helped reduce or avoid the risk;
 - (e) how much the use of alternative methods of investigation would have prejudiced the safety of the person or property because of delay or for another reason;
 - (f) whether or not it was practicable in the circumstances to apply for a surveillance device warrant.
- (2) Before deciding an application for approval in respect of an emergency authorisation given under section 24, the Supreme Court must, in particular, and being mindful of the intrusive nature of using a surveillance device, consider the following:
- (a) the nature of the risk of loss of evidence;

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- (b) the extent to which issuing a surveillance device warrant would have helped reduce or avoid the risk;
- (c) the terms of the existing authorisation for the use of the surveillance device;
- (d) whether or not it was practicable in the circumstances to apply for a surveillance device warrant.

27. Approval of emergency use of powers

- (1) After considering an application for approval in respect of an emergency authorisation given under section 23, the Supreme Court or magistrate may approve the application if satisfied that there were reasonable grounds to suspect or believe that –
 - (a) there was a risk of serious violence to a person or substantial damage to property; and
 - (b) using a surveillance device may have helped reduce the risk; and
 - (c) it was not practicable in the circumstances to apply for a surveillance device warrant.
- (2) After considering an application for approval in respect of an emergency authorisation given under section 24, the Supreme Court may approve the application if satisfied that –

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- (a) use of the surveillance device in this jurisdiction was authorised under a law of this jurisdiction, in connection with an investigation into a relevant offence; and
 - (b) there were reasonable grounds to suspect or believe that –
 - (i) there was a risk of loss of evidence; and
 - (ii) using the surveillance device in a participating jurisdiction may have helped reduce the risk; and
 - (c) it was not practicable in the circumstances to apply for a surveillance device warrant.
- (3) If the Supreme Court or magistrate approves an application for approval of the exercise of powers under an emergency authorisation, the Supreme Court or magistrate may issue a surveillance device warrant for the continued use of the surveillance device as if the application were an application for a surveillance device warrant under Division 2 of Part 2.
- (4) If the Supreme Court or magistrate does not approve an application under this section, the Supreme Court or magistrate may order that the use of the surveillance device cease.
- (5) In any case, the Supreme Court or a magistrate may order that any information obtained from or relating to the exercise of powers under the emergency authorisation or any record of that

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information be dealt with in the way specified in the order.

28. Admissibility of evidence

If the exercise of powers under an emergency authorisation is approved under section 27, evidence obtained because of the exercise of those powers is not inadmissible in any proceeding only because the evidence was obtained before the approval.

29. Report to Supreme Court or magistrate

- (1) A law enforcement officer to whom a warrant is issued, or who is primarily responsible for executing a warrant issued, under this Act must make a report in accordance with this section to the Supreme Court or magistrate who issued the warrant.
- (2) The report must be made –
 - (a) within the time stated in the warrant; or
 - (b) if the warrant is revoked before the end of the time stated in the warrant, as soon as practicable after the warrant is revoked and within the time stated in the warrant.
- (3) In the case of a surveillance device warrant, the report must –
 - (a) state whether the warrant was executed; and

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- (b) if it was executed –
- (i) state the name of the person primarily responsible for the execution of the warrant; and
 - (ii) state the name of each person involved in the installation, maintenance or retrieval of the surveillance device; and
 - (iii) state the kind of surveillance device used; and
 - (iv) state the period during which the device was used; and
 - (v) state the name, if known, of any person whose conversations or activities were overheard, recorded, monitored, listened to or observed by the use of the device; and
 - (vi) state the name, if known, of any person whose geographical location was determined by the use of a tracking device; and
 - (vii) give details of any premises on which the device was installed or any place at which the device was used; and
 - (viii) give details of any object in or on which the device was installed or any premises where the object

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- was located when the device was installed; and
- (ix) give details of the benefit to the investigation of the use of the device and of the general use made or to be made of any evidence or information obtained by the use of the device; and
 - (x) give details of the compliance with the conditions (if any) to which the warrant was subject; and
- (c) if the warrant was extended or varied, state –
- (i) the number of extensions or variations; and
 - (ii) the reasons for them.
- (4) In the case of a retrieval warrant, the report must –
- (a) state when the warrant was executed; and
 - (b) state the name of each person involved in the execution of the warrant; and
 - (c) state whether the surveillance device was retrieved under the warrant; and
 - (d) if the device was not retrieved, state the reason why; and

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- (e) give details of the compliance with the conditions (if any) to which the warrant was subject.
- (5) On receiving a report, the Supreme Court or magistrate may order that any information obtained from or relating to the execution of the warrant or any record of that information be dealt with in the way specified in the order.

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Part 4 – Recognition of Corresponding Warrants and Emergency
Authorisations

**PART 4 – RECOGNITION OF CORRESPONDING
WARRANTS AND EMERGENCY AUTHORISATIONS**

30. Corresponding warrants

A corresponding warrant may be executed in this jurisdiction in accordance with its terms as if it were a surveillance device warrant or retrieval warrant (as the case requires) issued under Part 2.

31. Corresponding emergency authorisations

- (1) A corresponding emergency authorisation authorises the use of a surveillance device in accordance with its terms in this jurisdiction, as if it were an emergency authorisation given under Part 3.
- (2) Subsection (1) does not apply at any time after the relevant court in the corresponding jurisdiction orders, under a provision of a corresponding law that corresponds to section 27(4), that the use of a surveillance device under the corresponding emergency authorisation cease.

PART 5 – COMPLIANCE AND MONITORING

***Division 1 – Restrictions on use, communication and
publication of information***

32. Interpretation

In this Division –

inspection entity means a person appointed
and holding office under section 40;

protected information means –

- (a) any information obtained from
the use of a surveillance device
under a warrant, emergency
authorisation, corresponding
warrant or corresponding
emergency authorisation; or
- (b) any information relating to –
 - (i) an application for, issue
of, existence of or expiry
of a warrant, emergency
authorisation,
corresponding warrant or
corresponding emergency
authorisation; or
 - (ii) an application for
approval of powers
exercised under an
emergency authorisation;
or

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(iii) an application under a corresponding law for approval of powers exercised under a corresponding emergency authorisation; or

(c) any information obtained by the use of a personal camera, in accordance with section 44A, by a police officer.

33. Prohibition on communication or publication of protected information

(1) A person is guilty of an offence if –

(a) the person intentionally, knowingly or recklessly uses, communicates or publishes any information; and

(b) the person knows that, or is reckless as to whether, the information is protected information; and

(c) the person knows that, or is reckless as to whether, the use, communication or publication of the information is not permitted by this section.

Penalty: Imprisonment for a term not exceeding 2 years.

(2) A person is guilty of an offence against this subsection if the person commits an offence

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against subsection (1) in circumstances in which the person –

- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation into a relevant offence; or
- (b) knows that, or is reckless as to whether, the disclosure of the information –
 - (i) endangers or will endanger the health or safety of any person; or
 - (ii) prejudices or will prejudice the effective conduct of an investigation into a relevant offence.

Penalty: Imprisonment for a term not exceeding 10 years.

(3) Subsections (1) and (2) do not apply to –

- (a) the use, communication or publication of –
 - (i) any information that has been disclosed in proceedings in open court; or
 - (ii) any information that has entered the public domain; or
- (b) the use or communication of protected information by a person who believes on reasonable grounds that the use or communication is necessary to help

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- prevent or reduce the risk of serious violence to a person or substantial damage to property; or
- (c) the communication to the Director-General (within the meaning of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth) of protected information that relates or appears to relate to activities prejudicial to security (within the meaning of that Act); or
 - (d) the use or communication of information referred to in paragraph (c) by an officer of the Australian Security Intelligence Organisation in the performance of his or her official functions; or
 - (e) the use or communication of information to a foreign country or an appropriate authority of a foreign country in accordance with the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth; or
 - (f) the use or communication of information otherwise authorised under this Division.
- (4) Protected information may be used, communicated, or published, for any of the following purposes:
- (a) the investigation of a relevant offence within the meaning of this Act or a relevant offence within the meaning of a corresponding law;

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- (b) the making of a decision whether or not to bring a prosecution for a relevant offence within the meaning of this Act or a relevant offence within the meaning of a corresponding law;
- (c) a relevant proceeding within the meaning of this Act or a relevant proceeding within the meaning of a corresponding law;
- (d) an investigation of a complaint against, or of the conduct of, a public officer within the meaning of this Act or a public officer within the meaning of a corresponding law;
- (e) the making of a decision in relation to the appointment, reappointment, term of appointment, termination or retirement of a person referred to in paragraph (d);
- (f) the keeping of records and the making of reports by –
 - (i) a law enforcement agency in accordance with the obligations imposed by Division 2; or
 - (ii) a law enforcement agency (within the meaning of a corresponding law) in accordance with the obligations imposed by provisions of the corresponding law that correspond to Division 2;

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- (g) an inspection by the inspection entity under section 41 or an inspection under a provision of a corresponding law that corresponds to section 41;
 - (ga) the training of police officers;
 - (h) an investigation under the *Personal Information Protection Act 2004*, the *Ombudsman Act 1978* or the law of a participating jurisdiction or of the Commonwealth concerning the privacy of personal information.
- (4A) Protected information may be used, communicated, or published, if –
- (a) the protected information is information obtained by the use of a personal camera, in accordance with section 44A, by a police officer; and
 - (b) the information does not contain a record of a private conversation.
- (5) Subsection (3)(c), (d) and (e) and subsection (4)(a), (b) and (c) do not authorise the use, communication or publication of protected information in respect of an emergency authorisation or corresponding emergency authorisation unless the use of powers under that emergency authorisation has been approved under section 27 or the provisions of a corresponding law that correspond to section 27.
- (6) A reference in subsection (4) to a relevant offence (whether of this jurisdiction or any other

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jurisdiction) is a reference to any relevant offence of the relevant jurisdiction whether or not it is the offence of the relevant jurisdiction in respect of which the relevant warrant or emergency authorisation was issued or given.

- (7) A reference in this section to a relevant offence (whether of this jurisdiction or any other jurisdiction) includes, in relation to protected information obtained by the use of a personal camera in accordance with section 44A, a reference to any offence, including an offence that is not punishable by a term of imprisonment of 3 years or more and is not prescribed.

34. Dealing with records obtained by use of surveillance devices

- (1) The chief officer of a law enforcement agency –
- (a) must ensure that every record or report obtained by use of a surveillance device by a law enforcement officer of the agency under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation is kept in a secure place that is not accessible to people who are not entitled to deal with the record or report; and
 - (b) must destroy or cause to be destroyed any record or report referred to in paragraph (a) if satisfied that it is not likely to be required in connection with a purpose referred to in section 33(4).

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

35. Protection of surveillance device technologies and methods

- (1) In any proceedings, a person may object to the disclosure of information on the ground that the information, if disclosed, could reasonably be expected to reveal details of surveillance device technology or methods of installation, use or retrieval of surveillance devices.
- (2) If the person conducting or presiding over the proceeding is satisfied that the ground of objection is made out, he or she may order that the person who has the information not be required to disclose it in the proceeding.
- (3) In determining whether or not to make an order under subsection (2), the person conducting or presiding over the proceeding must take into account whether disclosure of the information –
- (a) is necessary for the fair trial of the defendant; or
 - (b) is in the public interest.
- (4) Subsection (2) does not affect a provision of another law under which a law enforcement officer cannot be compelled to disclose information or make statements in relation to the information.

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- (5) If the person conducting or presiding over a proceeding is satisfied that publication of any information disclosed in the proceeding could reasonably be expected to reveal details of surveillance device technology or methods of installation, use or retrieval of surveillance devices, the person must make any orders prohibiting or restricting publication of the information that he or she considers necessary to ensure that those details are not revealed.
- (6) Subsection (5) does not apply to the extent that the person conducting or presiding over the proceeding considers that the interests of justice require otherwise.
- (7) In this section –

proceeding includes a proceeding before a court, tribunal or Royal Commission.

36. Protected information in custody of court

A person is not entitled to search any protected information in the custody of a court unless the court otherwise orders in the interests of justice.

Division 2 – Reporting and record-keeping

37. Keeping documents connected with warrants and emergency authorisations

The chief officer of a law enforcement agency must cause the following to be kept:

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- (a) each warrant issued to a law enforcement officer of the agency;
- (b) each notice given to the chief officer under section 15(3) of revocation of a warrant;
- (c) each emergency authorisation given to a law enforcement officer of the agency;
- (d) each application made by a law enforcement officer of the agency for an emergency authorisation;
- (e) a copy of each application made by a law enforcement officer of the agency for –
 - (i) a warrant; or
 - (ii) extension, variation or revocation of a warrant; or
 - (iii) approval of the exercise of powers under an emergency authorisation;
- (f) a copy of each report made to the Supreme Court or a magistrate under section 29;
- (g) a copy of each certificate issued by a senior officer of the agency under section 43.

38. Other records to be kept

The chief officer of a law enforcement agency must cause the following to be kept:

- (a) a statement as to whether each application made by a law enforcement officer of the agency for a warrant, or extension, variation or revocation of a warrant, was granted, refused or withdrawn;
- (b) a statement as to whether each application made by a law enforcement officer of the agency for an emergency authorisation, or for approval of powers exercised under an emergency authorisation, was granted, refused or withdrawn;
- (c) details of each use by the agency, or by a law enforcement officer of the agency, of information obtained by the use of a surveillance device by a law enforcement officer of the agency;
- (d) details of each communication by a law enforcement officer of the agency to a person other than a law enforcement officer of the agency of information obtained by the use of a surveillance device by a law enforcement officer of the agency;
- (e) details of each occasion when, to the knowledge of a law enforcement officer of the agency, information obtained by

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the use of a surveillance device by a law enforcement officer of the agency was given in evidence in a relevant proceeding;

- (f) details of the destruction of records or reports under section 34(1)(b).

39. Register of warrants and emergency authorisations

- (1) The chief officer of a law enforcement agency must cause a register of warrants and emergency authorisations to be kept.
- (2) The register is to specify, for each warrant issued to a law enforcement officer of the agency –
 - (a) the date of issue of the warrant; and
 - (b) the name of the judge or magistrate who issued the warrant; and
 - (c) the name of the law enforcement officer named in the warrant as the person primarily responsible for executing it; and
 - (d) the relevant offence in relation to which the warrant was issued; and
 - (e) the period during which the warrant is in force; and
 - (f) details of any variation or extension of the warrant.

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- (3) The register is to specify, for each emergency authorisation given to a law enforcement officer of the agency –
- (a) the date on which the emergency authorisation was given; and
 - (b) the name of the senior officer who gave the emergency authorisation; and
 - (c) the name of the law enforcement officer to whom the emergency authorisation was given; and
 - (d) the relevant offence in relation to which the emergency authorisation was given; and
 - (e) the date on which the application for approval of powers exercised under the emergency authorisation was made.

Division 3 – Inspections

40. Appointment of inspection entity

The Minister is to appoint an independent person as the inspection entity.

41. Inspection of records by inspection entity

- (1) The inspection entity must, from time to time and at least once every 12 months, inspect the records of a law enforcement agency to determine the extent of compliance with this Act

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by the agency and law enforcement officers of the agency.

- (2) For the purpose of an inspection under this section, the inspection entity –
 - (a) after notifying the chief officer of the agency, may enter at any reasonable time premises occupied by the agency; and
 - (b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and
 - (c) may require a member of staff of the agency to give the inspection entity any information that the inspection entity considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.
- (3) The chief officer must ensure that members of staff of the agency give the inspection entity any assistance the inspection entity reasonably requires to enable the inspection entity to perform functions under this section.

42. Report on inspection

- (1) The inspection entity must make a written report to the Minister and the Minister administering the *Police Service Act 2003* by not later than 3 months after the end of each financial year on the results of each inspection under section 41.

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- (2) The report referred to in subsection (1) is to include a report on the comprehensiveness and adequacy of the records of the agency and the cooperation given by the agency in facilitating the inspection by the inspection entity of those records.
- (3) The Minister is to cause a copy of the report to be laid before each House of Parliament within 15 sitting-days from the day on which the report is received by the Minister.

Division 4 – General

43. Evidentiary certificates

- (1) A senior officer of a law enforcement agency, or a person assisting him or her, may issue a written certificate signed by the officer or person setting out any facts he or she considers relevant with respect to –
 - (a) anything done by a law enforcement officer of the agency, or by a person assisting or providing technical expertise to him or her, in connection with the execution of a warrant or in accordance with an emergency authorisation; or
 - (b) anything done by a law enforcement officer of the agency in connection with –
 - (i) the communication by a person to another person of; or

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- (ii) the making use of; or
- (iii) the making of a record of; or
- (iv) the custody of a record of –

information obtained by the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation.

- (2) A document purporting to be a certificate issued under subsection (1) or under a provision of a corresponding law that corresponds to subsection (1) is admissible in evidence in any proceeding.
- (3) Subsection (2) does not apply to a certificate to the extent that the certificate sets out facts with respect to anything done in accordance with an emergency authorisation or corresponding emergency authorisation unless the use of powers under that authorisation has been approved under section 27 or under a provision of a corresponding law that corresponds to section 27.

PART 6 – GENERAL

44. Annual reports

- (1) The chief officer of a law enforcement agency must submit a report to the Minister and the Minister administering the *Police Service Act 2003* that includes the following information in respect of each financial year:
 - (a) the number of applications for warrants by and the number of warrants issued to law enforcement officers of the agency during that year;
 - (b) the number of applications for emergency authorisations by and the number of emergency authorisations given to law enforcement officers of the agency during that year;
 - (c) the number of remote applications for warrants by law enforcement officers of the agency during that year;
 - (d) the number of applications for warrants or emergency authorisations by law enforcement officers of the agency that were refused during that year, and the reasons for refusal;
 - (e) the number of applications for extensions of warrants by law enforcement officers of the agency during that year, the number of extensions granted or refused

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- and the reasons why they were granted or refused;
- (f) the number of arrests made by law enforcement officers of the agency during that year on the basis (wholly or partly) of information obtained by the use of a surveillance device under a warrant or emergency authorisation;
 - (g) the number of prosecutions that were commenced in this jurisdiction during that year in which information obtained by the use of a surveillance device under a warrant or emergency authorisation was given in evidence and the number of those prosecutions which resulted in a person being found guilty;
 - (h) any other information relating to the use of surveillance devices and the administration of this Act that the Minister considers appropriate.
- (2) The information referred to in subsection (1)(a) and (b) must be presented in such a way as to identify the number of warrants issued and emergency authorisations given in respect of each different kind of surveillance device.
 - (3) The report must be submitted to the Minister as soon as practicable after the end of each financial year, and at any event within 3 months after the end of the financial year.
 - (4) The Minister is to cause a copy of the report to be laid before each House of Parliament within

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15 sitting-days from the day on which the report is received by the Minister.

44A. Use of personal cameras, &c.

- (1) The use of a personal camera is in accordance with this section if –
- (a) it is –
 - (i) being held and used; or
 - (ii) being worn and used –by a police officer who is on duty; and
 - (b) the presence of the personal camera is overt; and
 - (c) where the personal camera is being used to record a private conversation to which the police officer is a party –
 - (i) he or she is in uniform; or
 - (ii) he or she has informed each other party to the conversation that he or she is using a personal camera; or
 - (iii) the circumstances are such that the person being recorded ought reasonably to be expected to be aware that the private conversation is being recorded.

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- (2) Despite section 5(6), the *Right to Information Act 2009* and the *Personal Information Protection Act 2004* apply in relation to information that consists of a recording made, or a transcript or copy of a recording made, by means of a personal camera being held or worn by a police officer, if the information may be used, communicated or published under section 33(3) or (4).

45. Regulations

- (1) The Governor may make regulations for the purpose of this Act.
- (2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.
- (4) The regulations may –
- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 500 penalty units.

45A. Validation of certain actions

If, after the day on which this Act commenced and before the day on which the *Surveillance Legislation Amendments (Personal Police Cameras) Act 2018* commenced, any protected information within the meaning of section 32 was used, communicated or published in relation to a relevant offence, that use, communication or publication is taken to be, and to have always been, lawful, if the use, communication or publication, respectively, would have been lawful under this Act as in force after the amendment to section 33(4)(a) made by the *Surveillance Legislation Amendments (Personal Police Cameras) Act 2018* had commenced.

46. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Workplace Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

47. See Schedule 1.

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SCHEDULE 1

The amendments effected by Section 47 and this Schedule have been incorporated into the authorised version of the Listening Devices Act 1991.

NOTES

The foregoing text of the *Police Powers (Surveillance Devices) Act 2006* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 5 October 2018 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Police Powers (Surveillance Devices) Act 2006</i>	No. 22 of 2006	1.1.2009
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	1.1.2009
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2009</i>	No. 76 of 2009	11.12.2009
<i>Right to Information (Consequential and Transitional) Act 2009</i>	No. 54 of 2009	1.7.2010
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2012</i>	No. 13 of 2012	30.5.2012
<i>Surveillance Legislation Amendments (Personal Police Cameras) Act 2018</i>	No. 18 of 2018	5.10.2018

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TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 18 of 2018, s. 11
Section 5	Amended by No. 54 of 2009, Sched. 1
Section 7	Amended by No. 18 of 2018, s. 12
Section 8	Substituted by No. 76 of 2009, s. 26
Section 9	Amended by No. 66 of 2007, Sched. 1 and No. 76 of 2009, s. 27
Section 17	Amended by No. 66 of 2007, Sched. 1
Section 25	Amended by No. 66 of 2007, Sched. 1
Section 32	Amended by No. 18 of 2018, s. 13
Section 33	Amended by No. 18 of 2018, s. 14
Section 42	Amended by No. 13 of 2012, s. 52
Section 44A	Inserted by No. 18 of 2018, s. 15
Section 45A	Inserted by No. 18 of 2018, s. 16