

c2026-075F
OPP--Opposition

LEGISLATIVE COUNCIL

Surveillance Devices Amendment (Public Interest Exceptions) Bill 2026

First print

Proposed amendments

No. 1 **Objects of Surveillance Devices Act 2007**

Page 3, Schedule 1. Insert after line 2—

[1A] Section 2A Objects of Act

Omit section 2A(c).

Insert instead—

- (c) to ensure the privacy of individuals is not unnecessarily impinged on by providing strict requirements for—
 - (i) the installation, use and maintenance of surveillance devices, and
 - (ii) the possession, communication and publication of unlawfully made surveillance device records.

No. 2 **Additional warrants**

Page 3, Schedule 1[1], line 4. Insert “Omit the definition of *warrant* from section 4(1).” before “Insert”.

No. 3 **Additional warrants**

Page 3, Schedule 1[1]. Insert after line 11—

possession or communication and publication warrant, for Part 3, Division 2A—see section 24A.

possession or communication and publication warrant particulars, for Part 3, Division 2A—see section 24D(1).

surveillance device communication and publication warrant, for Part 3, Division 2A—see section 24A.

No. 4 **Additional warrants**

Page 3, Schedule 1[1]. Insert after line 15—

surveillance device recording possession warrant, for Part 3, Division 2A—see section 24A.

warrant means the following—

- (a) a retrieval warrant,
- (b) a surveillance device communication and publication warrant,

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- (c) a surveillance device warrant,
 - (d) a surveillance device recording possession warrant.

No. 5 **Exception for possession of record if in accordance with warrant**

Page 3, Schedule 1[2], proposed section 12(2), lines 31–34. Omit all words on the lines. Insert instead—

- (2) Subsection (1)(b) does not apply to the possession of a record of a private conversation or the carrying out of an activity if the possession of the record is in accordance with a surveillance device recording possession warrant.

No. 6 **Limitation of public interest exception to law enforcement agencies**

Pages 3 and 4, Schedule 1[3], proposed section 14A(1) and (2), line 38 on page 3 to line 12 on page 4. Omit all words on the lines. Insert instead—

A person does not commit an offence against section 11 or 14 if the person communicates or publishes a surveillance device record to a law enforcement agency in accordance with section 12(1)(b).

No. 7 **Additional types of warrants**

Page 4, Schedule 1. Insert after line 20—

[3A] Section 15 Types of warrant

Omit “warrant.” from section 15(1)(b).

Insert instead—

- warrant,
- (c) a surveillance device recording possession warrant,
- (d) a surveillance device communication and publication warrant.

[3B] Part 3, Division 2A

Insert after Division 2—

Division 2A Surveillance device recording possession warrants and surveillance device communication and publication warrants

24A Definitions

In this division—

possession or communication and publication warrant means—

- (a) a surveillance device recording possession warrant, or
- (b) a surveillance device communication and publication warrant.

possession or communication and publication warrant particulars—see section 24D(1).

surveillance device communication and publication warrant means a warrant issued under section 24C to communicate or publish a record or part of a record.

surveillance device recording possession warrant means a warrant issued under section 24C to possess and examine a record or part of a record.

24B Applications for possession or communication and publication warrants

- (1) An officer of a law enforcement agency, or another person on behalf of the officer, may apply for the issue of—

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- (a) a surveillance device recording possession warrant, or
 - (b) a surveillance device communication and publication warrant.
- (2) An officer of a law enforcement agency, or another person on the officer's behalf, may apply for the issue of a possession or communication and publication warrant if the officer on reasonable grounds suspects or believes the possession or communication and publication is necessary for an investigation in the exercise of the law enforcement agency's functions.
- (3) The application may be made to an eligible Judge.
- (4) The application must be in the form of an affidavit that—
- (a) includes the information required to complete the possession or communication and publication warrant particulars, and
 - (b) sets out the grounds on which the warrant is sought, and
 - (c) sets out the details of any alternative means of obtaining the evidence or information sought under the warrant and the extent to which those means may assist or prejudice the investigation, and
 - (d) states whether any attempts have been made to use an alternative means and, if so, the result of the attempts, and
 - (e) sets out the details of any previous warrant or emergency authorisation sought or issued under this Act in relation to the relevant offence, and
 - (f) as far as reasonably practicable, identifies persons who may be incidentally recorded by the surveillance device, and
 - (g) includes any information known to the applicant that may be adverse to the warrant application or, if no adverse information is known, a statement to that effect.
- (5) A notice containing the information required under subsection (4) must also be served on the Attorney General.
- (6) An application for a warrant must not be heard in open court.

24C Determining applications

- (1) An eligible Judge may issue a possession or communication and publication warrant if satisfied—
- (a) there are reasonable grounds for the claim the possession or communication and publication is necessary, and
 - (b) the notice referred to in section 24B(5) has been served on the Attorney General, and
 - (c) the Attorney General has had an opportunity to be heard in relation to the granting of the warrant.
- (2) In determining whether a possession or communication and publication warrant should be issued, the eligible Judge must have regard to—
- (a) for an application under section 24B(1)—the nature and gravity of the subject of the investigation in relation to which the warrant is sought, and
 - (b) the extent to which encouragement would be given for further making of unlawful surveillance device recordings, and
 - (c) the extent to which the privacy of any person is likely to be affected, and

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- (d) 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
 - (e) the extent to which the information sought to be obtained would assist the investigation, and
 - (f) the evidentiary value of any information sought to be obtained, and
 - (g) for an application under section 24B(2)—any previous warrant sought or issued under this part or a corresponding law, if known, in connection with the same offence.

24D Contents of possession or communication and publication warrants

- (1) A possession or communication and publication warrant must specify the following (the *possession or communication and publication warrant particulars*)—
 - (a) the name of the applicant,
 - (b) the kind of surveillance record to be possessed or communicated and published,
 - (c) the name of the officer of the law enforcement agency primarily responsible for executing the warrant,
 - (d) the period during which the warrant is to be in force, being a period not exceeding 90 days.
- (2) A warrant must also include the following—
 - (a) a statement that the eligible Judge is satisfied of the matters referred to in section 24C(1) and has had regard to the matters referred to in section 24C(2),
 - (b) the date the warrant is issued,
 - (c) the date on which the warrant commences, being not more than 10 days after the date on which the warrant is issued,
 - (d) the period within which a report about the possession or communication and publication authorised by the warrant must be given to the eligible Judge under section 44(1), being a period that expires not less than 60 days after the expiry of the warrant.
- (3) A warrant must be signed by the eligible Judge issuing the warrant and include the Judge's name.

24E What a possession or communication and publication warrant authorises

- (1) A surveillance device recording possession warrant authorises, as specified in the warrant, the possession and examination of a record.
- (2) A surveillance device communication and publication warrant authorises, as specified in the warrant, the parts of a record that may be communicated or published, including, if specified, the whole of a record.

24F Extension and variation of possession or communication and publication warrant

- (1) An officer of a law enforcement agency to whom a possession or communication and publication warrant has been issued or another person on the officer's 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 the warrant would otherwise expire, or

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- (b) for a variation of any of the other terms of the warrant.
 - (2) The application must be made to an eligible Judge.
 - (3) Sections 24B and 24C apply, with any necessary changes, to an application under this section as if the application were an application for a warrant.
 - (4) The eligible Judge may grant an application, subject to any conditions the Judge thinks fit, if satisfied that the matters referred to in section 24C(1) still exist, having regard to the matters in section 24C(2).
 - (5) An eligible Judge who grants an application must endorse the new expiry date or the other varied term on the original warrant.
 - (6) An application in relation to a warrant may be made under this section more than once.

24G Revocation of possession or communication and publication warrant

- (1) A possession or communication and publication warrant may be revoked at any time before the expiration of the period of validity specified in the warrant by an eligible Judge.
- (2) An eligible Judge may revoke a possession or communication and publication warrant on application by or on behalf of an officer of a law enforcement agency.
- (3) The eligible Judge who revokes a warrant on the application of an officer of a law enforcement agency is taken to have notified the chief officer of the law enforcement agency of which the officer to whom the warrant was issued is a member when the eligible Judge revokes the warrant.

24H Discontinuance of possession of record under warrant

- (1) This section applies if a surveillance device recording possession warrant is issued to an officer of a law enforcement agency.
- (2) If the chief officer of the law enforcement agency of which the officer is a member is satisfied possession of the record under the warrant is no longer necessary for the purpose for which the warrant was issued, the chief officer must—
 - (a) destroy the record, or
 - (b) if the record is required by a law enforcement agency to investigate any contraventions of this Act in the making of the record—give the record to the law enforcement agency.
- (3) The chief officer of the law enforcement agency is not required to arrange for an application to be made for the revocation of a warrant under section 24G if the warrant will cease to be in force within 5 days after the day on which the chief officer became satisfied possession of a record under the warrant was no longer necessary.
- (4) If the chief officer is notified that the warrant has been revoked under section 24G, the officer must take the steps necessary to ensure the record is destroyed immediately.
- (5) If the officer of the law enforcement agency to whom the warrant is issued, or who is primarily responsible for executing the warrant, believes the possession of a record under the warrant is no longer necessary for the purpose for which the warrant was issued, the officer must inform the chief officer of the law enforcement agency immediately.

No. 8 **Reports to eligible Judge and Attorney General**

Page 4, Schedule 1. Insert after line 20—

[3C] Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General

Insert after section 44(2)—

- (2A) A person to whom a surveillance device recording possession warrant is issued must, within the time specified in the warrant, give a written report to an eligible Judge and the Attorney General—
- (a) stating whether or not a surveillance device record was examined under the warrant, and
 - (b) specifying the type of surveillance device record, and
 - (c) specifying the name, if known, of any person whose private conversation was recorded, or whose activity was recorded, as part of the surveillance device record, and
 - (d) specifying the period during which the surveillance device record was examined, and
 - (e) containing particulars of the general use made, or to be made, of any evidence or information obtained by examining the surveillance device record, and
 - (f) containing particulars of any previous use of a surveillance device or surveillance device record in connection with the relevant offence in relation to which the warrant was issued.
- (2B) A person to whom a surveillance device communication and publication warrant is issued must, within the time specified in the warrant, give a written report to an eligible Judge and the Attorney General—
- (a) stating whether or not a surveillance device record was communicated or published under the warrant, and
 - (b) specifying how, and to whom, any communication or publication took place, and
 - (c) specifying the name, if known, of any person whose private conversation was recorded, or whose activity was recorded, as part of the surveillance device record that was communicated or published, and
 - (d) containing particulars of the general use made, or to be made, of any evidence or information obtained by communicating or publishing the surveillance device record, and
 - (e) containing particulars of any previous use of a surveillance device or surveillance device record in connection with the relevant offence in relation to which the warrant was issued.

[3D] Section 44(4)

Omit “by the use of the surveillance device”.

Insert instead “under a warrant”.

No. 9 **Savings and transitional provision—warrants**

Page 4. Insert after line 36—

[5] Schedule 1 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part numbering—

**Part Provisions consequent on enactment of
Surveillance Devices Amendment (Public
Interest Exceptions) Act 2026**

1 Part 3, Division 2A

- (1) Part 3, Division 2A, as inserted by the *Surveillance Devices Amendment (Public Interest Exceptions) Act 2026*, does not apply to the Independent Commission Against Corruption processing, publishing or communicating a record, or a report about or including a record, if the record was in the Commission's possession before 1 July 2026.
- (2) If the Independent Commission Against Corruption relies on subclause (1) to process, publish or communicate a record during an investigation under the *Independent Commission Against Corruption Act 1988*, any report relating to the investigation prepared by the Commission under that Act, section 74 must include a statement to that effect.