



SURVEILLANCE DEVICES AMENDMENT (PUBLIC INTEREST EXCEPTIONS) BILL

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The *Surveillance Devices Act 2007* (**SDA**) does not provide for a person to possess an unlawfully made surveillance device record and communicate it to a law enforcement agency or other investigative body for the purposes of an investigation where they have received the record unsolicited and had no involvement in the record being unlawfully made.

The amendments proposed by the Surveillance Devices Amendment (Public Interest Exceptions) Bill 2026 (**the Bill**) will resolve these concerns and were supported by stakeholders.

The Bill removes obstacles for investigative agencies when operating within their statutory functions to better protect the people of NSW. It will create a public interest exception to permit law enforcement and investigative bodies to receive evidence relevant to their functions that may otherwise be in contravention of the SDA.

Objectives: What is the policy's objective couched in terms of the public interest?

There will be circumstances in which the public benefit generated by permitting investigative bodies to use surveillance device records that were obtained unlawfully by a third party will outweigh any potential breaches of privacy involved in obtaining those records.

It serves the public interest for such records to be available to investigative bodies to allow them to investigate criminal or corrupt conduct, and for individuals who communicate such records to investigative bodies in good faith to be protected from criminal liability.

The Bill does not propose a broader public interest exception that would cover, for example, the sharing of illegally made records to the media or the public at large. The NSW Government is concerned a broad exception may encourage other unlawful conduct to collect the content. This Bill is instead focussed on removing obstacles that prevent evidence of crime or corruption being provided to investigative bodies for investigation.

The Bill includes a statutory review provision, and government will consider the limits of the public interest exception in five years' time. This will enable enough time for Government to understand its operation.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The Government considered alternative policies and mechanisms during a public consultation process, however other models were not recommended due to impacts on privacy and other concerns. The public interest exception contained in the Bill implements the recommendations of the consultation report.

The public interest exception can only be created through legislative amendment.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The proposal to include a public interest exception to certain offences has privacy implications, given it will permit unlawfully obtained records such as private conversations to be communicated to, and used by, investigative bodies in limited circumstances. However, as noted above, there will be times where the public benefit in allowing such information to be used in investigations outweigh the privacy concerns. It may also be inappropriate to punish individuals who communicate such records in good faith for public interest reasons, such as to report crime and corrupt conduct to an appropriate authority.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The amendments in the Bill commence on a day to be proclaimed to enable system changes, community education and agency readiness.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

In 2024, the Department of Communities and Justice undertook public consultation on whether a public interest exception should be developed in NSW. The consultation outcome report is publicly available. The majority of stakeholders consulted supported a public interest exception for offences under sections 11, 12, and 14 of the SDA,.

Consultation was also undertaken with relevant agencies and stakeholders on the other amendments in the Bill.