



Australian Capital Territory

Listening Devices Act 1992

A1992-57

Republication No 1 (RI)

Effective: 29 November 1994 – 8 December 1998

Republication date of printed version: 28 February 1995

Reissued electronically: 30 April 2026

Last amendment made by A1994-81

Authorised by the ACT Parliamentary Counsel

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The republished law

This is a republication of the *Listening Devices Act 1992* effective from 29 November 1994 to 8 December 1998.

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AUSTRALIAN CAPITAL TERRITORY

LISTENING DEVICES ACT 1992

Reprinted as at 28 February 1995

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AUSTRALIAN CAPITAL TERRITORY

LISTENING DEVICES ACT 1992

An Act to regulate the use of listening devices for the purpose of listening to or recording private conversations, and for related purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Listening Devices Act 1992*.¹

Interpretation

2. In this Act, unless the contrary intention appears—

“consent” includes implied consent;

“defined offence” means—

- (a) an offence against a law of the Territory (other than the common law) punishable by penal servitude for life or for 10 years or more; or
- (b) an offence against section 164 or 165 of the *Drugs of Dependence Act 1989*;

“hearing aid” means a device used by a person with impaired hearing to overcome the impairment and to permit the person to hear sounds ordinarily audible to the human ear, but no other sounds;

“listen to” includes hear;

“listening device” means any instrument, apparatus, equipment or device capable of being used to listen to or to record a private conversation, but does not include a hearing aid;

“party”, in relation to a private conversation, means—

- (a) a person who speaks, or is spoken to, in the course of the conversation; or
- (b) a person who, with the consent of any of the persons who speaks or is spoken to in the course of the conversation, listens to or records the conversation;

“principal party”, in relation to a private conversation, means a person who speaks, or is spoken to, in the course of the conversation;

“private conversation” means a conversation between persons in circumstances that may reasonably be taken to indicate that any of the principal parties desires the conversation to be listened to only—

- (a) by themselves; or
- (b) by themselves and by some other person with the consent of each principal party to the conversation;

“record”, in relation to a private conversation, includes a statement prepared from such a record;

“report”, in relation to a private conversation, includes a report of the substance, meaning or purport of the conversation;

“this Act” includes the regulations.

PART II—OFFENCES

Use of listening devices

4. (1) A person shall not use, or cause to be used, a listening device—

- (a) to listen to or to record a private conversation to which the person is not a party; or
- (b) to record a private conversation to which the person is a party.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(2) Subsection (1) does not apply to—

- (a) the use of a listening device pursuant to an authority granted by or under a law of the Commonwealth; or

- (b) the unintentional hearing of a private conversation by means of a listening device.

(3) Paragraph (1) (b) does not apply to the use of a listening device by, or on behalf of, a party to a private conversation if—

- (a) each principal party to the conversation consents to that use of the listening device; or
- (b) a principal party to the conversation consents to the listening device being so used, and—
 - (i) the recording of the conversation is considered by that principal party, on reasonable grounds, to be necessary for the protection of that principal party's lawful interests; or
 - (ii) the recording is not made for the purpose of communicating or publishing the conversation, or a report of the conversation, to any person who is not a party to the conversation.

(4) Subparagraph (3) (b) (i) does not apply so as to exempt a person from the application of subsection (1) where the relevant listening device is used by or on behalf of the Territory.

Communication and publication of records of private conversations by parties

5. (1) A party to a private conversation shall not knowingly communicate or publish a record of the conversation made, directly or indirectly, by the use of a listening device (whether in contravention of section 4 or not).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months;
- (b) if the offender is a body corporate—250 penalty units.

(2) Subsection (1) does not apply where the communication or publication—

- (a) is made to another party to the conversation;
- (b) is made with the consent of each principal party to the conversation;
- (c) is made in the course of civil or criminal proceedings;
- (d) is considered by the party making it, on reasonable grounds, to be necessary for the protection of that party's lawful interests;

- (e) is made to a person who is believed by the party on reasonable grounds to have such an interest in the conversation as to make the communication or publication reasonable in the circumstances; or
- (f) is made pursuant to an authority granted by or under a law of the Commonwealth.

(3) Paragraph (2) (d) does not apply so as to exempt a person from the application of subsection (1) where the relevant record of conversation is made, directly or indirectly, by the use of a listening device by or on behalf of the Territory.

Communication and publication of unlawfully recorded private conversations

6. (1) A person shall not knowingly communicate or publish a private conversation, or a report of a private conversation, that has come to the person's knowledge as a result, direct or indirect, of the use of a listening device—

- (a) in contravention of section 4; or
- (b) in circumstances referred to in paragraph 4 (2) (b) or subsection 4 (3).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months;
- (b) if the offender is a body corporate—250 penalty units.

(2) Subsection (1) does not apply—

- (a) where the communication or publication is made—
 - (i) to a party to the private conversation;
 - (ii) with the consent of each principal party to the conversation;
 - (iii) in the course of proceedings for an offence against this Act; or
 - (iv) in the case of the use of a listening device in the circumstances referred to in subparagraph 4 (3) (b) (i)—in the course of reasonable action taken to protect the lawful interests of the principal party to the conversation who consented to the use of the device; or
- (b) where the person referred to in subsection (1) also obtains knowledge of the private conversation or report in circumstances other than those referred to in that subsection.

(3) Subparagraph (2) (a) (iv) does not apply so as to exempt a person from the application of subsection (1) where the relevant listening device is used by or on behalf of the Territory.

Possession of records of unlawfully recorded private conversations

7. (1) A person shall not possess a record of a private conversation knowing that it has been obtained, directly or indirectly, by the use of a listening device in contravention of section 4.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months;
- (b) if the offender is a body corporate—250 penalty units.

(2) Subsection (1) does not apply where the record is in the possession of the person—

- (a) in connection with proceedings for an offence against this Act;
- (b) with the consent of each principal party to the conversation; or
- (c) as a consequence of a communication or publication of the record to that person in circumstances that do not constitute an offence against this Act.

Manufacture, supply and possession of listening devices

8. A person shall not—

- (a) manufacture;
- (b) supply, sell or distribute;
- (c) offer to supply, sell or distribute; or
- (d) possess;

a listening device in the knowledge that it is intended or principally designed for use in contravention of section 4.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months;
- (b) if the offender is a body corporate—250 penalty units.

PART III—EVIDENCE

Interpretation

9. In this Part, a reference to the giving of evidence of a private conversation includes a reference to the production of a record of such a conversation.

Admissibility of evidence obtained using listening devices

10. (1) Where a private conversation, or a report of a private conversation, has come to the knowledge of a person as a result (direct or indirect) of the use of a listening device in contravention of section 4, or as a result (direct or indirect) of the use of a listening device in circumstances referred to in paragraph 4 (2) (b) or subsection 4 (3)—

- (a) evidence of the conversation; or
- (b) evidence obtained as a direct consequence of the conversation so coming to the knowledge of that person;

may not be given by that person in any civil or criminal proceedings.

(2) Subsection (1) does not apply—

- (a) if each principal party to the conversation consents to the evidence being given;
- (b) in proceedings for an offence against this Act;
- (c) if the listening device was used in the circumstances referred to in subparagraph 4 (3) (b) (i)—so as to render any evidence inadmissible for the purpose of protecting the lawful interests of the principal party to the conversation who consented to the use of the device;
- (d) in proceedings for a defined offence if, subject to subsection (4), a court considers that the evidence should be admitted; or
- (e) where the person referred to in subsection (1) also obtains knowledge of the conversation or report in circumstances other than those referred to in that subsection.

(3) Paragraph (2) (c) does not apply so as to render admissible evidence which has been obtained, directly or indirectly, by the use of a listening device by or on behalf of the Territory.

(4) In determining whether to admit evidence referred to in subsection (1) in proceedings for a defined offence, the court shall—

- (a) be guided by the public interest, including (where relevant) the public interest in—
 - (i) upholding the law;
 - (ii) protecting people from illegal or unfair treatment; and
 - (iii) punishing those guilty of offences; and
- (b) have regard to all relevant matters, including—

- (i) the seriousness of the offence in relation to which the evidence is sought to be admitted; and
- (ii) the nature of the relevant contravention of section 4, or of the relevant circumstances referred to in paragraph 4 (2) (b), or subsection 4 (3), as the case requires.

(5) A court before which evidence referred to in subsection (1) is admitted in proceedings for an offence against this Act, or proceedings for a defined offence, may, at any stage of the proceedings, and from time to time, make an order forbidding the publication of—

- (a) any such evidence;
- (b) any report of any such evidence; or
- (c) any report of the substance, meaning or purport of any such evidence.

(6) A person shall not contravene an order under subsection (5).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months;
- (b) if the offender is a body corporate—250 penalty units.

Conduct of directors, servants and agents

11. (1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the

body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

PART IV—ENFORCEMENT

Forfeiture of listening devices

12. (1) Where a court has convicted a person of an offence against this Act, it may, in addition to any penalty it may impose, order—

- (a) that any listening device used in connection with the offence be forfeited to the Territory or destroyed; and
- (b) that any record of a private conversation—
 - (i) to which the offence relates; or
 - (ii) which was obtained, directly or indirectly, by the use of a listening device in connection with the offence;

be forfeited to the Territory or destroyed.

(2) Before making an order under subsection (1), the court may require notice to be given to, and may hear, such persons as the court thinks fit.

(3) Without affecting any other right of appeal, an order under subsection (1) is appealable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence.

(4) Where an order is made under subsection (1) in relation to a listening device or record, a police officer may seize the device or record for the purpose of giving effect to the order.

Corporations—penalties

13. Where a body corporate is convicted of an offence against this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for the offence.

PART V—MISCELLANEOUS

Exemptions

14. (1) The regulations may exempt a person from the operation of this Act, or specified provisions of this Act, subject to such conditions as are prescribed by the regulations.

(2) Notwithstanding paragraph 6 (1) (b) of the *Subordinate Laws Act 1989*, a regulation made for the purposes of subsection (1) takes effect—

- (a) on the expiration of the period of 15 sitting days after it is laid before the Legislative Assembly under paragraph 6 (1) (c) of that Act; or
- (b) on such later date as is prescribed by the regulation;

subject otherwise to that Act.

Regulations

15. (1) The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may prescribe penalties not exceeding—

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000;

for offences against the regulations.

NOTE

1. The *Listening Devices Act 1992* as shown in this reprint comprises Act No. 57, 1992 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Listening Devices Act 1992</i>	57, 1992	25 Sept 1992	25 Sept 1992	
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Statute Law Revision (Penalties) Act 1994</i>	81, 1994	29 Nov 1994	Ss. 1 and 2: 29 Nov 1994 Remainder: 29 Nov 1994 (see <i>Gazette</i> 1994, No. S269, p. 2)	—

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 3	rep. No. 44, 1993
Ss. 4-8	am. No. 81, 1994
S. 10	am. No. 81, 1994

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95/3301