



Australian Capital Territory

Listening Devices Act 1992

A1992-57

Republication No 7

Effective: 18 December 2007 – 8 September 2008

Republication date: 18 December 2007

Last amendment made by A2007-15

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Listening Devices Act 1992* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 18 December 2007. It also includes any amendment, repeal or expiry affecting the republished law to 18 December 2007.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Listening Devices Act 1992

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R7
18/12/07

Listening Devices Act 1992
Effective: 18/12/07-08/09/08

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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 1 Preliminary

1 Name of Act

This Act is the *Listening Devices Act 1992*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*engage in conduct*—see the Criminal Code, section 13.' means that the term 'engage in conduct' is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

3B Application of Act to corrections management

- (1) This section applies in relation to an electronic communication, other than a protected electronic communication, between a detainee in a correctional centre and someone else.
- (2) This Act does not apply to any of the following under the *Corrections Management Act 2007*:
 - (a) the listening to or recording of the communication;
 - (b) the communication or publication of the communication.
- (3) In this section:

detainee—see the *Corrections Management Act 2007*, section 6.

electronic communication—see the *Corrections Management Act 2007*, section 103 (Monitoring telephone calls etc).

protected electronic communication—see the *Corrections Management Act 2007*, section 103 (Monitoring telephone calls etc).

Part 2 Offences

4 Use of listening devices

- (1) A person must not use a listening device with the intention of—
 - (a) listening to or recording a private conversation to which the person is not a party; or
 - (b) recording a private conversation to which the person is a party.Maximum penalty: 50 penalty units.
- (2) Subsection (1) does not apply to—
 - (a) the use of a listening device under 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) Subsection (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) Subsection (3) (b) (i) does not apply so as to exempt a person from the application of subsection (1) if the relevant listening device is used by or on behalf of the Territory.

5 Communication and publication of records of private conversations by parties

- (1) A person who is party to a private conversation commits an offence if—
- (a) the person divulges or communicates a record of the conversation; and
 - (b) the person knows that the record was made, directly or indirectly, using a listening device (whether or not in contravention of section 4).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if the communication or publication—
- (a) is made to another party to the conversation; or
 - (b) is made with the consent of each principal party to the conversation; or
 - (c) is made in the course of civil or criminal proceedings; or
 - (d) is considered by the party making it, on reasonable grounds, to be necessary for the protection of that party's lawful interests; or
 - (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 under an authority granted by or under a law of the Commonwealth.

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

6 Communication and publication of unlawfully recorded private conversations

- (1) A person commits an offence if—
- (a) the person divulges or communicates a private conversation, or a report of a private conversation; and
 - (b) the person knows of the conversation, directly or indirectly, because of the use of a listening device—
 - (i) in contravention of section 4; or
 - (ii) in circumstances mentioned in section 4 (2) (b) or (3).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply—
- (a) if the communication or publication is made—
 - (i) to a party to the private conversation; or
 - (ii) with the consent of each principal party to the conversation; or
 - (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 section 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) if 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) Subsection (2) (a) (iv) does not apply so as to exempt a person from the application of subsection (1) if the relevant listening device is used by or on behalf of the Territory.

7 Possession of records of unlawfully recorded private conversations

- (1) A person commits an offence if—
 - (a) the person possesses a record of a private conversation; and
 - (b) the person knows the record was obtained, directly or indirectly, using a listening device in contravention of section 4.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if the record is in the possession of the person—
 - (a) in connection with proceedings for an offence against this Act; or
 - (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.

8 Manufacture, supply and possession of listening devices

A person commits an offence if—

- (a) the person—
 - (i) manufactures a listening device; or

- (ii) supplies, sells or distributes a listening device; or
 - (iii) offers to supply, sell or distribute a listening device; or
 - (iv) possesses a listening device; and
- (b) the person knows the device is intended or mainly designed for use in contravention of section 4.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Part 3 Evidence

9 Interpretation for pt 3

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

10 Admissibility of evidence obtained using listening devices

- (1) If 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 section 4 (2) (b) or 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; or
 - (b) in proceedings for an offence against this Act; or
 - (c) if the listening device was used in the circumstances referred to in section 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; or

- (d) in proceedings for a defined offence if, subject to subsection (4), a court considers that the evidence should be admitted; or
 - (e) if 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) Subsection (2) (c) does not apply so as to render admissible evidence that 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 (if relevant) the public interest in—
 - (i) upholding the law; and
 - (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 section 4 (2) (b) or 4 (3).
- (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; or
 - (b) any report of any such evidence; or

(c) any report of the substance, meaning or purport of any such evidence.

- (6) A person must not engage in conduct that contravenes an order under subsection (5).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

11 Acts and omissions of representatives

- (1) In this section:

person means an individual.

Note See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

representative, of a person, means an employee or agent of the person.

state of mind, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

Part 4 Enforcement

12 Forfeiture of listening devices

- (1) If 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) that 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, the persons that 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) If 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.

Part 5 Miscellaneous

14 Exemptions

- (1) The regulations may exempt a person from the operation of this Act, or specified provisions of this Act, subject to the conditions that are prescribed by the regulations.
- (2) Subject to any disallowance under the *Legislation Act 2001*, chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments), a regulation providing for an exemption commences—
 - (a) on the day after the 6th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
 - (b) if the regulations provide for a later date or time of commencement—on that date or at that time.

15 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Commonwealth
- contravene
- disallowable instrument (see s 9)
- Executive
- individual
- penalty unit (see s 133)
- person
- the Territory.

consent includes implied consent.

defined offence means—

- (a) an offence against a Territory law (other than the common law) punishable by life imprisonment or for 10 years or more; or
- (b) an offence against any of the following provisions of the Criminal Code:
 - (i) section 603 (8) (which is about trafficking in cannabis);
 - (ii) section 610 (5) (Selling controlled precursor for manufacture of controlled drug);
 - (iii) section 611 (9) or (10) (Manufacturing controlled precursor for manufacture of controlled drug);
 - (iv) section 613 (Supplying substance, equipment or instructions for manufacturing controlled drug);
 - (v) section 620 (Supplying plant material, equipment or instructions for cultivating controlled plant);

- (vi) section 625 (4) (Supplying controlled drug to child);
- (vii) section 640 (Receiving property directly derived from drug offence); or
- (c) an offence against the *Drugs of Dependence Act 1989*, section 164 (Sale or supply).

engage in conduct—see the Criminal Code, section 13.

evidence—giving of ***evidence*** of a private conversation, for part 3 (Evidence)—see section 9.

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.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

Listening Devices Act 1992 No 57

notified 25 September 1992 (Gaz 1992 No S162)

commenced 25 September 1992

as amended by

Acts Revision (Position of Crown) Act 1993 No 44 sch 2

notified 27 August 1993 (Gaz 1993 No S165)

commenced 27 August 1993 (s 2)

Statute Law Revision (Penalties) Act 1994 No 81 sch

notified 29 November 1994 (Gaz 1994 No S253)

s 1, s 2 commenced 29 November 1994 (s 2 (1))

sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Statute Law Amendment Act 2000 No 80 amdt 3.15

notified 21 December 2000 (Gaz 2000 No S69)

commenced 21 December 2000 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 226

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 226 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-14 sch 1 pt 1.30

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 1 pt 1.30 commenced 9 April 2004 (s 2 (1))

Endnotes

4 Amendment history

Criminal Code (Serious Drug Offences) Amendment Act 2004 A2004-56 sch 1 pt 1.4

notified LR 6 September 2004
s 1, s 2 commenced 6 September 2004 (LA s 75 (1))
sch 1 pt 1.4 commenced 6 March 2005 (s 2 and LA s 79)

Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.29

notified LR 27 October 2005
s 1, s 2 commenced 27 October 2005 (LA s 75 (1))
sch 1 pt 1.29 commenced 24 November 2005 (s 2)

Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.62

notified LR 22 March 2007
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))
sch 3 pt 3.62 commenced 12 April 2007 (s 2 (1))

Corrections Management Act 2007 A2007-15 sch 1 pt 1.5

notified LR 18 June 2007
s 1, s 2 commenced 18 June 2007 (LA s 75 (1))
sch 1 pt 1.5 commenced 18 December 2007 (s 2 and LA s 79)

4 Amendment history

Name of Act

s 1 sub A2007-3 amdt 3.345

Dictionary

s 2 am 2001 No 44 amdt 1.2669
defs reloc to dict A2007-3 amdt 3.347
sub A2007-3 amdt 3.348
def **engage in conduct** ins A2005-54 amdt 1.208
om A2007-3 amdt 3.346
def **this Act** om 2001 No 44 amdt 1.2668

Notes

s 3 om 1993 No 44 sch 2
ins A2005-54 amdt 1.209

Offences against Act—application of Criminal Code etc

s 3A ins A2005-54 amdt 1.209

Application of Act to corrections management

s 3B ins A2007-15 amdt 1.26

Use of listening devices

s 4 am 1994 No 81 sch; A2005-54 amdt 1.210

Communication and publication of records of private conversations by parties

s 5 am 1994 No 81 sch; A2005-54 amdt 1.211

Communication and publication of unlawfully recorded private conversations

s 6 am 1994 No 81 sch; A2005-54 amdt 1.212

Possession of records of unlawfully recorded private conversations

s 7 am 1994 No 81 sch; A2005-54 amdt 1.213

Manufacture, supply and possession of listening devicess 8 am 1994 No 81 sch
sub A2005-54 amdt 1.214**Admissibility of evidence obtained using listening devices**

s 10 am 1994 No 81 sch; A2005-54 amdt 1.215

Acts and omissions of representatives

s 11 sub A2004-15 amdt 1.34

Corporations—penalties

s 13 om 1998 No 54 sch

Exemptions

s 14 am 2001 No 44 amdt 1.2670

Regulation-making powers 15 am 1998 No 54 sch
sub 2001 No 44 amdt 1.2671**Dictionary**dict ins A2007-3 amdt 3.349
def **consent** reloc from s 2 A2007-3 amdt 3.347
def **defined offence** am 2000 No 80 amdt 3.15; A2004-56
amdt 1.49
reloc from s 2 A2007-3 amdt 3.347
def **engage in conduct** ins A2007-3 amdt 3.349
def **evidence** ins A2007-3 amdt 3.349
def **hearing aid** reloc from s 2 A2007-3 amdt 3.347
def **listen to** reloc from s 2 A2007-3 amdt 3.347
def **listening device** reloc from s 2 A2007-3 amdt 3.347
def **party** reloc from s 2 A2007-3 amdt 3.347
def **principal party** reloc from s 2 A2007-3 amdt 3.347
def **private conversation** reloc from s 2 A2007-3 amdt 3.347
def **record** reloc from s 2 A2007-3 amdt 3.347
def **report** reloc from s 2 A2007-3 amdt 3.347

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1994 No 81	28 February 1995
2	A2001-44	26 March 2002
3	A2004-15	9 April 2004
4	A2004-56	6 March 2005
5	A2005-54	24 November 2005
6	A2007-3	12 April 2007

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