

Public interest exceptions to the offences in sections 11, 12 and 14 of the Surveillance Devices Act 2007 (NSW)

Consultation Paper

April 2024

Contents

List of key terms.....	3
1 Opportunity to provide comment	4
2 Offences in the <i>Surveillance Devices Act 2007</i>	5
3 Public interest exceptions in other jurisdictions	9
4 Questions.....	11
5 Attachments	13
Attachment 1: Sections 11, 12 and 14 of the <i>Surveillance Devices Act 2007</i> (NSW)	13
Attachment 2: Public interest exceptions in other Australian states and territories.	15

List of key terms

Term	Definition
Data surveillance device	Any device or program capable of being used to record or monitor the input of information into or output of information from a computer, but does not include an optical surveillance device.
Department	NSW Department of Communities and Justice
ICAC	NSW Independent Commission Against Corruption
Listening device	Generally 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. It does not include a device used by a person with a hearing impairment to overcome their impairment.
Optical surveillance device	Generally any device capable of being used to record visually or observe an activity, but it does not include a device used by a person with a vision impairment to overcome their impairment.
Public interest exceptions	Exceptions to offences in surveillance device laws which allow a person to possess, communicate or publish information or a recording from a surveillance device if it is in the public interest.
SD Act	<i>Surveillance Devices Act 2007</i> (NSW)
Surveillance device	A data surveillance device, a listening device, an optical surveillance device or a tracking device, or a device that is a combination of any 2 or more of those devices.
Tracking device	Any electronic device capable of being used to determine or monitor the geographical location of a person or an object.

1 Opportunity to provide comment

The Department of Communities and Justice (the Department) is seeking comments on whether changes should be made to the offences in sections 11, 12 and 14 of the *Surveillance Devices Act 2007* (NSW) (SD Act) to introduce a public interest exception.

Sections 11, 12 and 14 of the SD Act make it an offence to have, publish, or give someone information or a recording that was obtained by someone using a surveillance device in breach of the law. A surveillance device generally is any item or program that can be used to:

- record or listen to a conversation, or
- observe or make a visual record of an activity, or
- record or monitor the information going in or out of a computer.

A mobile phone with a camera is an example of a surveillance device.

The Department is considering whether to add new exceptions to the offences in sections 11, 12 and 14 of the SD Act. These exceptions could allow a person to use information, or a recording obtained from an illegal use of a surveillance device if it is in the public interest (public interest exceptions).

The Department would like to hear your views on:

- whether public interest exceptions should be inserted into sections 11, 12 and 14 of the SD Act, and
- if so, what should be the content of those exceptions.

This paper provides information about the offences in the SD Act, and the public interest exceptions in the surveillance device laws in other Australian states and territories.

This paper includes questions to help you consider the different issues and provide your views to the Department. The list of questions is on pages 11-12.

Please send your comments to the Department by:

- completing the Submission form, and
- sending your completed form by email to policy@dcj.nsw.gov.au or
- mailing your completed form to:

Director, Law Enforcement and Crime Team
Policy, Reform and Legislation Branch
Department of Communities and Justice
Locked Bag 5000
Parramatta, NSW, 2124

Please provide your comments by 22 May 2024. If you do not want your comments to be published, please tell us this when you send your comments.

If you have a question about anything in this paper, please email your question to policy@dcj.nsw.gov.au.

The NSW Government will consider all the responses that are provided to this paper and will then decide whether to introduce a law to make changes to the SD Act.

2 Offences in the *Surveillance Devices Act 2007*

The SD Act helps to protect the privacy of people in New South Wales by making it illegal for a person to:

- install, use or maintain surveillance devices in certain circumstances, and to
- communicate, publish or possess information, a report or a record that was obtained by an illegal use of a surveillance device.

2.1 Offences for the use of surveillance devices

The SD Act contains separate offences for using different types of surveillance devices, as shown in the table below.

Offences for use of surveillance devices	Section
Installing/using/causing to be used/maintaining a listening device	7
Installing/using/maintaining an optical surveillance device	8
Installing/using/maintaining a tracking device	9
Installing/using/maintaining a data surveillance device	10

These sections only prohibit the use of these devices in certain circumstances. Under these sections it is only an offence to knowingly install, use and maintain such devices to:

- listen to or record people's **private conversations without their consent** (section 7)
- observe and record **activities by entering onto private premises or interfering with property without the consent of the owner or occupier** (section 8)
- identify a **person's location without their consent** (section 9), or
- record or monitor the **use of a computer by entering onto private premises or interfering with the computer or a computer network on those premises without the consent of the owner or occupier** (section 10).

There are limited exceptions to each of the offences in sections 7-10 of the SD Act. For example, all of those offences have exceptions for the installation, use and maintenance of a surveillance device which is done in accordance with either:

- a warrant issued by a court to a law enforcement officer under Part 3 of the SD Act
- the emergency authorisation provisions available to law enforcement officers in Division 4 of Part 3 of the SD Act, or
- a law of the Commonwealth.

There are no general exceptions to the offences in sections 7-10 for use of surveillance devices in the public interest.

2.2 Offences for use of information or recordings

The SD Act also contains offences for the use of information or a report or recording that was obtained by a person using a surveillance device in breach of sections 7-10 of the Act.

Offences for using information/report/recording from illegal use of surveillance devices	Section
Communicating/publishing a report or record of a private conversation or an activity from a listening device, optical surveillance device or tracking device	11
Possessing a record of a private conversation or an activity from a listening device, optical surveillance device or tracking device	12
Communicating/publishing information from a data surveillance device	14

Under section 11 of the SD Act, it is an offence for a person to **publish or communicate**:

- a private conversation or a report of a private conversation, or
- a record or report of an activity

if the conversation, report or record has come to the person's knowledge as a result of the use of a surveillance device in breach of section 7, 8 or 9 of the SD Act.

Section 14 contains a similar offence for the publication or communication of information obtained from the use of a data surveillance device in breach of section 10 of the SD Act.

Section 12 of the SD Act makes it an offence for a person to **possess** a record of a private conversation or an activity if the person knows it has been obtained by a person using a surveillance device in breach of section 7, 8 or 9 of the Act.

A copy of sections 11, 12 and 14 of the SD Act is attached to this paper (see **Attachment 1**).

The diagram below shows the relationship between the offences in sections 7-10 of the SD Act, and the offences in sections 11, 12 and 14 of the Act.



2.3 Exceptions which allow use of information or recordings

There are no general exceptions to the offences in sections 11, 12 and 14 to permit a report, recording or information that was obtained by illegal use of a surveillance device to be published, communicated or possessed if it is in the public interest.

However, there are exceptions which allow communication or publication that is no more than is reasonably necessary in connection with an imminent threat of:

- serious violence to persons, or
- substantial damage to property, or
- commission of a serious narcotics offence.

If those requirements are met:

- the person who communicated or published the information, report or record will not have committed an offence under section 11 or 14,¹ and
- any person who receives a record because of that communication or publication will not have committed an offence under section 12 for possessing that record.²

There are also other limited exceptions, for example, if the record or report of a private conversation or an activity is possessed, communicated or published with the consent of all the main parties to that conversation or activity.³

2.4 Prosecutions for offences under the SD Act

A person cannot be charged with the offences in sections 7-14 of the SD Act unless the NSW Attorney General or Director of Public Prosecutions agrees they should be prosecuted.⁴ The maximum sentence for each of the offences in sections 7-14 of the SD Act is **5 years' imprisonment**.

Regulations can be made under the SD Act to exempt particular groups of people from having to comply with sections of the Act, which means those offences will not apply to those people.⁵

For example, the NSW Government has made a temporary regulation to allow officers who investigate corruption at the NSW Independent Commission Against Corruption (ICAC) to use information, records and reports that have been obtained by an illegal use of a surveillance device. The ICAC officers are not permitted to use a surveillance device in breach of sections 7-10 of the SD Act, and they are only allowed to use the information, records or reports they receive for investigations into corruption.⁶

2.5 How the offences affect the public interest

Sections 7, 8, 9 and 10 of the SD Act **protect the privacy** of members of the public by making it a serious offence to install, use and maintain surveillance devices to listen to or record their private conversations or identify their location without their consent, or to observe and record their activities or use of a computer by entering onto private premises or interfering with property without consent.

Sections 8 and 10 of the SD Act also help to protect members of the community against **trespass on their private property**. Those sections prohibit a person using an optical surveillance device or a data surveillance device if that use involves the person entering private property without the consent of the owner or occupier of the property.

The offences in sections 11, 12 and 14 of the SD Act protect the person whose privacy was violated and/or whose property was invaded by a breach of sections 7, 8, 9 or 10 from **further infringement of their privacy**. Sections 11, 12 and 14 do this by prohibiting any person from possessing, communicating or publishing a surveillance device recording that

¹ *Surveillance Devices Act 2007* (NSW) s 11(2)(b) and s 14(2)(b).

² *Surveillance Devices Act 2007* (NSW) s 12 (2)(c).

³ *Surveillance Devices Act 2007* (NSW) s 11(2)(a)(ii) and s 12(2)(b).

⁴ Section 56 of the *Surveillance Devices Act 2007* (NSW) requires the Attorney General's consent to institute proceedings for any offence against the Act, and the Attorney General has authorised the Director of Public Prosecutions to give that consent: Attorney General (NSW), 'Director of Public Prosecutions Act 1986 Order' in New South Wales, *Government Gazette of the State of New South Wales*, No 86, 31 August 2012, p 3838-3839.

⁵ *Surveillance Devices Act 2007* (NSW) s 59(2).

⁶ *Surveillance Devices Regulation 2022* (NSW) reg 6A.

was made in breach of the SD Act. These sections also aim to further discourage a person from using a surveillance device in breach of the SD Act, because a person cannot use or even possess any recording obtained by that breach without committing a separate offence.

However, there has been some criticism of the communication, publication and possession offences in the SD Act for being too strict. For example, concerns have been raised that those offences in the SD Act:

- prevent a person giving a recording that is evidence of a **serious crime** to police
- expose persons to criminal liability for passing on to anti-corruption bodies a recording that shows **corrupt conduct** by a public figure
- prevent the exposure of **animal cruelty, human rights abuses** and other misconduct.

These examples illustrate circumstances where it may be in the public interest for a recording that was illegally obtained through a breach of the SD Act to be communicated to certain authorities or published, even though this infringes a person's privacy. A public interest exception which allows for communication or publication in certain circumstances may therefore serve the interests of the community.

2.6 The High Court's comments on sections 11 and 12

In the case *Farm Transparency International Ltd v New South Wales*⁷ the High Court of Australia was required to consider how the offences in sections 11 and 12 of the SD Act affect **freedom of communication about political matters**.

The case was about an organisation that published photographs and videos of animal agricultural practices to raise awareness about animal cruelty and advocate for changes to laws and policies. A director of the organisation had obtained the photographs and videos by entering farms and using a surveillance device in breach of section 8 of the SD Act.

The organisation and the director argued that sections 11 and 12 of the SD Act infringed on the freedom of political communication that is implied in the Australian Constitution. They argued that those sections prohibit communication and publication of reports and recordings which may be relevant to public discussion about important political matters.

All Justices of the High Court agreed that the offences in sections 11 and 12 of the SD Act affect the implied constitutional freedom of political communication because they prohibit possession, communication and publication of a record obtained in breach of section 8 of the SD Act.

However, all Justices also agreed that the offence in section 8 of the SD Act has the legitimate aim of **protecting the privacy of activities that occur on private property**, and sections 11 and 12 contribute to that aim.

A majority of the Court concluded that the limits that sections 11 and 12 of the SD Act place on political communication were justifiable in circumstances where:

- the record that was possessed, communicated or published did not reveal **unlawful activity**, and
- the person who possessed, communicated or published the record was **complicit or involved in the breach of section 8** through which the record was obtained.

⁷ (2022) 403 ALR 1.

3 Public interest exceptions in other jurisdictions

3.1 Differences between the SD Act and other surveillance device laws

The Northern Territory (**NT**), South Australia, Victoria and Western Australia all have laws that regulate the use of different types of surveillance devices by members of the public.⁸ There are some key differences in the offences in those laws compared with those in the SD Act, for example:

- The other jurisdictions only prohibit the use of optical surveillance devices to record **private activities**,⁹ but section 8 of the SD Act aligns with the common law's protection of private property by prohibiting the recording of any activities if the recording involves entry onto premises without consent.
- The other jurisdictions prohibit communication or publication of information, a report or record that has been obtained as a result of a **legal or illegal use of a surveillance device**.¹⁰ Sections 11 and 14 of the SD Act only prohibit communication or publication if the surveillance device was used **illegally**.
- It is not an offence under the laws in the NT, Victoria and South Australia to **possess** a record obtained from a surveillance device.

New South Wales also has the highest penalties for possessing, communicating or publishing information, reports or records obtained by illegal use of surveillance devices. The relevant offences and penalties in the surveillance device laws in the other states and territories are set out in the table attached to this paper (**Attachment 2**).

3.2 Public interest exceptions in other surveillance device laws

The surveillance device laws in the NT, South Australia, Victoria and Western Australia each contain public interest exceptions that provide examples of the potential content and scope of exceptions that could be introduced in New South Wales. The table below shows the different types of public interest exceptions that have been adopted.

⁸ *Surveillance Devices Act 2007* (NT); *Surveillance Devices Act 2016* (SA); *Surveillance Devices Act 1999* (Vic); *Surveillance Devices Act 1998* (WA). The laws in the Australian Capital Territory, Queensland and Tasmania only regulate the use of listening devices: see *Listening Devices Act 1992* (ACT); *Invasion of Privacy Act 1971* (Qld) and *Listening Devices Act 1991* (Tas).

⁹ *Surveillance Devices Act 2007* (NT) s 12; *Surveillance Devices Act 2016* (SA) s 5; *Surveillance Devices Act 1999* (Vic) s 7; *Surveillance Devices Act 1998* (WA) s 6.

¹⁰ *Surveillance Devices Act 2007* (NT) s 15; *Surveillance Devices Act 2016* (SA) ss 9-10 and s 11; *Surveillance Devices Act 1999* (Vic) s 11; *Surveillance Devices Act 1998* (WA) ss 9, 10 and 12.

Types of public interest exceptions for possession/communication/publication of information/reports/records from use of surveillance device	States and territories which have the type of exception
General exception allowing communication and publication that is reasonably necessary in the public interest	Northern Territory, Victoria
Exception allowing communication and publication by an order from a judge if the surveillance device was used in the public interest	Northern Territory, South Australia, Western Australia
Exception allowing publication or communication to police about serious criminal matters	Western Australia
Exception allowing publication or communication by or to media organisations in the public interest	South Australia
Exception allowing possession if the surveillance device was used in the public interest	Western Australia

See **Attachment 2** for details of the public interest exceptions in each of the jurisdictions.

4 Questions

The Department would like to hear your views on whether public interest exceptions should be inserted into sections 11, 12 and 14 of the SD Act, and if so, what should be the content of those exceptions. The Department invites you to provide responses to the questions below.

Questions

Creating public interest exceptions

1. Should exceptions be added to sections 11, 12 and 14 of the *Surveillance Devices Act 2007* (NSW) (SD Act) to allow information, records and reports obtained from using a surveillance device in breach of the Act to be communicated, published or possessed if it is in the public interest?

Threshold requirements for a public interest test

2. Should the exceptions include a requirement that the possession, communication or publication be **reasonably necessary** in the public interest?

The surveillance device laws in Victoria and the Northern Territory include exceptions which allow communication or publication of surveillance device information that is reasonably necessary in the public interest. Those laws do not provide any guidance about how this requirement should be interpreted, which means it is left to the court in any prosecution under those Acts to decide whether the extent of the communication or publication was reasonably necessary in the circumstances.

3. Should the exceptions include a requirement that the person **believes on reasonable grounds** that possessing, communicating or publishing the information, record or report is in the public interest?

Belief on reasonable grounds is a threshold requirement found in defences and exceptions to offences in the Crimes Act 1900 (NSW). This requirement would mean that if a person is prosecuted for the offence, to avoid criminal liability the court would need to be satisfied of two things: 1) that the person believed the communication or publication was in the public interest and 2) that the person had a basis for holding that belief which was objectively reasonable.

4. Should the exceptions require **an order from a judge** to permit the information, report or record to be communicated or published in the public interest?

The surveillance devices laws in the Northern Territory, South Australia and Western Australia have exceptions which require a person to apply to a judge for an order to allow the person to communicate or publish surveillance device information that was obtained in the public interest. Under the Northern Territory and Western Australian laws, the judge can only make such an order if satisfied publication or communication should be made to protect or further the public interest.

Limits on the communication or publication of information or records in the public interest

Questions

5. Should the exceptions allow possession, communication and publication **by and to any person** if it is in the public interest?

The surveillance device laws in Victoria and the Northern Territory include public interest exceptions which allow communication and publication by or to any person.

6. Should the exceptions only allow communication and publication **about unlawful or corrupt activity** in the public interest? If so, should communication and publication be permitted only **to police, or also to other law enforcement, regulatory enforcement, anti-corruption and integrity bodies**?

The High Court decision in the case Farm Transparency International Ltd v New South Wales (2022) 403 ALR 1 suggests that it may be appropriate for there to be exceptions in the SD Act to allow possession, communication or publication of recordings which reveal unlawful activity. An exception which allows communication or publication of information about corrupt activity made be appropriate as a temporary exemption was needed to ensure that officers working at ICAC can use illegally obtained surveillance device information they have received in their corruption investigations. The Western Australian surveillance device law include an exception that allows publication or communication to police about serious criminal matters.

7. Should the exceptions allow communication and publication to and by **media organisations** in the public interest?

The surveillance device law in South Australia has a specific exception for media organisations which allows surveillance device information that was obtained in the public interest to be communicated or published to a media organisation, and to be used, communicated or published by a media organisation if the information is in the public interest. That law includes a definition of a 'media organisation.'

8. Are there **any other requirements or limits** that the exceptions should include?

5 Attachments

Attachment 1: Sections 11, 12 and 14 of the *Surveillance Devices Act 2007* (NSW)

Section 11: Prohibition on communication or publication of private conversations or recordings of activities

- (1) A person must not publish, or communicate to any person, a private conversation or a record of the carrying on of an activity, or a report of a private conversation or carrying on of an activity, that has come to the person's knowledge as a direct or indirect result of the use of a listening device, an optical surveillance device or a tracking device in contravention of a provision of this Part.

[Note: Maximum penalty – 500 penalty units (in the case of a corporation) or 100 penalty units or 5 years imprisonment, or both (in any other case).]

- (2) Subsection (1) does not apply to the following –
- (a) if the communication or publication is made –
 - (i) to a party to the private conversation or activity, or
 - (ii) with the consent, express or implied, of all the principal parties to the private conversation or activity, or
 - (iii) for the purpose of investigating or prosecuting an offence against this section, or
 - (iv) in the course of proceedings for an offence against this Act or the regulations,
 - (b) if the communication or publication is no more than is reasonably necessary in connection with an imminent threat of –
 - (i) serious violence to persons or of substantial damage to property, or
 - (ii) commission of a serious narcotics offence.
- (3) A person who obtains knowledge of a private conversation or activity in a manner that does not involve a contravention of a provision of this Part is not prevented from communicating or publishing the knowledge so obtained even if the same knowledge was also obtained in a manner that contravened this Part.

Section 12: Possession of record of private conversation or activity

- (1) A person must not possess a record of a private conversation or the carrying on of an activity knowing that it has been obtained, directly or indirectly, by the use of a listening device, optical surveillance device or tracking device in contravention of this Part.

[Note: Maximum penalty – 500 penalty units (in the case of a corporation) or 100 penalty units or 5 years imprisonment, or both (in any other case).]

[Section 12 continued]

- (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 or the regulations, or
 - (b) with the consent, express or implied, of all of the principal parties to the private conversation or persons who took part in the activity, or
 - (c) as a consequence of a communication or publication of that record to that person in circumstances that do not constitute a contravention of this Part.

Section 14: Communication and publication of information from the use of a data surveillance device

- (1) A person must not publish, or communicate to any person, any information regarding the input of information into, or the output of information from, a computer obtained as a direct or indirect result of the use of a data surveillance device in contravention of this Part.

[Note: Maximum penalty — 500 penalty units (in the case of a corporation) or 100 penalty units or 5 years imprisonment, or both (in any other case).]

- (2) Subsection (1) does not apply to the following —
- (a) to a communication or publication made —
 - (i) to the person having lawful possession or control of the computer, or
 - (ii) with the consent, express or implied, of the person having lawful possession or lawful control of the computer, or
 - (iii) for the purpose of investigating or prosecuting an offence against this section, or
 - (iv) in the course of proceedings for an offence against this Act or the regulations,
 - (b) if the communication or publication is no more than is reasonably necessary in connection with an imminent threat of —
 - (i) serious violence to persons or substantial damage to property, or
 - (ii) the commission of a serious narcotics offence.
- (3) A person who obtains information in a manner that does not involve a contravention of this Part is not prevented from publishing or communicating the information so obtained even if the same information was also obtained in a manner that contravened this Part.

Attachment 2: Public interest exceptions in other Australian states and territories

Jurisdiction and Act	Offences for possession, communication or publication of information/reports/records from surveillance devices	Public interest exceptions for possession/communication/publication of information/reports/records from surveillance devices
<p>Northern Territory <i>Surveillance Devices Act 2007</i> (NT) <i>Surveillance Devices Regulations 2008</i> (NT)</p>	<p>General offence for communication and publication: Offence to communicate or publish a record or report of a private conversation or private activity that the person knows has been made as a result of the use of a listening device, optical surveillance device or tracking device (s 15). Maximum penalty - 2 years' imprisonment.</p> <p>Separate offence: if a law enforcement officer or ICAC officer communicates or publishes information from a data surveillance device (s 16). Maximum penalty - 1 year imprisonment.</p> <p>No offence for possession of a record from a surveillance device.</p>	<p>General exception for communication and publication: s 15(2)(b)(i) permits communication and publication that is reasonably necessary in the public interest.</p> <p>Exception for communication or publication by order from a judge: If a person has used a listening device or optical surveillance device in 'emergency' circumstances in the public interest (under ss 43 and 44) a person can apply for an order from a Supreme Court Judge to publish or communicate a report or record that has come to the person's knowledge as a result of the use of the device. The Judge may only make the order if satisfied publication or communication should be made to protect or further the public interest (s 46).</p>
<p>South Australia <i>Surveillance Devices Act 2016</i> (SA) <i>Surveillance Devices Regulations 2017</i> (SA)</p>	<p>Multiple offences for use, communication and publication: Different offences depending on whether the device was used by a person to record, listen to or observe a private conversation or private activity:</p> <ul style="list-style-type: none"> to protect their lawful interests (s 9) in the public interest (s 10) or in contravention of the Act (s 12). <p>Maximum penalty ranges from \$10,00 fine (s 9) to 3 years' imprisonment (s 12)</p> <p>No offence for possession of a record from a surveillance device.</p>	<p>Exception for communication or publication to or by media organisation: If a listening device or optical surveillance device was used in the public interest under s 6, under s 10(2) information or material derived from the use:</p> <ul style="list-style-type: none"> can be communicated or published to a media organisation; and can be used, communicated or published by a media organisation if the information or material is in the public interest ('media organisation' is defined in s 3). <p>Exception for communication or publication by order from a judge: A person can apply to a judge for an order under s 11 authorising the use, communication or publication of information or material derived from the use of a listening device or an optical surveillance device when the device was used in the public interest, or to protect the person's lawful interests.</p>
<p>Victoria <i>Surveillance Devices Act 1999</i> (Vic) <i>Surveillance Devices Regulations 2016</i> (Vic)</p>	<p>General offence for communication and publication: Offence to knowingly communicate or publish a record or report of a private conversation or private activity made as a result of the use of a listening device, an optical surveillance device or a tracking device (s 11). Maximum penalty - 2 years' imprisonment.</p> <p>Separate offence: if a law enforcement officer communicates or publishes information from a data surveillance device (s 12). Maximum penalty - 1 year imprisonment.</p> <p>No offence for possession of a record from a surveillance device.</p>	<p>General exception for publication or communication: s 11(2)(b)(i) permits communication or publication that is no more than is reasonably necessary in the public interest.</p>
<p>Western Australia <i>Surveillance Devices Act 1998</i> (WA) <i>Surveillance Devices Regulations 1999</i> (WA)</p>	<p>Offence for communication and publication: Offence to knowingly publish or communicate a private conversation, a report or record of a private conversation, or a record of a private activity, that has come to the person's knowledge as a result of the use of a listening device or optical surveillance device (s 9). Maximum penalty - 12 months' imprisonment.</p> <p>Possession offence: Offence to unlawfully possess surveillance information (<i>Surveillance Devices Regulations 1999</i> (WA) reg 9). Penalty - \$5,000 fine.</p>	<p>Exception for publication or communication to police: s 9(2)(b) permits communication or publication to police in Western Australia or another state or territory in connection with an indictable drug offence or 'any other indictable matter of such seriousness as to warrant the publication or communication'. However the communication or publication must also satisfy one of the criteria in s 9(3), which includes that it is 'not more than is reasonably necessary in the public interest.'</p> <p>Exception for communication or publication by order from a judge: If a person has used a listening device or optical surveillance device in the public interest (under either s 26, s 27, s 28 or s 29) a person can apply for an order from a Judge to publish or communicate a report or record resulting from the use of the device. The Judge may only make the order if satisfied publication or communication should be made to protect or further the public interest (s 31).</p> <p>Exception for possession: a person can possess surveillance information if it was obtained as a result of a use of a device in the public interest in accordance with the provisions of the Act (<i>Surveillance Devices Regulations 1999</i> (WA) reg 9(2)).</p>

Note: As the laws in the Australian Capital Territory, Queensland and Tasmania only regulate the use of listening devices and not other surveillance devices, those jurisdictions have not been included in this comparative table: see *Listening Devices Act 1992* (ACT); *Invasion of Privacy Act 1971* (Qld) and *Listening Devices Act 1991* (Tas).

Communities and Justice

Locked Bag 5000
Parramatta NSW 2124

T: 02 9377 6000
E: policy@justice.nsw.gov.au
W: www.dcj.nsw.gov.au

