

# What you should know about the *Surveillance Devices Act 2016*

## Information sheet

The [\*Surveillance Devices Act 2016\*](#) came into operation on 18 December 2017.

Surveillance devices include:

- listening devices
- optical surveillance devices
- tracking devices
- data surveillance devices.

The Act restricts the installation, use and maintenance of surveillance devices and the communication of information or material from these devices.

### **Installation, use or maintenance**

The Act prohibits the installation, use or maintenance of a listening device to overhear, record, monitor or listen to a private conversation.

Exceptions apply where:

- The parties to a conversation consent to the use of a listening device.
- A listening device is needed to protect the lawful interests of a person.
- The use of the device is in the public interest.

There are restrictions on the installation, use or maintenance of optical surveillance devices. People must give you consent to record or observe them carrying out their private activities. If the surveillance involves entry or interference to a premises, you must also get consent from the owner or occupier of the premises.

Sometimes the use of a surveillance device is necessary to protect a person's lawful interest or the public interest. This will be decided by a court.

You cannot use a tracking device to monitor a person or vehicle's location without their consent. This does not prevent you from using tracking technology to locate and retrieve an object such as your phone or computer.

### **Communication or publication**

There are prohibitions on the use of information or material derived from surveillance devices.

The Act generally prohibits the use, communication, or publication of information or material from a listening or optical surveillance device where it is used to protect the lawful interests of a person.

There are exceptions to this prohibition:

- A person who was part of the conversation or activity under surveillance may communicate this information or material with another person who was also party to the same conversation.
- Each party to the conversation or activity under surveillance has consented to its use.
- Information is communicated to an officer of an investigating agency for an investigation, action or proceeding.
- Information is used in a relevant action or proceeding.
- A person subjected to violence or an immediate threat of violence uses surveillance to keep evidence of offending.
- Information is communicated to a media organisation.
- Communication is allowed by a court order.

You must seek permission from a judge to use, communicate or publish information or material from a listening or optical surveillance device used in the public interest. You may communicate the material with the media without a court order. Media organisations are not required to seek a court order.

### **Using devices and communicating information unknowingly offences**

If you do not know that you have recorded a private conversation or activity, or communicated or published it, you have not committed an offence. Your conduct will only be captured by the offence provisions if you did it knowingly.

### **Use by law enforcement authorities**

Surveillance devices are sometimes necessary for law enforcement purposes.

The Act contains provisions for the issue of surveillance devices warrants and provides further exceptions for use by law enforcement authorities and licenced security and investigation agents.