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**ELIZABETHAE II REGINAE**

A.D. 1972

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**No. 112 of 1972**

An Act to regulate the Use of Listening Devices and for other purposes.

[Assented to 23rd November, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. This Act may be cited as the "Listening Devices Act, 1972".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation.

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

"declared listening device" means a listening device or a listening device of a class or kind to which for the time being, section 8 of this Act applies:

"listening device" means any electronic or mechanical instrument, apparatus, equipment or other device capable of being used to overhear, record, monitor or listen to a

private conversation or words spoken to or by any person in private conversation but does not include a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and to permit him only to hear sounds ordinarily audible to the human ear:

“private conversation” means any conversation carried on in circumstances that may reasonably be taken to indicate that any party to the conversation desires it to be confined to the parties to the conversation.

4. Except as is provided in this Act a person shall not intentionally use any listening device to overhear, record, monitor or listen to any private conversation, whether or not he is a party thereto, without the consent, express or implied, of the parties to that conversation.

Prohibition on use of listening device.

Penalty: Two thousand dollars or imprisonment for six months or both.

5. A person shall not knowingly communicate or publish any information or material derived from the use of a listening device in contravention of section 4 of this Act.

Prohibition on communication or publication.

Penalty: Two thousand dollars or imprisonment for six months or both.

6. (1) Section 4 of this Act does not apply to or in relation to the use of a listening device by, or at the direction of, a member of the police force, acting in the performance of his duty.

Lawful use of listening devices by members of the police force.

(2) The Commissioner of Police shall, at intervals of not more than one month, furnish to the Minister a report containing such particulars, as the Minister from time to time requires, of each use of any listening device by a member of the police force under this section during the period to which the report relates.

(3) A member of the police force shall not, otherwise than in the course of his duty as such a member, knowingly communicate or publish any information or material derived from the use of a listening device under this section.

Penalty: Two thousand dollars or imprisonment for six months or both.

(4) A person who uses a listening device at the direction of a member of the police force under this section shall not, except to the extent necessary to give full effect to the purposes for which the listening device is used or except for the purposes of giving evidence, communicate or publish any information or material derived from the use of that listening device.

Penalty: Two thousand dollars or imprisonment for six months or both.

Lawful use of a listening device by a party to a private conversation.

7. (1) Section 4 of this Act does not apply to or in relation to the use of a listening device by a person (including a member of the police force) where that listening device is used—

(a) to overhear, record, monitor or listen to any private conversation to which that person is a party;

and

(b) in the course of duty of that person, in the public interest or for the protection of the lawful interests of that person.

(2) A person referred to in subsection (1) of this section shall not otherwise than in the course of his duty, in the public interest or for the protection of his lawful interests, communicate or publish any information or material derived from the use of a listening device under that subsection.

Penalty: Two thousand dollars or imprisonment for six months or both.

Possession, etc., of declared listening device.

8. (1) The Minister may by notice published in the *Gazette* declare that this section shall apply to a listening device or a listening device of a class or kind specified in that notice and the Minister may by a notice published in a like manner revoke or amend any such declaration.

(2) A person shall not without the consent of the Minister (which the Minister is hereby empowered to give) have in his possession, custody or control any declared listening device.

Penalty: Two thousand dollars or imprisonment for six months or both.

(3) The consent of the Minister under subsection (2) of this section—

(a) may be expressed to relate to the possession, custody or control of a listening device or to any listening device of a class or kind;

and

(b) may be expressed to be subject to such conditions, limitations or restrictions as the Minister considers necessary or expedient.

(4) The Minister may at any time revoke any consent given under this section and upon that revocation that consent shall cease to have effect.

(5) For the purposes of this section having the possession, custody or control of any listening device in contravention of a condition, limitation or restriction imposed by the Minister shall be deemed to be having the possession, custody or control of that device without the consent of the Minister.

(6) The Minister may by notice in writing delegate any of his powers under subsections (2), (3) and (4) of this section to any Officer as defined in the Public Service Act, 1967, as amended, and those powers may be exercised by the delegate accordingly but the exercise of any such power shall not affect the exercise of that power by the Minister.

9. (1) The Minister shall in respect of the twelve months ending on the thirty-first day of December in each year cause a report to be prepared specifying, in relation to that period of twelve months the number of occasions on which a listening device was used under section 6 of this Act and the general purposes for which a listening device was used on each such occasion. Annual report.

(2) The Minister shall cause a copy of the report prepared under subsection (1) of this section to be laid before each House of Parliament within fourteen days of his receipt thereof if Parliament is then in session or if Parliament is not then in session within fourteen days of the commencement of the next session of Parliament.

10. (1) Except as is provided in this section, proceedings for an offence against this Act shall be disposed of summarily. Offences.

(2) In proceedings for an offence against this Act the defendant may, at any time up to and including the close of the case for the prosecution, elect to have the offence treated as an indictable offence.

(3) Upon an election being made under subsection (2) of this section the defendant shall be dealt with in all respects as if—

(a) the offence were an indictable offence;

and

(b) the proceedings in relation to which the election was made were a preliminary examination of a person charged on an information with an indictable offence.

(4) Proceedings for an offence against this Act may be brought within two years from the day on which it is alleged that the act or omission constituting the offence was done or omitted.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor