

Queensland



INVASION OF PRIVACY ACT 1971

**Reprinted as in force on 10 March 2000
(includes amendments up to Act No. 63 of 1999)**

Reprint No. 2B

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 10 March 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



INVASION OF PRIVACY ACT 1971

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	7
2	Commencement	7
4	Definitions	8
PART 2—INSPECTORS		
5	Appointment of inspectors	9
6	Inspector's identity card	9
6A	Production of inspector's identity card	10
7	Powers of inspector	10
PART 3—CREDIT REPORTING AGENTS		
<i>Division 1—Licences</i>		
8	Credit reporting agent must be licensed	11
9	Application for licence or renewal	11
10	Grant of licence	12
11	Restoration of licence	13
12	Variation of licence	14
13	Cancellation of licence	15
14	Appeal	16
15	Registers	16
<i>Division 2—Credit reporting agents</i>		
16	Permissible purposes of reports	17
17	Information to be furnished to consumer and credit reporting agent	17
18	Information to be disclosed by credit reporting agent	18
19	Obtaining information falsely	19

Invasion of Privacy Act 1971

20	Unauthorised disclosure	19
21	Supply of false information	20
22	Falsifying records or credit report	20
23	Liability of credit reporting agent	20
24	Deletion of stale information	20
25	Demanding payment by threats	21
<i>Division 4—Licensees generally</i>		
36	Registered addresses	21
37	Production of licence	22
38	Surrender of licence	23
39	Automatic cancellation of licence	23
40	Furnishing incorrect information in applications, etc.	23
PART 4—LISTENING DEVICES		
41	Part binds Crown	24
42	Reference to listening devices and private conversations	24
43	Prohibition on use of listening devices	24
44	Prohibition on communication or publication of private conversations unlawfully listened to	27
45	Prohibition on communication or publication of private conversations by parties thereto	27
46	Inadmissibility of evidence of private conversations when unlawfully obtained	28
47	Destruction of irrelevant records made by the use of a listening device . .	29
48	Advertising listening devices prohibited	30
PART 4A—INVASION OF PRIVACY WITH RESPECT TO DWELLING HOUSES		
48A	Unlawful entry of dwelling houses	30
PART 5—MISCELLANEOUS		
48B	Delegation by chief executive	32
49	Offences and penalty	32
50	Proceedings how and when taken	32
51	Saving of Remedies	33
51A	Protection from liability	33

51B	Approval of forms	33
52	Regulation making power	33

ENDNOTES

1	Index to endnotes	35
2	Date to which amendments incorporated	35
3	Key	36
4	Table of earlier reprints	36
5	Tables in earlier reprints	36
6	List of legislation	37
7	List of annotations	38

INVASION OF PRIVACY ACT 1971

[as amended by all amendments that commenced on or before 10 March 2000]

An Act to make provision for the licensing and control of credit reporting agents, for regulating the use of listening devices and for other purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Invasion of Privacy Act 1971*.

Commencement

2.(1) Except as provided in subsection (2), this Act, or this Act less specified provisions, shall commence on a date to be fixed by the Governor by proclamation.

(2) The Governor may, by proclamation under subsection (1) or by a subsequent proclamation or proclamations fix a date or dates for the commencement of the several provisions of this Act not brought into operation pursuant to subsection (1) later than the date fixed by the proclamation under subsection (1).

(3) Every proclamation under this section shall be published in the gazette.

Definitions

4. In this Act—

“**approved form**” see section 51B.¹

“**Commissioner**” means the Commissioner of the Police Service.

“**consumer**” means an individual seeking or obtaining credit to be used wholly or primarily for personal, family or household purposes.

“**credit report**” means any written, oral, or other communication in relation to the credit worthiness, credit standing or credit capacity of a consumer which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for credit to be used wholly or primarily for personal, family or household purposes, but does not include any report containing information solely as to transactions or experiences between the consumer and the person making the report or the employer of the person making the report in the course of his or her employment and where the person making the report or the employer of the person making the report in the course of his or her employment is a corporation, between the consumer and a related corporation.

“**credit reporting agent**” means a person who is regularly engaged, in whole or in part, in providing credit reports to any other person, whether for remuneration or otherwise.

“**credit reporting agent’s licence**” means a valid and unexpired credit reporting agent’s licence or renewed licence issued under part 3.

“**inspector**” means a person who is appointed under section 5 as an inspector.

“**licence**” means a credit reporting agent’s licence.

“**licensed credit reporting agent**” means the holder of a credit reporting agent’s licence.

“**listening device**” means any instrument, apparatus, equipment or device capable of being used to overhear, record, monitor or listen to a private conversation simultaneously with its taking place.

¹ Section 51B (Approval of forms)

“private conversation” means any words spoken by one person to another person in circumstances that indicate that those persons desire the words to be heard or listened to only by themselves or that indicate that either of those persons desires the words to be heard or listened to only by themselves and by some other person, but does not include words spoken by one person to another person in circumstances in which either of those persons ought reasonably to expect the words may be overheard, recorded, monitored or listened to by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

“register” means a register mentioned in section 15.

“registered address” of a licensee means the address recorded in the register as the licensee’s address.

PART 2—INSPECTORS

Appointment of inspectors

5.(1) The chief executive may appoint an officer of the public service to be an inspector.

(2) The chief executive may appoint a person to be an inspector only if—

- (a)** the chief executive believes that the person has the necessary expertise or experience to be an inspector; or
- (b)** the person has satisfactorily completed a course of training approved by the chief executive.

(3) The chief executive may limit the powers of an inspector by stating conditions in the instrument of appointment.

Inspector’s identity card

6.(1) The chief executive must issue an identity card to each inspector.

(2) The identity card must—

- (a)** contain a recent photograph of the inspector; and

(b) be signed by the inspector.

(3) A person who stops being an inspector must return the identity card to the chief executive as soon as practicable after stopping to be an inspector, unless the person has a reasonable excuse for not returning it.

Maximum penalty for subsection (3)—20 penalty units.

Production of inspector's identity card

6A.(1) An inspector may exercise a power under this Act in relation to a person only if the inspector first produces or displays the inspector's identity card for inspection by the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

Powers of inspector

7.(1) For the purposes of this Act an inspector may at any time—

- (a) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been or are being complied with and interrogate any person for that purpose and require any such person to answer the questions put, and to sign a declaration of the truth of the person's answers;
- (b) enter any premises at the registered address of any licensee and inspect and examine any books and papers found upon such entry;
- (c) call to his or her aid any person whom the inspector may think competent to assist him or her in the exercise of any power aforesaid;
- (d) exercise such other powers as may be prescribed.

(2) Nothing contained in subsection (1) renders any person compellable to answer any question incriminating or tending to incriminate himself or herself.

PART 3—CREDIT REPORTING AGENTS

Division 1—Licences

Credit reporting agent must be licensed

8. No person shall—

- (a) act as; or
- (b) carry on the business or any of the functions of; or
- (c) advertise, notify or state that—
 - (i) the person acts as or is willing to act as; or
 - (ii) carries on or is willing to carry on the business or any of the functions of;

a credit reporting agent unless—

- (d) the person is the holder of a credit reporting agent's licence; or
- (e) the person is a person, or belongs to a class of persons, exempted by the Governor in Council by gazette notice from the requirements of this Act with respect to the holding of a credit reporting agent's licence (which the Governor in Council is empowered so to do either absolutely or subject to conditions).

Maximum penalty—6 penalty units or imprisonment for 3 months.

Application for licence or renewal

9.(1) Application for a licence or renewal of a licence—

- (a) shall be in accordance with an approved form; and
- (b) shall be lodged with the chief executive; and
- (c) shall be accompanied by the prescribed fee; and
- (d) may set out any other matter that the applicant wishes the chief executive to consider.

(2) The chief executive may require an applicant to furnish in writing, within the time specified, further information in connection with the

applicant's application.

(3) Upon receipt of an application the chief executive shall inquire into—

- (a) where the applicant is an individual—the fame and character and suitability and qualifications (if any) for the licence in question of the applicant;
- (b) where the applicant is a corporation—the fame and character of the directors and the secretary of the corporation and the suitability and qualifications (if any) for the licence in question of the corporation.

(3A) For the purposes of his or her inquiry, the chief executive may request the Commissioner to furnish the chief executive with a report on the fame and character of the applicant or, where the applicant is a corporation, on the fame and character of the directors and the secretary of the corporation, and the Commissioner on receipt of such request shall cause inquiries to be made and a report to be furnished to the chief executive in accordance with the request.

(4) An application for renewal of a licence shall be lodged with the chief executive not later than 1 month before the date on which the licence, if not renewed, would expire.

(5) The chief executive shall not refuse to grant or renew a licence without first giving the applicant for the licence or renewal an opportunity of being heard.

Grant of licence

10.(1) If as a result of the inquiries made pursuant to section 9(3), including a consideration of any report furnished by the Commissioner, and after consideration of the interests of the public the chief executive is of opinion that the applicant is a fit and proper person to hold the licence applied for, the chief executive shall grant or renew the licence but if the chief executive is not of that opinion the chief executive shall refuse the application.

(2) The chief executive may grant or renew a licence subject to such conditions or restrictions as the chief executive thinks fit.

(3) A person who contravenes or fails to comply with any condition of or

restriction applicable to the person's licence shall be guilty of an offence against this Act.

Maximum penalty—60 penalty units.

(4) Upon receipt of an application for renewal of a licence, the chief executive may, if the chief executive is satisfied that the applicant has complied with the provisions of this part, grant the application for renewal.

(5) The chief executive may, in respect of an application for renewal of a licence, dispense with an inquiry under section 9(3).

(6) A licence shall be in the approved form and in addition to any other particulars—

(a) in the case of a licence issued to a person other than a corporation—the licence shall set forth the name, place or places of business and place of abode of the person taking out the licence;

(b) in the case of a licence issued to a corporation—the licence shall set forth the name of the corporation and the address of its place or places of business and the name and the address of the secretary and the directors of the corporation.

(7) The fee payable for a licence shall be such amount as may be prescribed.

(8) Subject to this part, a licence is renewed for a period of 1 year.

(9) A licence must not be granted to an individual who is a minor.

(10) Upon the refusal or withdrawal of an application for a licence or for the renewal of a licence, there shall be refunded to the applicant, or to any person who appears to the chief executive to be entitled thereto, such part of the fees paid by the applicant upon lodgment of the application as may be prescribed.

Restoration of licence

11.(1) Where an application for renewal of a licence is not made before the day of expiry of the licence, application may be made for the restoration of the licence.

(2) An application for restoration of a licence shall be in the approved

form and lodged with the chief executive who shall make such inquiry into the application as the chief executive sees fit.

(3) An application for restoration of a licence shall be accompanied by the prescribed fee.

(4) The chief executive may require an applicant to furnish in writing within the time specified, further information in connection with the applicant's application.

(5) Upon being satisfied as the result of his or her inquiries that the non-renewal is due to inadvertence and that the result of such inadvertence should be remedied or that for any reason it is just and equitable that the licence should be restored, the chief executive may restore the licence and upon restoration shall issue a new licence signed by him or her.

(6) Where a licence is restored, the holder of the licence shall be deemed to be and to have been as from the expiration of the licence in respect of which the application for restoration was made the holder of a licence of the class in question until such time as the new licence is issued pursuant to subsection (5).

Variation of licence

12.(1) Upon the application of the holder of a licence, at any time during the currency of that licence, the chief executive may vary the licence by amending—

- (a) the place or places at which the business is carried on; or
- (b) in the case of a corporation—the name and address of the secretary or any director; or
- (c) any other particulars contained in the licence.

(2) An application under this section, accompanied by the relevant licence and the prescribed fee (if any) shall be lodged with the chief executive who shall make such inquiry as the chief executive sees fit in relation to the application.

(3) The provisions of sections 9 and 10 shall, so far as they are applicable and with all necessary adaptations, apply to and in respect of an application for the variation of a licence in all respects as if the same were an application for a licence or for the renewal of a licence.

Cancellation of licence

13.(1) The chief executive may, of his or her own motion or pursuant to any complaint or charge made to the chief executive, by notice in writing call upon a person to show cause why a licence of which the person is the holder should not be cancelled and why the person should not be disqualified either permanently or temporarily from holding such a licence on the ground—

- (a) that the licence was improperly obtained; or
- (b) where the licensee is an individual—that the person is not a fit and proper person to continue to hold such a licence; or
- (c) where the licensee is a corporation—
 - (i) that any director or the secretary of the corporation is not a fit and proper person to be a director or the secretary, as the case may be, of a corporation holding such a licence; or
 - (ii) that the affairs of the corporation have been so conducted as to render it unfit to continue to hold such a licence; or
- (d) that there has not been compliance with the provisions of this part.

(2) The notice shall be served personally or by post on the person to whom it is directed and where the notice alleges a ground referred to in subsection (1)(c)(i), a copy of the notice shall be served personally or by post on the director or the secretary referred to in the statement of that ground in the notice.

(3) If at the time and place appointed by the notice issued under subsection (1), the person to whom it is directed does not appear and in the case of a corporation, where the notice alleges a ground referred to in subsection (1)(c)(i), the director or the secretary, as the case may be, does not appear, then upon proof of due service of the notice upon him, her or them a reasonable time before the time appointed for appearance, the chief executive may proceed to hear and determine the matter in the absence of such person, director or secretary as the case may be.

(4) Service of the notice or a copy thereof may be proved by the oath of the person who served it or by statutory declaration or by such other evidence as the chief executive deems sufficient.

(5) The hearing of the matter shall be an open hearing unless the licensee

requests the chief executive to hear the matter in camera and the chief executive shall permit the person to whom the notice is directed and the director or secretary on whom a copy of the notice has been served to appear at the hearing in person or by counsel or solicitor.

(6) Upon being satisfied of the truth of any of the grounds referred to in subsection (1) and alleged in the notice, the chief executive may cancel the licence and order that the holder of the licence be disqualified either permanently or for such period as the chief executive specifies from holding another such licence.

(7) Upon the making of such an order the licensee shall cause the licence to be lodged with the chief executive forthwith.

Appeal

14.(1) Any person who feels aggrieved by any decision of the chief executive under this part refusing an application for a licence or renewal, variation or restoration of a licence or cancelling a licence or disqualifying a person from holding a licence either permanently or for a period may, within 1 month after notification to the person of the chief executive's decision, appeal therefrom to a Magistrates Court having jurisdiction at the place where the appellant proposed to carry on or, as the case may be, carried on business, by virtue of the licence.

(2) Every such appeal shall be by way of rehearing and the Magistrates Court shall inquire into and determine the appeal and its decision shall be final and without appeal and shall be given effect to by the chief executive.

Registers

15. The chief executive shall keep registers of all licences and all refusals, renewals, restorations, variations, surrenders and cancellations of licences, which registers shall be available at the office of the chief executive during normal working hours for perusal by any person upon payment of the prescribed fee.

Division 2—Credit reporting agents**Permissible purposes of reports**

16. A credit reporting agent shall not furnish a credit report to any person other than—

- (a) in accordance with the written instructions of the consumer to whom it relates; or
- (b) a person who or which the credit reporting agent has reason to believe intends to use the information contained in the credit report in connection with a credit transaction involving that person, the employer of that person receiving the report in the course of his or her employment or a related corporation of that person or employer and the consumer on whom the information is to be furnished.

Information to be furnished to consumer and credit reporting agent

17.(1) Whenever credit for personal, family or household purposes involving a consumer is refused and the refusal is based in whole or in part on information contained in a credit report furnished by a credit reporting agent, the user of the credit report shall notify the consumer—

- (a) of the refusal; and
- (b) that the refusal was based in whole or in part on information contained in a credit report; and
- (c) of the consumer's right to make a written request to the user of the credit report within 14 days after receiving advice of such refusal, for the disclosure to the consumer of the name and address of the credit reporting agent who or which made the credit report.

(2) The user of the credit report shall upon receipt of a written request by the consumer in terms of subsection (1)(c) forthwith furnish in writing to the consumer the name and address of the credit reporting agent who or which made the credit report.

(3) Upon disclosing to the consumer the name and address of the credit reporting agent pursuant to subsection (2), the user of the credit report shall

notify the credit reporting agent in question of the name and address of the consumer who has been so supplied.

Information to be disclosed by credit reporting agent

18.(1) Where a consumer is furnished pursuant to section 17 with the name and address of a credit reporting agent, the credit reporting agent shall, upon written request and proper identification of the consumer made within 14 days after being so furnished, disclose to the consumer the nature and substance of all information contained in the credit report made to the user of the credit report.

(2) Where the accuracy of any information contained in the credit report is disputed, the credit reporting agent shall within a reasonable period of time make investigations into the information so disputed as a result of notice given to the credit reporting agent by the consumer unless it has reasonable grounds for believing that the dispute by the consumer is frivolous, irrelevant or vexatious.

(3) Pending the completion of the investigations in relation to the disputed information the credit reporting agent shall—

- (a) clearly note in his, her or its records that the information is disputed;
- (b) in any subsequent credit report containing the disputed information clearly note that the information is disputed.

(4) If after the completion of the investigations made by the credit reporting agent, the information disputed is found to be inaccurate or can no longer be verified, the credit reporting agent at his, her or its own expense shall promptly delete the information from his, her or its records and inform any person who has previously received a credit report containing such information within 6 months of the date on which the correction is recorded of that deletion.

(5) At such time as the credit reporting agent completes his, her or its investigations and determines whether the disputed information is accurate or inaccurate or can no longer be verified, he, she or it shall so inform the consumer.

(6) Where the consumer disputes the accuracy of the information upon which a credit report is based and alleges that the consumer is unable to

refute it without disclosure of the source of the information a credit reporting agent shall disclose to the consumer the source of information but the credit reporting agent may refuse to make the disclosure if he, she or it has reasonable grounds to believe that disclosure is unnecessary to permit refutation.

(7) The disclosures required under subsections (1) and (6) shall be made to the consumer—

- (a) in person if the consumer appears in person and furnishes proper identification;
- (b) by telephone if the consumer has made a written request, with proper identification, for telephone disclosure and the charge for any STD telephone call is prepaid by the consumer;
- (c) in writing and posted to the consumer at the consumer's last known address by means of registered post if—
 - (i) the postage is prepaid by the consumer; and
 - (ii) the consumer has made a written request, with proper identification, for written disclosure; and
 - (iii) the consumer satisfies the credit reporting agent that the consumer cannot reasonably appear in person.

Obtaining information falsely

19. Any person who obtains information on a consumer from a credit reporting agent by any false pretence is guilty of an offence.

Maximum penalty—100 penalty units or imprisonment for 5 years.

Unauthorised disclosure

20. Any person who knowingly provides information concerning a consumer from the records of a credit reporting agent to a person not authorised to receive that information is guilty of an offence.

Maximum penalty—100 penalty units or imprisonment for 5 years.

Supply of false information

21. Any person who supplies information that to the person's knowledge is false or misleading in a material particular to a credit reporting agent for the purpose of having such false or misleading information recorded in the records of the credit reporting agent or reported in a credit report is guilty of an offence.

Maximum penalty—100 penalty units or imprisonment for 5 years.

Falsifying records or credit report

22. Any person who knowingly falsifies a credit report or any records used or intended for use in relation thereto is guilty of an offence.

Maximum penalty—100 penalty units or imprisonment for 5 years.

Liability of credit reporting agent

23.(1) A credit reporting agent, the user of a credit report and the supplier of the information which is contained in a credit report do not incur any liability as for defamation in respect of the publication in good faith of any defamatory matter in the course of the preparation, supply and use of a credit report in compliance with this Act.

(2) A publication shall be taken to be made in good faith if—

- (a)** the person making the publication does not know, and could not in the circumstances reasonably be expected to know, that the information supplied or used in the credit report is false or misleading in a material particular; and
- (b)** the person making the publication is not actuated by ill will to the person in respect of whom the information was supplied or the credit report furnished or by any other improper motive.

Deletion of stale information

24.(1) After a date to be prescribed once at least in each calendar year or such lesser period as may be prescribed, a credit reporting agent shall make an examination of his, her or its records and shall delete therefrom all information that relates to any act, matter, circumstance or thing that

happened, occurred, existed or was done or omitted to be done more than 5 years before the time at which the examination is made.

(2) A credit reporting agent shall not furnish to any person a credit report that is based wholly or in part upon information that relates to any act, matter, circumstance or thing that happened, occurred, existed or was done or omitted to be done more than 5 years before the time at which the credit report is furnished.

(3) Nothing in this section applies to information in respect of the conviction of a person for an offence involving fraud or dishonesty.

Demanding payment by threats

25.(1) Any person who knowing the contents of the writing causes any person to receive any writing demanding the payment of money to any person and containing any threat of any injury or detriment of any kind in relation to his or her credit worthiness, credit standing or eligibility for credit to be caused to any person, either by the offender or any other person, if the demand is not complied with is guilty of an offence.

Maximum penalty—20 penalty units or imprisonment for 1 year.

(2) However, nothing in this section applies—

- (a) where the amount of money demanded is owing by the person to whom the demand is addressed to the person by or on whose behalf the demand is made; and
- (b) where the threat regarding future credit availability to the person to whom the demand is addressed is confined to the future extension of credit by the person by whom or on whose behalf the demand is made.

Division 4—Licensees generally

Registered addresses

36.(1) A licensed credit reporting agent must have a registered address in Queensland to which notices may be sent.

(2) The registered address shall be specified by the applicant in the

Invasion of Privacy Act 1971

applicant's application for a licence and shall be the address at which the applicant proposes to carry on business or, in the case of an applicant proposing to carry on business at more than 1 place in the State, the address of the principal place at which the applicant proposes to carry on business; and the chief executive shall, upon the grant of a licence, enter such address in the register kept by the chief executive as the registered address of the licensee.

(3) In the case of an applicant proposing to carry on business at more than 1 place in the State, that applicant shall specify in the application the addresses of the places at which the applicant proposes to carry on business that are additional to the registered address; and the chief executive shall, upon the grant of a licence, enter such addresses in the register kept by the chief executive as addresses of the licensee additional to the registered address.

(4) A licensee shall within 7 days after—

- (a) a change in the licensee's registered address give written notice of the particulars thereof to the chief executive;
- (b) a change in an address of a place where the licensee carries on business other than the licensee's registered address give written notice of the particulars thereof to the chief executive;
- (c) commencing to carry on business at an additional place give written notice of the address thereof to the chief executive;
- (d) ceasing to carry on business at any place give written notice of the licensee ceasing to carry on business at the address of the place in question to the chief executive;

and the chief executive shall enter particulars with respect thereto in the register kept by the chief executive.

Maximum penalty for subsections (2) to (4)—10 penalty units.

Production of licence

37. A licensee must produce the licensee's licence for inspection on the request of—

- (a) an inspector; or

- (b) a police officer; or
- (c) a person with whom the licensee is dealing in the course of the licensee's business.

Maximum penalty—10 penalty units.

Surrender of licence

38.(1) Where the holder of a licence desires to surrender the licence held by him or her, the holder may in writing notify the chief executive that he or she desires to surrender the licence and deliver the licence to the chief executive.

(2) The chief executive shall, upon receipt of a notification in pursuance of subsection (1) and the licence in question, endorse on the licence the word 'surrendered' and thereupon the licence shall cease to be of force or effect.

Automatic cancellation of licence

39.(1) A licensee must not allow a person to use the licensee's licence in order to falsely hold out that the person is licensed.

Maximum penalty—10 penalty units.

(2) A licence is cancelled on the licensee's conviction of an offence against subsection (1).

Furnishing incorrect information in applications, etc.

40. Any person who in any application or other statement made under or for the purposes of this part or the regulations knowingly makes any statement which is not correct or knowingly omits to furnish any particulars by this part or the regulations required to be furnished is guilty of an offence against this Act.

PART 4—LISTENING DEVICES

Part binds Crown

41. Except where otherwise provided, this part binds the Crown.

Reference to listening devices and private conversations

42.(1) A reference in this part to a listening device does not include a reference to a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and to permit the person only to hear sounds ordinarily audible to the human ear.

(2) A reference in this part to a party to a private conversation is a reference—

- (a) to a person by or to whom words are spoken in the course of a private conversation; and
- (b) to a person who, with the consent, express or implied, of any of the persons by or to whom words are spoken in the course of a private conversation, overhears, records, monitors or listens to those words.

Prohibition on use of listening devices

43.(1) A person is guilty of an offence against this Act if the person uses a listening device to overhear, record, monitor or listen to a private conversation and is liable on conviction on indictment to a maximum penalty of 40 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply—

- (a) where the person using the listening device is a party to the private conversation;
- (b) to the unintentional hearing of a private conversation by means of a telephone;
- (c) to or in relation to the use of any listening device by—
 - (i) a police officer acting in the performance of his or her duty if the officer has been authorised in writing to use a listening

Invasion of Privacy Act 1971

device by—

- (A) the Commissioner;
- (B) an assistant commissioner; or an officer of police of or above the rank of inspector who has been appointed in writing by the Commissioner to authorise the use of listening devices;

under and in accordance with an approval in writing given by a Judge of the Supreme Court in relation to any particular matter specified in the approval;

- (ii) an officer employed in the service of the Commonwealth in relation to customs authorised by a warrant under the hand of the Comptroller-General of Customs under the *Customs Act 1901* (Cwlth) to use a listening device in the performance of the officer's duty;
- (iii) a person employed in connection with the security of the Commonwealth when acting in the performance of the person's duty under an Act passed by the Parliament of the Commonwealth relating to the security of the Commonwealth.

(3) In considering any application for approval to use a listening device pursuant to subsection (2)(c)(i) a Judge of the Supreme Court shall have regard to—

- (a) the gravity of the matters being investigated; and
- (b) the extent to which the privacy of any person is likely to be interfered with; and
- (c) the extent to which the prevention or detection of the offence in question is likely to be assisted;

and the Judge may grant his or her approval subject to such conditions, limitations and restrictions as are specified in his or her approval and as are in his or her opinion necessary in the public interest.

(4) An application to which subsection (3) relates shall be made as prescribed by rules of court or in so far as not so prescribed as a Judge may direct, and shall be heard *ex parte* in the Judge's chambers.

Invasion of Privacy Act 1971

(4A) No notice or report relating to the application shall be published and no record of the application or of any approval or order given or made thereon shall be available for search by any person except by direction of a Judge of the Supreme Court.

(5) The Commissioner shall—

- (a) as soon as practicable but not later than 7 days after the granting of an authorisation pursuant to subsection (2)(c)(i) cause the chief executive to be informed of such authorisation;
- (b) cause a record to be kept of all authorisations granted pursuant to subsection (2)(c)(i);
- (c) furnish to the chief executive in respect of each authorisation at intervals of not more than 1 month a report containing such particulars as the chief executive from time to time requires of the use of any listening device by any police officer to overhear, record, monitor or listen to any private conversation to which the member was not a party.

(6) A person referred to in subsection (2)(c) who uses a listening device to overhear, record, monitor or listen to any private conversation to which the person is not a party shall not communicate or publish the substance or meaning of that private conversation otherwise than in the performance of the person's duty.

(7) The court by which a person is convicted of an offence under this section may, by its conviction, order that any listening device used in the commission of the offence and described in the order shall be forfeited to Her Majesty and delivered up, within such period as may be specified in the order, by the person who has possession of the listening device to a person specified in the order.

(8) If an order is made under subsection (7), the person who has possession of the listening device must deliver up the listening device under the order.

Maximum penalty—20 penalty units.

(9) If a person contravenes subsection (8), whether or not a proceeding for the offence has started, a police officer may seize the listening device and deliver it up under the order.

Prohibition on communication or publication of private conversations unlawfully listened to

44.(1) A person is guilty of an offence against this Act if the person communicates or publishes to any other person a private conversation, or a report of, or of the substance, meaning or purport of, a private conversation, that has come to his or her knowledge as a result, direct or indirect, of the use of a listening device used in contravention of section 43 and is liable on conviction on indictment to a maximum penalty of 40 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply—

- (a) where the communication or publication of the private conversation is made—
 - (i) to a party to the conversation or with the consent, express or implied, of such a party; or
 - (ii) in the course of proceedings for an offence against this Act constituted by a contravention of, or a failure to comply with any provision of this part; or
- (b) to prevent a person who has obtained knowledge of a private conversation otherwise than in a manner referred to in that subsection from communicating or publishing to another person the knowledge so obtained by the person, notwithstanding that the person also obtained knowledge of the conversation in such a manner.

Prohibition on communication or publication of private conversations by parties thereto

45.(1) A person who, having been a party to a private conversation and having used a listening device to overhear, record, monitor or listen to that conversation, subsequently communicates or publishes to any other person any record of the conversation made, directly or indirectly, by the use of the listening device or any statement prepared from such a record is guilty of an offence against this Act and is liable on conviction on indictment to a maximum penalty of 40 penalty units or imprisonment for 2 years.

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

Invasion of Privacy Act 1971

- (a) is made to another party to the private conversation or with the consent, express or implied, of all other parties to the private conversation, being parties referred to in section 42(2)(a); or
- (b) is made in the course of legal proceedings; or
- (c) is not more than is reasonably necessary—
 - (i) in the public interest; or
 - (ii) in the performance of a duty of the person making the communication or publication; or
 - (iii) for the protection of the lawful interests of that person; or
- (d) is made to a person who has, or is believed, on reasonable grounds, by the person making the communication or publication to have, such an interest in the private conversation as to make the communication or publication reasonable under the circumstances in which it is made; or
- (e) is made by a person who used the listening device to overhear, record, monitor, or listen to the private conversation in accordance with an authorisation referred to in section 43(2)(c) or who is a person referred to in section 43(2)(c)(iii).

(3) In subsection (2)—

“**legal proceedings**” includes—

- (a) proceedings (whether civil or criminal) in or before any court; and
- (b) proceedings before justices; and
- (c) proceedings before any court, tribunal or person (including any inquiry, examination or arbitration) in which evidence is or may be given; and
- (d) any part of legal proceedings.

Inadmissibility of evidence of private conversations when unlawfully obtained

46.(1) Where a private conversation has come to the knowledge of a person as a result, direct or indirect, of the use of a listening device used in contravention of section 43, evidence of that conversation may not be given

by that person in any civil or criminal proceedings.

(2) Subsection (1) does not render inadmissible—

- (a) evidence of a private conversation that has, in the manner referred to in that subsection, come to the knowledge of the person called to give the evidence, if a party to the conversation consents to that person giving the evidence; or
- (b) evidence of a private conversation that has, otherwise than in the manner referred to in that subsection, come to the knowledge of the person called to give the evidence, notwithstanding that the person also obtained knowledge of the conversation in such a manner; or
- (c) in any proceedings for an offence against this Act constituted by a contravention of, or a failure to comply with, any provision of this part, evidence of a private conversation that has in the manner referred to in that subsection come to the knowledge of the person called to give the evidence.

(3) The court before which any proceedings referred to in subsection (2)(c) are brought may, at any stage of the proceedings and from time to time, make an order forbidding publication of any evidence, or of any report of, or report of the substance meaning or purport of, any evidence referred to in that subsection.

(4) Any person who contravenes an order made under subsection (3) is guilty of an offence against this Act.

Maximum penalty—10 penalty units.

Destruction of irrelevant records made by the use of a listening device

47. The Commissioner shall, as soon as practicable after it has been made, cause to be destroyed so much of any record, whether in writing or otherwise, of any information obtained by the use of a listening device pursuant to an authorisation given under section 43(2)(c)(i) as does not relate directly or indirectly to the commission of an offence.

Advertising listening devices prohibited

48. A person who—

- (a) publishes or causes to be published by radio or television or in any newspaper or other publication an advertisement relating to any listening device of a prescribed class or description; or
- (b) in any other way advertises or publicly exhibits any such listening device with the intention or apparent intention of promoting its sale or use;

is guilty of an offence.

Maximum penalty—20 penalty units or imprisonment for 1 year.

PART 4A—INVASION OF PRIVACY WITH RESPECT TO DWELLING HOUSES**Unlawful entry of dwelling houses**

48A.(1) Any person who enters a dwelling house without the consent of the person in lawful occupation or, where there is not a person in lawful occupation, without the consent of the owner is guilty of an offence.

Maximum penalty—20 penalty units or imprisonment for 1 year.

(1A) If the offender gains entry to the dwelling house—

- (a) by force;
- (b) by threats or intimidation of any kind;
- (c) by deceit;
- (d) by any fraudulent trick or device;
- (e) by false and fraudulent representations as to the reason for entry;

the offender is guilty of an offence whether or not the offender has the consent of the person in lawful occupation or the owner.

Maximum penalty—30 penalty units or imprisonment for 18 months.

Invasion of Privacy Act 1971

(2) A person is not guilty of an offence under subsection (1) or (1A)—

- (a) where the person shows that his or her entry of the dwelling house in question (not being an entry by any means referred to in subsection (1A)(b), (c), (d) or (e)) was authorised, justified or excused by law;
- (b) where the person shows that he or she entered the dwelling house in question bona fide for the protection or succour of any person therein or the preservation or protection of the dwelling house.

(3) Any person who without lawful excuse, the proof of which lawful excuse shall be upon the person, is found in a dwelling house or the yard of a dwelling house is guilty of an offence.

Maximum penalty—20 penalty units or imprisonment for 1 year.

(3A) In subsection (3)—

“**yard**” includes any path, garden, curtilage, courtyard, enclosure, lawn or other ground or area within the precincts of or appurtenant to or under the dwelling house in question.

(4) It is lawful for any person who finds another committing an offence against this section to arrest him or her without warrant.

(5) In any case where there is power pursuant to subsection (4) to arrest an offender, the power and authority to proceed against such an offender by way of complaint and summons under the *Justices Act 1886* in accordance with this Act also lies.

(7) The provisions of section 43 of the *Vagrants, Gaming, and Other Offences Act 1931* shall apply with necessary adaptations with respect to any person arrested for an offence against this section.

(11) The provisions of this section are in addition to, are not in substitution for, and do not derogate from any of the provisions of the Criminal Code or any other Act.

(12) In this section—

“**dwelling house**” has the meaning it has from time to time in the Criminal Code.

(13) For the purposes of this section, a person is said to enter a dwelling house as soon as any part of the person's body or any part of any instrument used by the person is within the dwelling house.

PART 5—MISCELLANEOUS

Delegation by chief executive

48B. The chief executive may delegate the chief executive's powers under this Act to an officer of the department.

Offences and penalty

49.(1) A person who contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act and, where no penalty is expressly provided, is liable to a penalty not exceeding 10 penalty units.

(2) Where a person, being a corporation, is guilty of an offence against this Act, any director, manager, secretary or other officer of the corporation who knowingly authorises or permits the same or is a party to the offence is guilty of that offence and is liable on conviction to the pecuniary penalty or imprisonment provided by this Act for such offence.

(3) Any offence against this Act which is expressed to be punishable upon conviction on indictment is a misdemeanour.

(4) Except where this Act otherwise provides, offences against this Act shall be punishable on summary conviction.

Proceedings how and when taken

50. Proceedings for an offence against this Act that is punishable on summary conviction may be brought within the period of 12 months of the commission of the alleged offence, or within 6 months after the commission of the alleged offence comes to the knowledge of the complainant whichever is the later.

Saving of Remedies

51. Subject to section 23, no proceedings or conviction for any offence against this Act shall affect any civil right or remedy to which any person aggrieved by the offence may be entitled.

Protection from liability

51A.(1) In this section—

“**official**” means—

- (a) the Minister; or
- (b) the Commissioner; or
- (c) the chief executive; or
- (d) an inspector; or
- (e) a police officer; or
- (f) a person acting under the direction of an inspector or a police officer.

(2) An official does not incur civil liability for an act or omission done honestly and without negligence under this Act.²

(3) A liability that would, apart from this section, attach to an official attaches instead to the State.

Approval of forms

51B. The chief executive may approve forms for use under this Act.

Regulation making power

52.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about—

- (a) fees payable under this Act; or

² ‘Under’ includes ‘for the purposes of’. See *Acts Interpretation Act 1954*, section 36.

Invasion of Privacy Act 1971

- (b) applications to the chief executive; or
- (c) registration of licences, refusals, renewals, variations, cancellations, restorations, surrenders or any other matters requiring registration under this Act; or
- (d) records to be kept by licensees and the way the records are to be kept; or
- (e) information that may or may not be contained in a credit report; or
- (f) returns and information that a licensee is required to give to the chief executive; or
- (g) exemption from compliance with provisions of this Act.

(3) A regulation may provide for a maximum penalty of 20 penalty units for a contravention of the regulation.

ENDNOTES**1 Index to endnotes**

	Page
2 Date to which amendments incorporated	35
3 Key	36
4 Table of earlier reprints	36
5 Tables in earlier reprints	36
6 List of legislation	37
7 List of annotations	38

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 10 March 2000. Future amendments of the Invasion of Privacy Act 1971 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 83 of 1993	24 April 1995
1A	to Act No. 58 of 1995	8 August 1996
2	to Act No. 58 of 1995	17 February 1998
2A	to Act No. 63 of 1999	4 February 2000

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Invasion of Privacy Act 1971 No. 50

date of assent 15 November 1971

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1972 (proc pubd gaz 1 July 1972 p 1133)

as amended by—

Invasion of Privacy Act Amendment Act 1976 No. 26

date of assent 22 April 1976

commenced 1 June 1976 (proc pubd gaz 22 May 1976 p 650)

Administration of Commercial Laws Act and Other Acts Amendment Act 1981 No. 57 pts 1, 4

date of assent 12 June 1981

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1982 (proc pubd gaz 29 June 1982 p 2101)

Companies (Consequential Amendments) Act 1981 No. 111 s 23 pts 1, 6

date of assent 16 December 1981

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1982 (see s 2(4) and proc pubd gaz 29 June 1982 p 2102)

Commissions of Inquiry Act and Other Acts Amendment Act 1988 No. 58 pts 1, 4

date of assent 25 August 1988

commenced on date of assent

Public Service (Administrative Arrangements) Act (No. 2) 1990 No. 80 s 3 sch 6

date of assent 14 November 1990

commenced on date of assent

Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 pt 1, s 163 sch 1

date of assent 14 August 1992

commenced on date of assent

Consumer Law (Miscellaneous Provisions) Act 1993 No. 82 ss 1–3 sch 1

date of assent 17 December 1993

commenced on date of assent

Security Providers Act 1993 No. 83 pts 1, 6

date of assent 17 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 17 February 1995 (1995 SL No. 24)

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Equity and Fair Trading (Miscellaneous Provisions) Act 1999 No. 63 pts 1, 8

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 10 March 2000 (2000 SL No. 36)

7 List of annotations

Note—s 17 of Act No. 57 of 1981 substitutes “Registrar” and “Registrar’s” in each case as may be applicable for “Commissioner” (where it is used as a reference to the Commissioner for Corporate Affairs), “Commissioner for Corporate Affairs” and “Commissioner’s” wherever these words occur save in s 4 of the Principal Act which is expressly amended by s 16 of Act No. 57 of 1981.

Long title amd 1993 No. 83 s 60**Arrangement of Act**

s 3 amd 1976 No. 26 s 3
om 1992 No. 40 s 163 sch 1

Definitions

prov hdg sub 1995 No. 58 s 4 sch 1

s 4 def “**approved**” om 1993 No. 83 s 61
def “**approved form**” ins 1995 No. 58 s 4 sch 1
def “**chief executive**” ins 1993 No. 83 s 61
om R1 (see RA s 39)
def “**Commissioner**” om 1981 No. 57 s 16(a)
ins 1993 No. 83 s 61
def “**individual**” om 1992 No. 40 s 163 sch 1
def “**inspector**” sub 1993 No. 83 s 61
def “**licence**” sub 1993 No. 83 s 61
def “**licensed private inquiry agent**” om 1993 No. 83 s 61
def “**licensed subagent**” om 1993 No. 83 s 61
def “**licensee**” om 1993 No. 83 s 61
def “**Minister**” sub 1990 No. 80 s 3 sch 6
om 1992 No. 40 s 163 sch 1
def “**private inquiry agent**” om 1993 No. 83 s 61
def “**private inquiry agent’s licence**” om 1993 No. 83 s 61
def “**registered address**” amd 1976 No. 26 s 4
sub 1993 No. 83 s 61
def “**Registrar**” ins 1981 No. 57 s 16(b)
om 1992 No. 40 s 163 sch 1
def “**registrar**” ins 1992 No. 40 s 163 sch 1
om 1993 No. 83 s 61
def “**related corporation**” amd 1981 No. 111 s 23 sch
om 1993 No. 83 s 61
def “**subagent**” om 1993 No. 83 s 61
def “**subagent’s licence**” om 1993 No. 83 s 61

PART 2—INSPECTORS

pt hdg sub 1993 No. 83 s 62

Appointment of inspectors

s 5 sub 1993 No. 83 s 63

Inspector's identity card

s 6 sub 1993 No. 83 s 63

Production of inspector's identity card

s 6A sub 1993 No. 83 s 63

PART 3—CREDIT REPORTING AGENTS

pt hdg sub 1993 No. 83 s 64

Credit reporting agent must be licensed

prov hdg sub 1993 No. 83 s 65(1)

s 8 amd 1993 No. 82 s 3 sch 1; 1993 No. 83 s 65(2)–(3)

Application for licence or renewal

s 9 amd 1976 No. 26 s 5; 1993 No. 83 s 66; 1999 No. 63 s 67

Grant of licence

s 10 amd 1976 No. 26 s 6; 1981 No. 111 s 23 sch; 1993 No. 83 s 67; 1995 No. 58 s 4 sch 1

Restoration of licence

s 11 amd 1993 No. 83 s 68; 1995 No. 58 s 4 sch 1

Variation of licence

s 12 amd 1993 No. 83 s 69

Cancellation of licence

s 13 amd 1993 No. 83 s 70

Appeal

s 14 amd 1993 No. 82 s 3 sch 1; 1993 No. 83 s 71

Registers

s 15 amd 1993 No. 83 s 72; 1995 No. 58 s 4 sch 1

Information to be disclosed by credit reporting agent

s 18 amd 1993 No. 83 s 73

Obtaining information falsely

s 19 amd 1993 No. 83 s 74

Unauthorised disclosure

s 20 amd 1993 No. 83 s 75

Supply of false information

s 21 amd 1993 No. 83 s 76

Falsifying records or credit report

s 22 amd 1993 No. 83 s 77

Demanding payment by threats

s 25 amd 1993 No. 83 s 78

PART 3—CREDIT REPORTING AGENTS**Division 3—Private Inquiry Agents****div hdg** om 1993 No. 83 s 79**Act not applicable to certain persons****s 26** om 1993 No. 83 s 79**Savings as to licensed subagents****s 27** om 1993 No. 83 s 79**Persons prohibited from acting as subagents for unlicensed person****s 28** om 1993 No. 83 s 79**As to displaying notice on places of business, etc.****s 29** om 1993 No. 83 s 79**Certain persons not to be employed by licensees****s 30** om 1993 No. 83 s 79**Misrepresentation, etc., by private inquiry agent****s 31** om 1993 No. 83 s 79**Advertisements****s 32** om 1993 No. 83 s 79**Unlicensed persons not to recover fees****s 33** om 1993 No. 83 s 79**Excessive charges may be reduced****s 34** om 1993 No. 83 s 79**Licensees not to assume additional powers****s 35** om 1993 No. 83 s 80**Registered addresses****s 36** amd 1976 No. 26 s 7; 1993 No. 83 s 81**Production of licence****s 37** sub 1993 No. 83 s 82**Surrender of licence****s 38** amd 1993 No. 83 s 83**Automatic cancellation of licence****s 39** sub 1993 No. 83 s 84**Prohibition on use of listening devices****s 43** amd 1993 No. 82 s 3 sch 1; 1993 No. 83 s 85; 1995 No. 58 s 4 sch 1**Prohibition on communication or publication of private conversations unlawfully listened to****s 44** amd 1993 No. 83 s 86**Prohibition on communication or publication of private conversations by parties thereto****s 45** amd 1988 No. 58 s 11; 1993 No. 83 s 87

Inadmissibility of evidence of private conversations when unlawfully obtained
s 46 amd 1993 No. 83 s 88

Destruction of irrelevant records made by the use of a listening device
s 47 amd 1993 No. 83 s 89

Advertising listening devices prohibited
s 48 amd 1993 No. 83 s 90

**PART 4A—INVASION OF PRIVACY WITH RESPECT TO DWELLING
 HOUSES**

pt hdg ins 1976 No. 26 s 8

Unlawful entry of dwelling houses
s 48A ins 1976 No. 26 s 8
 amd 1993 No. 83 s 91

Delegation by chief executive
s 48B ins 1993 No. 83 s 92

Offences and penalty
s 49 amd 1993 No. 83 s 93

Proceedings how and when taken
s 50 amd 1993 No. 83 s 94

Protection from liability
s 51A ins 1976 No. 26 s 9
 sub 1993 No. 83 s 95

Approval of forms
s 51B prev s 51B ins 1992 No. 40 s 163 sch 1
 om 1993 No. 83 s 96
 pres s 51B ins 1995 No. 58 s 4 sch 1

Regulation making power
prov hdg sub 1995 No. 58 s 4 sch 1
s 52 sub 1993 No. 83 s 97
 amd 1995 No. 58 s 4 sch 1; 1999 No. 63 s 68

Publication of Regulations
s 53 om 1992 No. 40 s 163 sch 1