



# **Invasion of Privacy Act 1971**

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Queensland

# Invasion of Privacy Act 1971

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	3
2	Commencement . . . . .	3
4	Definitions . . . . .	3
<b>Part 2</b>	<b>Inspectors</b>	
5	Appointment of inspectors . . . . .	4
6	Inspector's identity card . . . . .	5
6A	Production of inspector's identity card . . . . .	5
7	Powers of inspector . . . . .	5
<b>Part 4</b>	<b>Listening devices</b>	
41	Part binds Crown . . . . .	6
42	Reference to listening devices and private conversations . . . . .	6
43	Prohibition on use of listening devices . . . . .	6
44	Prohibition on communication or publication of private conversations unlawfully listened to . . . . .	9
45	Prohibition on communication or publication of private conversations by parties thereto . . . . .	10
46	Inadmissibility of evidence of private conversations when unlawfully obtained . . . . .	12
48	Advertising listening devices prohibited . . . . .	13
<b>Part 4A</b>	<b>Invasion of privacy with respect to dwelling houses</b>	
48A	Unlawful entry of dwelling houses . . . . .	13
<b>Part 5</b>	<b>Miscellaneous</b>	
48B	Delegation by chief executive . . . . .	15
49	Offences and penalty . . . . .	15
49A	Executive officer may be taken to have committed offence . . . . .	16
50	Proceedings how and when taken . . . . .	17
51	Saving of remedies . . . . .	17

Invasion of Privacy Act 1971

Contents

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51A	Protection from liability .....	17
51B	Approval of forms .....	17
52	Regulation-making power .....	18

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# Invasion of Privacy Act 1971

**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

### 1 Short title

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

### 2 Commencement

- (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.

### 4 Definitions

In this Act—

*approved form* see section 51B.

*Commissioner* means the commissioner of the police service.

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

*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.

*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.

## Part 2 Inspectors

### 5 Appointment of inspectors

- (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.

## **6 Inspector's identity card**

- (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.

## **6A Production of inspector's identity card**

- (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.

## **7 Powers of inspector**

- (1) For the purposes of this Act an inspector may at any time do any or all of the following—
  - (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 4                      Listening devices**

### **41            Part binds Crown**

Except where otherwise provided, this part binds the Crown.

### **42            Reference to listening devices and private conversations**

- (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.

### **43            Prohibition on use of listening devices**

- (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



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a private conversation and is liable on conviction on indictment to a maximum penalty of 40 penalty units or imprisonment for 2 years.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 49A, to have also committed the offence.

- (2) Subsection (1) does not apply—
- (a) where the person using the listening device is a party to the private conversation; or
  - (b) to the unintentional hearing of a private conversation by means of a telephone; or
  - (c) to or in relation to the use of any listening device by—
    - (i) 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; or
    - (ii) 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; or
  - (d) to or in relation to the use of a listening device by a police officer or another person under a provision of an Act authorising the use of a listening device; or
  - (e) to or in relation to the use of a listening device that is a government network radio, activated by a communications centre operator for a public safety entity, in circumstances in which—
    - (i) an officer of the entity has activated a duress alarm; or

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- (ii) an officer of the entity has contacted the communications centre operator to ask for assistance; or
- (iii) the communications centre operator has reasonable grounds to believe there may be a risk to the life, health or safety of an officer of the entity.

*Example for subparagraph (iii)—*

A communications centre operator for a public safety entity has lost contact with an officer of the entity and the officer does not respond to normal radio communication.

- (3) 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.
- (4) 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.
- (5) If an order is made under subsection (4), the person who has possession of the listening device must deliver up the listening device under the order.

Maximum penalty—20 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 49A, to have also committed the offence.

- (6) If a person contravenes subsection (5), 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.
- (7) In this section—

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***communications centre operator***, for a public safety entity, means a person who is employed or otherwise engaged by the entity, whether on a paid or voluntary basis, to maintain radio contact with officers of the entity.

***government network radio*** means a radio that—

- (a) uses a secure digital radio communications network to enable a communications centre operator for a public safety entity and an officer of the entity to communicate with each other; and
- (b) may be fitted to a vehicle or carried by a person.

***officer***, of a public safety entity, means a person who is employed or otherwise engaged by the entity, whether on a paid or voluntary basis.

***public safety entity*** means—

- (a) the Queensland Ambulance Service established under the *Ambulance Service Act 1991*; or
- (b) the Queensland Police Service; or
- (c) any of the following entities established under the *Fire and Emergency Services Act 1990*—
  - (i) the Queensland Fire and Emergency Service;
  - (ii) the State Emergency Service;
  - (iii) an emergency service unit; or
- (d) a rural fire brigade registered under the *Fire and Emergency Services Act 1990*.

#### **44 Prohibition on communication or publication of private conversations unlawfully listened to**

- (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.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 49A, to have also committed the offence.

- (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.

#### **45 Prohibition on communication or publication of private conversations by parties thereto**

- (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.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 49A, to have also committed the offence.

- (2) Subsection (1) does not apply where the communication or publication—
- (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 under section 43(2)(c) or (d).
- (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.

## **46 Inadmissibility of evidence of private conversations when unlawfully obtained**

- (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.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 49A, to have also committed the offence.

**48 Advertising listening devices prohibited**

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**

**48A Unlawful entry of dwelling houses**

- (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; or
  - (b) by threats or intimidation of any kind; or

- (c) by deceit; or
- (d) by any fraudulent trick or device; or
- (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.

- (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; or
  - (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.

- (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

### 48B      Delegation by chief executive

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

### 49              Offences and penalty

- (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) Any offence against this Act which is expressed to be punishable upon conviction on indictment is a misdemeanour.
- (3) Except where this Act otherwise provides, offences against this Act shall be punishable on summary conviction.

#### **49A Executive officer may be taken to have committed offence**

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
  - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
  - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following—
  - (a) the liability of the corporation for the offence against the deemed executive liability provision;
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—

*deemed executive liability provision* means any of the following provisions—

  - section 43(1)
  - section 43(5)
  - section 44(1)
  - section 45(1)
  - section 46(4).

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

## **50 Proceedings how and when taken**

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.

## **51 Saving of remedies**

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.

## **51A Protection from liability**

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

## **51B Approval of forms**

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

## **52 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may provide for a maximum penalty of 20 penalty units for a contravention of the regulation.