

SURVEILLANCE & PRIVACY IN TASMANIA: *Information*

Sheet

What governs surveillance law in Tasmania?

The *Privacy Act 1988 (Cth)* covers Australian Government agencies and organisations with an annual turnover of more than \$3 million. Such an organisation or agency must:

- tell you that your image may be captured before you're recorded; and
- make sure recorded personal information is secure and destroyed or de-identified when it is no longer needed

While the *Privacy Act 1988 (Cth)* generally applies only to Australian Government agencies and certain organisations, amendments commencing on 10 June 2025 introduced a new civil cause of action for **serious invasions of privacy**. This remedy may, in appropriate circumstances, allow an individual to bring court proceedings against another individual or organisation, even where they are not otherwise regulated by the *Privacy Act 1988 (Cth)*. Further information is provided below.

For all other scenarios, state and territory laws apply. In Tasmania that includes the *Listening Devices Act 1991 (Tas)* and the *Police Offences Act 1935 (Tas)*.

What is considered a listening device and does the legislation treat listening devices and CCTV cameras differently?

A "listening device" is defined to mean any instrument, apparatus, equipment or device capable of being used to record or listen to a private conversation simultaneously with-it taking place.

The *Listening Devices Act 1991 (Tas)* is strict in its application to audio recording devices or devices capable of recording audio. This means even if the device used is not recording sound, so long as it is capable of recording sound, it is a "listening device". However, the Act does not specifically cover devices **only** capable of creating "video recordings" such as traditional CCTV.

This does not mean it is always lawful to have CCTV recording. Neighbourhood issues that arise include surveillance across and into a neighbour's property. Depending on where the camera is pointed and the rationale behind it, it may give rise to:

- (a) The ability for the other party to seek a restraint order; and/or
- (b) The ability for police to lay criminal charges (examples include CCTV focused on looking into bathrooms or habitable rooms).

Is it an offence to use a listening device to record conversations?

It is an offence for a person to use, or cause or permit to be used, a listening device to record or listen to a private conversation, whether or not that person is a party to the conversation. It is also an offence for a person to record a private conversation to which the person is a party.

A listening device can be used where the conversation is **not** private.

Are there any exceptions where a listening device can be used to record a private conversation?

Yes. Those exceptions include:

- A. It is legal if you unintentionally hear a private conversation through a listening device.
- B. It is legal if a party to a private conversation uses a listening device to record the conversation and all of the principal parties to the conversation expressly or impliedly consent to the listening device being used.
- C. It is legal to use a listening device to obtain evidence or information in connection with an imminent threat of serious violence to persons or of substantial damage to property.
- D. It is legal to use a listening device to record a conversation if a principal party to the conversation consents to the listening device being used, and:
 - (i) The recording of the conversation is reasonably necessary for the protection of their lawful interests; or
 - (ii) The recording of the conversation is not made for the purpose of communicating or publishing the conversation, or a report of the conversation, to persons who are not parties to the conversation.

What if someone gives me a recording of a private conversation?

It is illegal to possess a copy of a private conversation recording unless the recording is not of a private conversation or it has otherwise been obtained in a circumstance that gives rise to one of the exceptions noted above.

What are the penalties for breaching the *Listening Devices Act 1991* (Tas)?

You can be charged and prosecuted in the *Magistrates Court of Tasmania*. You will face a fine of up to 40 penalty units or up to 2 years imprisonment or both. In the case of a corporation, the maximum fine is 500 penalty units. See s12 of the *Listening Devices Act 1991* (Tas).

Outside of the *Listening Devices Act 1991* (Tas), what are some of the criminal charges available to Tasmania Police?

There are several provisions of the *Police Offences Act 1935* (Tas) that could apply to the use of surveillance equipment in certain contexts, including:

1. **s13A - "Observation or recording in breach of privacy"** - A person who observes or visually records another person, in circumstances where a reasonable person would expect to be afforded privacy –
 - (a) without the other person's consent; and
 - (b) when the other person –
 - (i) is in a private place; or
 - (ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act - is guilty of an offence.

The maximum fine is 50 penalty units or a term of imprisonment of 12 months or both.

This section goes on to provide that If a police officer has reasonable grounds to believe that a person is contravening or has contravened the above, the police officer may, without warrant and using such force, means and assistance as is reasonably necessary, detain and search that person and seize any visual recording, item or instrument found on that person that the police officer considers could be used for observing or visually recording contrary to this provision.

2. **s14A "Peering into dwelling houses"** –
 - (1) A person shall not without lawful excuse (proof whereof shall lie on him) –
 - (a) peep or peer into the window or door of a dwelling-house; or
 - (b) lurk, loiter, or secrete himself on any land within the curtilage of a dwelling-house.
 - (2) A person who contravenes a provision of subsection (1) is guilty of an offence.

The maximum penalty is 5 penalty units or to imprisonment for a term not exceeding 6 months.

There are defences available to the above charges and legal advice should be sought if you are the subject of a charge or have concerns regarding compliance with a legislative provision generally.

Are there any civil remedies available for breaches of privacy?

Yes. On 10 June 2025, amendments to the *Privacy Act 1988* (Cth) via the introduction of *Schedule 2*, introduced a new statutory tort for "Serious Invasions of Privacy". This provides individuals with a civil remedy, separate from any criminal investigation or prosecution by Tasmania Police.

The new provisions may allow a person to commence court proceedings where another person or organisation has seriously invaded their privacy by:

- intruding upon their seclusion (for example, by carrying out surveillance or monitoring activities in circumstances where a person would reasonably expect privacy); or
- misusing private information relating to them.

To succeed, the person bringing the claim must establish a number of factors, including that:

- They had a reasonable expectation of privacy in the circumstances;
- The invasion of privacy was serious;
- The conduct was intentional or reckless; and
- The public interest in protecting their privacy outweighs any broader competing public interest.

It is important to note that not every interference with a person's privacy will give rise to a claim. The invasion must be serious, having regard to all the circumstances. A court may consider matters such as the extent of the intrusion, whether it was repeated or persistent, whether it was intentional, the sensitivity of any information involved and the impact the conduct had on the affected person. Minor annoyances, accidental conduct or trivial interferences with privacy are unlikely to satisfy this threshold.

A court may grant a range of remedies, including: apologies, damages, an account of profits injunctions, declarations and other appropriate relief.

Importantly, there are a number of recognised defences. For example, a person may have a defence if the conduct was:

- (a) carried out with consent;
- (b) authorised by law; or
- (c) reasonably necessary to protect life, health or safety.

This means that even where an invasion of privacy has occurred, a court will still consider the circumstances before determining whether a remedy should be granted.

It is important to take from the above, that:

1. Not every privacy interference qualifies.
2. Even if it is serious, there may be defences.
3. If successful, the court can award remedies.

Unlike the criminal offences discussed above, this remedy is pursued by the affected individual through a civil cause of action in court. Independent legal advice should be sought regarding the prospects of any claim and the applicable time limits.

Helpful Resources

Privacy Act 1988 (Cth)

Listening Devices Act 1991

Police Offences Act 1935

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