

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Group 3

Program 1.6

Question No. 32

Senator Madigan asked the following question at the hearing on 24 February 2014:

Senator MADIGAN: I would just like to touch on the Surveillance Devices Act 2004. The Ford Motor Company in the US stated in a 3 February 2014 letter to US Senator Al Franken that it stores all GPS location data created by the cars that it makes, rental and private, for two to three weeks and then sends it off to Acquity Group, a management company, and then to other agencies. What is the situation in Australia? How is Australian GPS data collected or stored?

Mr Wilkins: I think we should probably take that on notice. It is a rather complicated question.

Senator Brandis: We will take it on notice without conceding the premise of the question, I might say.

Senator MADIGAN: What legal authorisation is required for police to get access to GPS data of vehicles, rental and private? You can take that on notice.

Senator Brandis: We will take that on notice.

Senator MADIGAN: How does the process work? How do your investigators go about getting the data?

Senator Brandis: Once again, I think the best thing to do is, without conceding the premise of the question, to take that bracket of questions on notice.

The answer to the honourable senator's question is as follows:

GPS data may be accessed by law enforcement agencies in the following ways:

(1) Search warrants: There is a range of Commonwealth and State and Territory legislation that sets out the circumstances in which police may stop and search a person or vehicle, enter a private place and seize evidence. The rules governing search and seizure warrants differ in each State and Territory. As a general proposition, to obtain a warrant police must establish that there are reasonable grounds for suspecting that there is evidence of the commission of an offence at the place or vehicle or an offence is likely to be committed imminently.

(2) Surveillance devices legislation: Surveillance devices are generally regulated by State and Territory laws. Under the Commonwealth *Surveillance Devices Act 2004* (SDA), certain law enforcement and anti-corruption agencies may obtain GPS data under a surveillance device warrant, issued by an eligible judge or nominated Administrative Appeals Tribunal member, for the use of a tracking device. A tracking device means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object. Section 14 of the SDA provides that a surveillance device warrant may be obtained in relation to an investigation of a relevant offence including:

- an offence against the law of the Commonwealth, or State offences with a federal aspect, carrying a penalty of 3 years imprisonment or more
- certain defined other offences carrying pecuniary penalties that are the equivalent of imprisonment terms of at least three years, or
- offences which are included in the SDA because they are often indicative of more serious criminal conduct.

The use of surveillance devices is also available to assist in the safe recovery of a child who is the subject of a recovery order or an order for a warrant of apprehension or detention of a child.

Surveillance Device Warrants may also be sought for mutual assistance investigations and integrity operations.

Section 39 of the SDA allows law enforcement and anti-corruption bodies to use a tracking device without a warrant but with the written permission of an appropriate authorising officer, where the use of that device does not involve either entering premises or interfering with the interior of a vehicle or thing without permission. This authorisation can only be issued for the investigation of a relevant offence as defined in the Act.

Under the SDA, Commonwealth agencies are subject to strict record keeping and reporting requirements on their use of such devices. Agencies' use of surveillance devices is also subject to independent inspection and oversight by the Commonwealth Ombudsman.