

# Keeping up with the Councils

Presented by Cimon Burke

Lead

Reason

Advise

***City of West Torrens v  
Tonks***



# The Offence

## **Section 34, *Environment Protection Act 1993* — Offence to contravene mandatory provisions of policy**

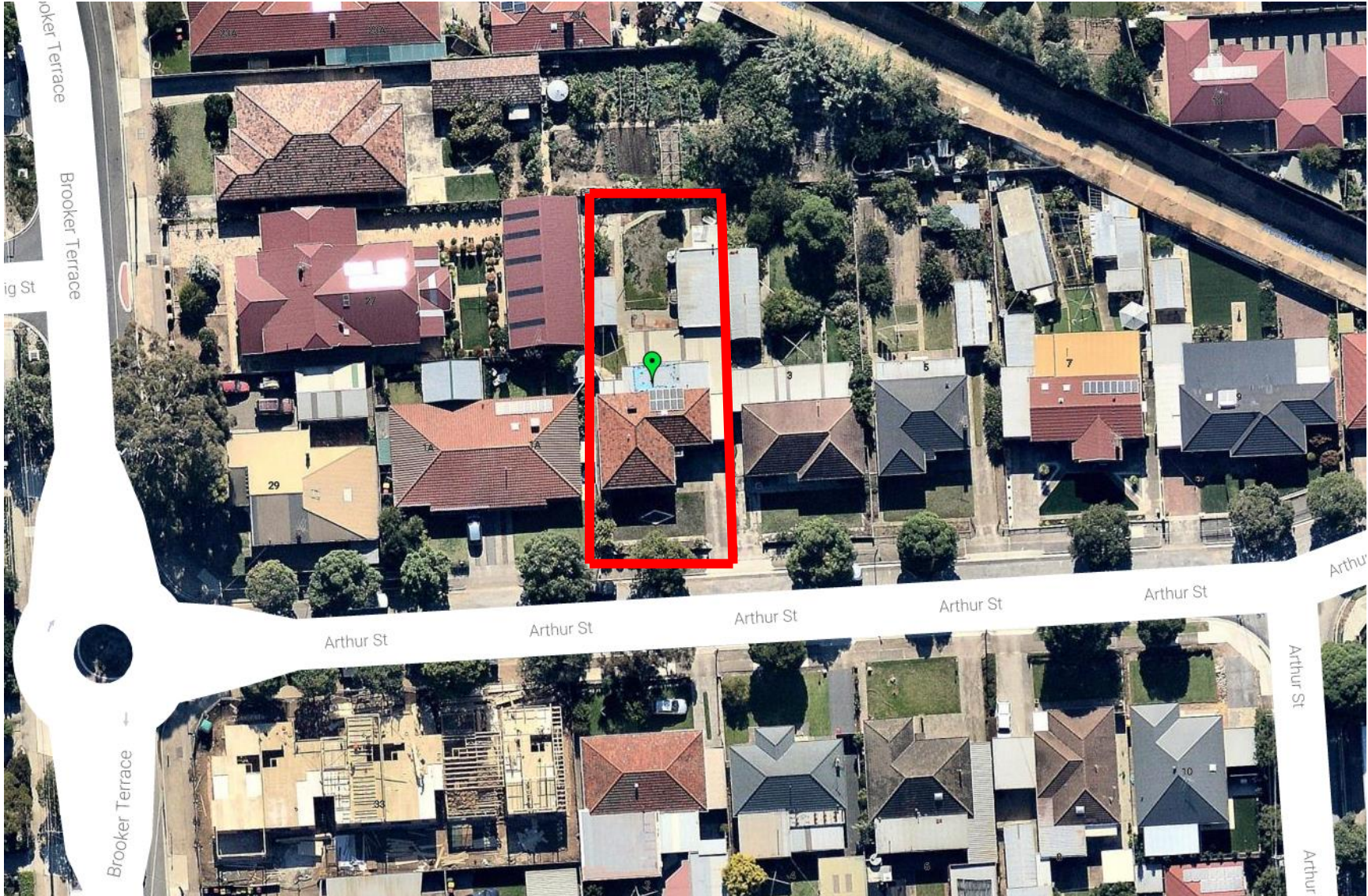
- 1. A person who intentionally or recklessly contravenes a mandatory provision of an environment protection policy is guilty of an offence.*
- 2. A person who contravenes a mandatory provision of an environment protection policy is guilty of an offence.*

# The Offence

## **Clause 5, Environment Protection (Burning) Policy 1994 —Domestic burning and burning on streets, roads or laneways (now repealed)**

3. A person must not cause or permit the burning of matter by a fire in the open or in a domestic incinerator—
  - a) on any domestic premises situated within a council area or portion of a council area referred to in Schedule 1....





# Background

- **17 May 2015** – first complaint, afterhours officer attended property
- **7 June 2015** – second complaint, afterhours officer attended property
- **10 June 2015** – expiation notice issued in connection with first complaint
- **23 June 2015** - expiation notice issued in connection with second complaint
- Tonks elects to be prosecuted

# Background

- assessing evidence and public interest considerations
- complaint and summons filed
- statement of agreed facts
- trial



# The Defence

## **Clause 5, Environment Protection (Burning) Policy 1994**

5. Subclause (3)...does **not apply to**—
  - a) ...
  - b) any fire used principally for the preparation of food or beverages or the heating of a potable liquid...

# Judgement Day!

- Defendant failed to make out defence
- Lighting of both fires was in contravention of the EP Burning Policy
- Guilty as charged!

# Sentence

- Max penalty \$500 and \$30,000 respectively
- Unsafe conditions & presence of danger
- Defendant was an EPA Officer
- Defendant's submissions

# EPA chicken tale cooks own goose

## EUGENE BOISVERT

AN ENVIRONMENT Protection Authority senior inspector has been stood down from his position after being found guilty of illegally burning a chicken coop in his backyard.

Richmond man Craig Tonks, 38, had unsuccessfully claimed he was using the fire to legally cook damper and potatoes. However, his defence was rejected by an Environment Court judge.

Tonks, who was found guilty in February of illegally lighting the fires in May and June 2015, was not present for submissions on penalty yesterday. His story was backed by the evidence of his ex-partner, Holly Warren, who was also at the house at the time.

However, his neighbour,

Fred Ritorto, testified that he did not see Tonks monitoring the fire or cooking on it, and he did not smell any food cooking.

In her judgment, Judge Susanne Cole said Ms Warren's evidence was "a fabrication" and it was "improbable that damper and potatoes would be cooking in coals without either Mr Ritorto or (inspector Nigel) Howard smelling them".

Instead, she said Tonks was using the fires to burn an old chicken coop.

Tonks was not in court because he was on a pre-planned trip to the US, his lawyer Daryl Clarke told the court.

Mr Clarke said Tonks had been removed from his position as an EPA senior inspector, which he had held for 10 years, but the authority was waiting to see whether he was

convicted to decide on his future. The EPA is responsible for setting State Government policy on burning in public.

It is illegal to light fires in the metropolitan area apart from for specified reasons such as cooking and heating.

Representing West Torrens Council, lawyer Tracy Riddle argued Tonks should be convicted and fined for the two offences, which could amount to \$35,000, because of his lack of contrition and the aggravated nature of the offending. If Tonks had elected to receive an expiation notice, his total fine would have been \$320.

Judge Cole ordered Tonks to pay the council's court costs of \$5135 but reserved her sentencing decision. Tonks is appealing the guilty verdict in the Supreme Court.



***To be continued...***

***City of Port Adelaide Enfield v  
Pol***



# **Australian Road Rules**

## **168— No Parking Signs**

1. *The driver of a vehicle must not stop on a length of road or in an area to which a no parking sign applies, unless the driver—*
  - a) *is dropping off, or picking up, passengers or goods; and*
  - b) *does not leave the vehicle unattended; and*
  - c) *completes the dropping off, or picking up, of the passengers or goods, and drives on, as soon as possible and, in any case, within the required time after stopping.*

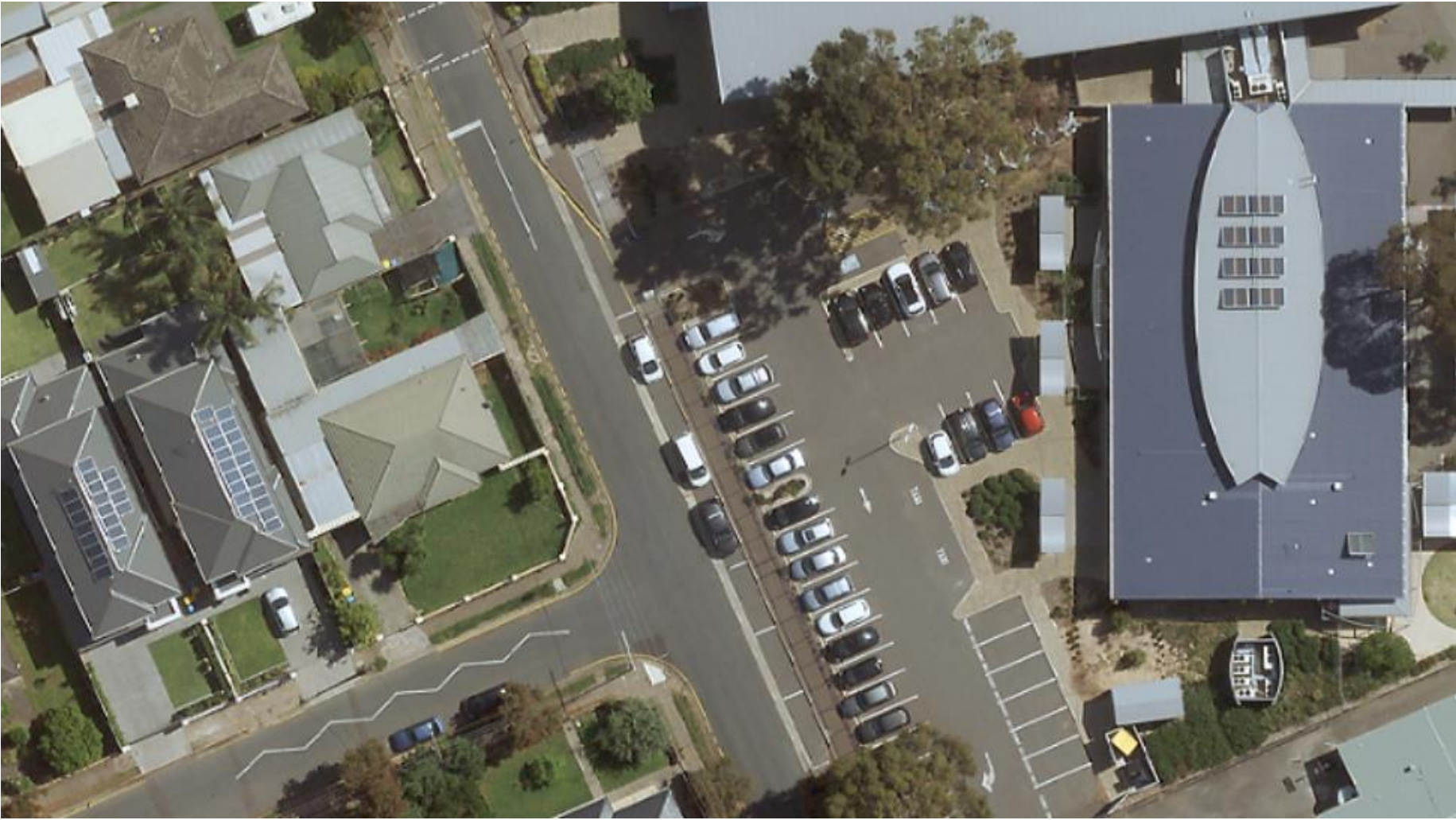


# Background

- **4 February 2016** – patrol conducted, vehicle observed to be unattended
- **15 February 2016** – expiation notice issued
- **23 February 2016** – statutory declaration
- **15 March 2016** – election to be prosecuted

# Court Process

- **29 April 2016** – complaint filed
- **5 August 2016** – PTC, Pol not in attendance, ex parte application granted
- **12 September 2016** – rehearing application granted
- **14 December 2014** – trial













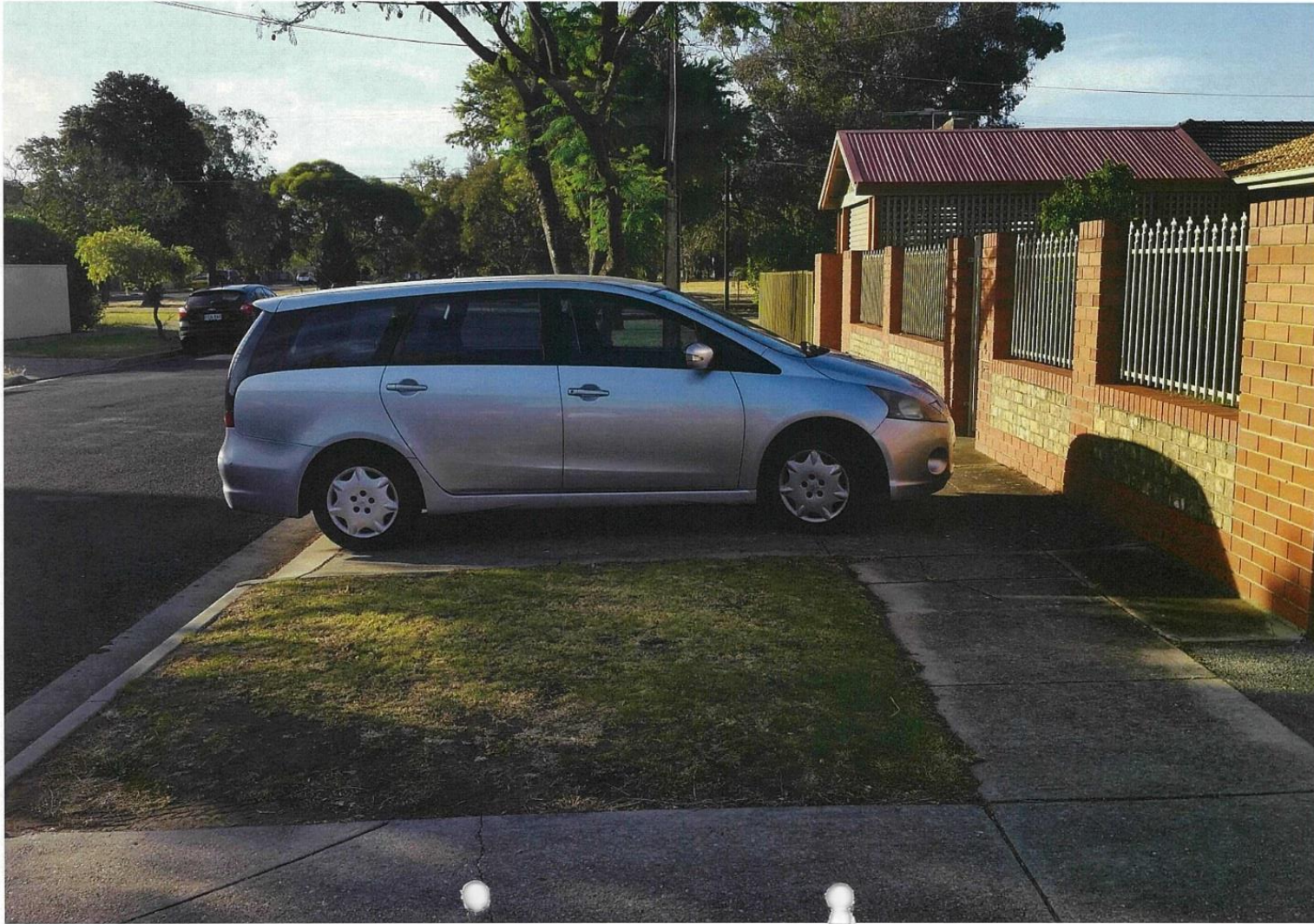


# Judgement Day!

- Guilty & convicted
- Penalty of \$74 + VOC Levy
- Costs order in the amount of \$3,826
- Appeal!

# ***DRIVEWAY OR FOOTPATH?***









# ***Australian Road Rules***

## **198—Obstructing access to and from a footpath, driveway etc**

*A driver must not stop on or across a driveway or other way of access for vehicles travelling to or from adjacent land unless—*

- a) the driver—
  - i. is dropping off, or picking up, passengers; and*
  - ii. does not leave the vehicle unattended; and*
  - iii. completes the dropping off, or picking up, of the passengers, and drives on, as soon as possible and, in any case, within 2 minutes after stopping; or**
- b) the driver stops in a parking bay and the driver is permitted to stop in the parking bay under the Australian Road Rules.*

# ***Australian Road Rules***

## **197—Stopping on a path, dividing strip, nature strip, painted island or traffic island**

1. *A driver must not stop on a bicycle path, footpath, shared path or dividing strip, or a nature strip adjacent to a length of road in a built-up area, unless—*
  - a) *the driver stops at a place on a length of road, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under the Australian Road Rules; or*
  - b) *the driver is permitted to stop under another law of this jurisdiction.*



# Remember...

## **Regulation 18 ,Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014**

*“For the purposes of rule 197(1), a driver is permitted to stop on a footpath if the driver is crossing the path to enter a road-related area or adjacent land and is required to open a gate or take some other action to enter the area or land.”*

# ***Surveillance Devices Act 2016***

# Listening Devices

## Surveillance Devices Act 1972

- **Section 4** prohibits use or installation of listening devices to:
  - overhear, record, monitor or listen to private conversations to which the person is not a party;  
or
  - record a private conversation to which the person is a party
- Subject to exceptions

# Listening Devices

## Surveillance Devices Act 1972 – Relevant exceptions

The Prohibition does not apply to:

- The use of a listening device by a party to a private conversation to record the conversation if:
  - all principal parties to the conversation **consent**, expressly or impliedly, to the device being so used; or
  - the use of the device is reasonably necessary for the **protection of the lawful interests of that person.**
- The use is authorised under any Act



# Listening Devices

## Surveillance Devices Act 1972 – Relevant exceptions

The Prohibition does not apply to:

- The installation, use or maintenance of a listening device on or within premises or a vehicle if:
  - an owner/occupier of the premises/vehicle **agrees**; and
  - the installation, use or maintenance of the device is reasonably necessary for the **protection of the lawful interests** of the owner or occupier of the premises/vehicle or some other person

# Listening Devices

## Surveillance Devices Act 1972 – Relevant exceptions

The Prohibition does not apply to:

- unintentional hearing of a private conversation by means of a listening device; or
- the use of a listening device solely for the purpose of the location and retrieval of the device; or
- the use of a listening device to overhear, record or listen to a private conversation if the use of the device is **in the public interest** (s6)

# Optical Surveillance Device

## Surveillance Devices Act 1972

- **Section 5** prohibits a person from knowingly installing, using or maintaining an optical surveillance device on or in premises/vehicles to record visually or observe the carrying on of a private activity without the express or implied **consent** of each party to the activity
- subject to exceptions

# Optical Surveillance Device

## Surveillance Devices Act 1972 – Relevant exceptions

The Prohibition does not apply to:

- use authorised under any Act; or
- the use of the device on premises by a person is the use of the device is reasonably necessary for the protection of the lawful interests of that person;  
or



# Optical Surveillance Device

## Surveillance Devices Act 1972 – Relevant exceptions

The Prohibition does not apply to:

- the use of the device solely for the purpose of the location and retrieval of the device; or
- the use of an optical surveillance device to record or observe a private activity if the use of the device is **in the public interest** (s6)

# Tracking Devices

## Surveillance Devices Act 1972

- **Section 7** prohibits a person from using/installing a tracking device to determine the geographical location of:
  - a person without the express or implied consent of that person; or
  - a vehicle or thing without the express or implied consent of the owner or a person in lawful possession/control of that vehicle or thing

# Tracking Device

## Surveillance Devices Act 1972 – Relevant exceptions

The Prohibition does not apply to:

- use authorised under any Act; or
- the use of a listening device solely for the purpose of the location and retrieval of the device.

# Data Surveillance Devices

## Surveillance Devices Act 1972

- **Section 8** prohibits a person from installing, using or maintain a data surveillance device to access, track, monitor or record the input of information into, the output of information from, or information stored in, a computer without the express or implied **consent** of the owner, or person with lawful control or management, of the computer.



# kelly jones

LAWYERS

Lead

Reason

Advise

Level 6 / 19 Gilles Street Adelaide South Australia 5000 | T. 8113 7100 | F. 8113 7199 | [kellyjones.com.au](http://kellyjones.com.au)