



Australian Capital Territory

# Crimes (Assumed Identities) Act 2009

A2009-33

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Australian Capital Territory

# **Crimes (Assumed Identities) Act 2009**

**A2009-33**

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An Act to provide for the lawful acquisition and use of assumed identities for law enforcement purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes (Assumed Identities) Act 2009*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*controlled operation*—see the *Crimes (Controlled Operations) Act 2008*, dictionary.' means that the term 'controlled operation' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

#### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

#### 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

#### 6 Purpose of Act

- (1) The main purpose of this Act is to facilitate, for law enforcement purposes, investigations and intelligence gathering in relation to criminal activity, including investigations extending beyond the ACT.
- (2) The purpose is to be achieved mainly by—
  - (a) providing for the lawful acquisition and use of assumed identities; and
  - (b) facilitating mutual recognition of things done in relation to assumed identities under corresponding laws.

**7 Relationship to other laws**

The following Acts do not apply in relation to activities, documents, and records under this Act:

- (a) the *Freedom of Information Act 1989*;
- (b) the *Territory Records Act 2002*.



## Part 2                      Authority to acquire or use assumed identity

### 8                      Application for authority

- (1) A law enforcement officer of a law enforcement agency may apply to the chief officer of the agency for an authority for the law enforcement officer, or someone else, to do either or both of the following:
  - (a) acquire an assumed identity;
  - (b) use an assumed identity.
- (2) A separate application must be made for each assumed identity to be acquired or used.
- (3) An application must be in writing in the form approved by the chief officer.
- (4) An application must contain—
  - (a) the applicant's name; and
  - (b) if someone other than the applicant is to be authorised to acquire or use an assumed identity—the person's name; and
  - (c) if the person mentioned in paragraph (b) is not a law enforcement officer—the name and rank or position of the law enforcement officer proposed to be appointed as the person's supervisor, and an explanation of why it is necessary for a person who is not a law enforcement officer to acquire or use an assumed identity; and
  - (d) details of the proposed assumed identity; and
  - (e) reasons for the need to acquire or use an assumed identity; and

- (f) details (to the extent known) of the investigation or intelligence-gathering exercise in which the assumed identity will be used; and
  - (g) details of the issuing agencies (if any) and the kinds of evidence to be issued by them; and
  - (h) details of any application to be made for an order under section 16 (Making entries in register of births, deaths or marriages) in relation to the assumed identity.
- (5) The chief officer may require the applicant to give the chief officer the additional information the chief officer reasonably needs to decide the application.

*Note* The chief officer may delegate a function under this section (see s 42).

## **9 Decision on application for authority**

- (1) After considering an application for an authority to acquire or use an assumed identity, and any additional information given under section 8 (5), the chief officer of a law enforcement agency may—
- (a) grant an authority to acquire or use the assumed identity, with or without conditions; or
  - (b) refuse the application.
- (2) The chief officer must not grant an authority to acquire or use an assumed identity unless satisfied on reasonable grounds that—
- (a) the assumed identity is necessary for the purposes of an investigation or intelligence gathering in relation to criminal activity; and
  - (b) the risk of abuse of the assumed identity by the authorised person is minimal; and

- (c) if the application is for authorisation of an assumed identity for a person who is not a law enforcement officer—it would be impossible or impracticable in the circumstances for a law enforcement officer to acquire or use the assumed identity for the purpose sought.
- (3) An authority may also authorise 1 or more of the following:
- (a) an application for an order for an entry in a register of births, deaths or marriages under section 16 (Making entries in register of births, deaths or marriages) or a corresponding law;
  - (b) a request under section 19 (Request for evidence of assumed identity) or section 31 (Request to participating jurisdiction for evidence of assumed identity);
  - (c) the use of an assumed identity in a participating jurisdiction.
- (4) A separate authority is required for each assumed identity.

*Note* The chief officer may delegate a function under this section (see s 42).

## **10 Authorised civilian's authority not longer than 3 months**

The chief officer must not grant an authority for an authorised civilian for longer than 3 months.

## **11 Authorised civilian's supervisor**

- (1) This section applies if the chief officer of a law enforcement agency grants an authority for an authorised civilian.
- (2) The chief officer must appoint a law enforcement officer of the agency to supervise the acquisition or use of the assumed identity by the authorised civilian.
- (3) The law enforcement officer appointed as supervisor must be—
  - (a) for the Australian Federal Police—of or above the rank of sergeant; and

- (b) for the Australian Crime Commission—of or above the rank of senior investigator.

## 12 Form of authority

- (1) An authority must be—
  - (a) in writing in the form approved by the chief officer; and
  - (b) signed by the person granting it.
- (2) An authority must state the following:
  - (a) the name of the person granting the authority;
  - (b) the date on which the authority comes into effect;
  - (c) details of the assumed identity under the authority;
  - (d) details of any evidence of the assumed identity that may be acquired under the authority;
  - (e) the conditions (if any) to which the authority is subject;
  - (f) why the authority is granted;
  - (g) if the authority relates to an authorised officer—the authorised officer's name;
  - (h) if the authority relates to an authorised civilian—
    - (i) the authorised civilian's name; and
    - (ii) the name of the authorised civilian's supervisor under the authority; and
    - (iii) the period the authority is in force.

*Note* An authorised civilian's authority must not be for longer than 3 months (see s 10).

- (3) The authority must also state the following:
- (a) each issuing agency to which a request may be made under section 19 (Request for evidence of assumed identity) or section 31 (Request to participating jurisdiction for evidence of assumed identity);
  - (b) whether it authorises an application for an order for an entry in a register of births, deaths or marriages under section 16 (Making entries in register of births, deaths or marriages) or a corresponding law;
  - (c) each participating jurisdiction in which an assumed identity may be used.

*Note* The chief officer may delegate a function under this section (see s 42).

### **13 Period of authority**

- (1) An authority for an authorised officer is in force until cancelled under section 14.
- (2) An authority for an authorised civilian is in force until—
  - (a) the end of the period stated in the authority; or
  - (b) if the authority is cancelled under section 14—the day the authority is cancelled.

### **14 Amendment or cancellation of authority**

- (1) The chief officer of a law enforcement agency who grants an authority—
  - (a) may amend or cancel the authority at any time; and
  - (b) must cancel the authority if satisfied on reasonable grounds (on a review under section 15 or otherwise) that use of the assumed identity under the authority is no longer necessary.

- (2) The chief officer must give written notice of the amendment or cancellation to—
  - (a) the authorised person to whom the authority relates; and
  - (b) if the authorised person is an authorised civilian—the authorised person’s supervisor.
- (3) The notice must state why the authority is amended or cancelled.
- (4) The amendment or cancellation takes effect on—
  - (a) the day the written notice is given to the authorised person; or
  - (b) if the notice states a later date of effect—the stated date.

*Note* The chief officer may delegate a function under this section (see s 42).

## **15 Review of authority granted to authorised officer**

- (1) The chief officer of a law enforcement agency must review each authority granted to an authorised officer by the chief officer, and in force, under this Act to decide whether use of the assumed identity under the authority is still necessary.

*Note* An authority granted by a delegate of a chief officer is taken to have been granted by the chief officer (see Legislation Act, s 239 (4)).

- (2) The review must happen at least once every 12 months.
- (3) If the chief officer is satisfied on reasonable grounds on a review that use of the assumed identity under the authority is no longer necessary, the chief officer must cancel the authority under section 14.
- (4) If the chief officer is satisfied on reasonable grounds on a review that use of the assumed identity under the authority is still necessary, the chief officer must record the chief officer’s opinion, and the reasons for it, in writing.

*Note* The chief officer may delegate a function under this section (see s 42).

**16 Making entries in register of births, deaths or marriages**

- (1) The Supreme Court may order the registrar-general to make an entry in the register under the *Births, Deaths and Marriages Registration Act 1997* in relation to the acquisition of an assumed identity under an authority or corresponding authority.
- (2) The court may make the order only—
  - (a) on application by—
    - (i) the chief officer of a law enforcement agency; or
    - (ii) the chief officer of a law enforcement agency under a corresponding law; and
  - (b) if satisfied that the order is justified having regard to the kind of activities undertaken or to be undertaken by the officer or person under the authority or corresponding authority.
- (3) The application must be heard in closed court.
- (4) The registrar-general must give effect to an order—
  - (a) within the period stated in the order; or
  - (b) if no period is stated in the order—within 28 days after the day the order is made.

*Note* The chief officer may delegate a function under this section (see s 42).

- (5) The registrar-general must give the chief officer who applied for the order a certificate under the *Births, Deaths and Marriages Registration Act 1997* in relation to the entry made in the register under the order.

**17 Cancellation of authority affecting entry in register of births, deaths or marriages**

- (1) This section applies if—
  - (a) the chief officer of a law enforcement agency cancels an authority for an assumed identity; and
  - (b) there is an entry in relation to the identity—
    - (i) in the register under the *Births, Deaths and Marriages Registration Act 1997* because of an order under section 16; or
    - (ii) in a register of births, deaths or marriages in a participating jurisdiction because of an order under a corresponding law of the jurisdiction.
- (2) If subsection (1) (b) (i) applies, the chief officer must apply for an order under section 18 within 28 days after the day the authority is cancelled.
- (3) If subsection (1) (b) (ii) applies, the chief officer must apply for an order under the corresponding law to cancel the entry within 28 days after the day the authority is cancelled.

**18 Cancelling entries in register of births, deaths or marriages**

- (1) The Supreme Court may order the registrar-general to cancel an entry that has been made in the register under the *Births, Deaths and Marriages Registration Act 1997* because of an order under section 16.
- (2) The court may make the order only on application by the chief officer mentioned in section 17.
- (3) The application must be heard in closed court.
- (4) The registrar-general must give effect to the order within 28 days after the day the order is made.



- (5) The chief officer who applied for the order must return to the registrar-general any certificate relating to the entry in the register that was given by the registrar-general in accordance with section 16 (5).

## Part 3 Evidence of assumed identity

### 19 Request for evidence of assumed identity

- (1) This section applies if an authority authorises a request under this section.

*Note* **Authority** means an authority granted under s 9 to acquire and use an assumed identity, and includes the authority as amended under s 14 (see dict).

- (2) The chief officer of a law enforcement agency who grants the authority may ask the chief officer of an issuing agency stated in the authority to—
- (a) produce evidence of an assumed identity in accordance with the authority; and
  - (b) give evidence of the assumed identity to the authorised person stated in the authority.

**Example—produce evidence of identity**

The assumed identity is Emmy Morgan. An issuing agency creates a driver's licence in the name of Emmy Morgan.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The request must state a reasonable period for compliance with the request.
- (4) A request must not be made under this section for an entry in the register under the *Births, Deaths and Marriages Registration Act 1997* or a certificate under that Act in relation to the entry.

*Note* Section 16 deals with entries in the register and related certificates.

(5) In this section:

*evidence* means evidence of identity similar to that ordinarily produced or given by the issuing agency.

*Note 1* *Evidence* of identity—see the dictionary.

*Note 2* The chief officer may delegate a function under this section (see s 42).

## **20 Government issuing agency to comply with request**

The chief officer of a government issuing agency who receives a request under section 19 must comply with the request within the reasonable period stated in the request.

## **21 Non-government issuing agency may comply with request**

The chief officer of a non-government issuing agency who receives a request under section 19 may comply with the request.

## **22 Cancellation of evidence of assumed identity**

- (1) This section applies if the chief officer of an issuing agency produces evidence of an assumed identity under this part.
- (2) The chief officer of the issuing agency must cancel the evidence if given a written direction to do so by the chief officer of a law enforcement agency who asked for the evidence.
- (3) In this section:  
*cancel* includes delete or alter an entry in a record of information.

## **23 Protection from criminal responsibility—officers of issuing agencies**

- (1) This section applies if the chief officer or an officer of an issuing agency engages in conduct that would, apart from this section, be an offence.

*Note* An issuing agency may be government or non-government (see dict).

- (2) The chief officer or officer is not criminally responsible for the offence if the conduct is engaged in to comply with a request under section 19 or a direction under section 22.

## 24 Protection from criminal responsibility for certain ancillary conduct

- (1) This section applies to conduct (*ancillary conduct*) for which a person may be criminally responsible because it involves conduct engaged in by someone else for which the other person would (apart from section 23) be criminally responsible (the *related conduct*).

### Examples—ancillary conduct

- 1 aiding and abetting (see Criminal Code, s 45)
- 2 conspiracy (see Criminal Code, s 48)

*Note* An example is part of the Act is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Despite any other territory law, a person who engages in ancillary conduct that is an offence (whether or not the person is an authorised person or officer of an issuing agency) is not criminally responsible for the offence if, at the time the person engaged in the ancillary conduct, the person believed the related conduct was being engaged in, or would be engaged in, by the chief officer or an officer of an issuing agency.

*Note* An issuing agency may be government or non-government (see dict).

## 25 Protection from civil liability—issuing agencies and officers

- (1) This section applies if the chief officer of a law enforcement agency makes a request under section 19 (Request for evidence of assumed identity) of, or gives a direction under section 22 (Cancellation of evidence of assumed identity) to, the chief officer of an issuing agency.

*Note* An issuing agency may be government or non-government (see dict).

- (2) The issuing agency, or an officer of the issuing agency, is not civilly liable for conduct engaged in honestly and without recklessness if—
- (a) the conduct is engaged in by the agency or officer—
    - (i) to comply with the request or direction in the course of duty; or
    - (ii) in the reasonable belief that the conduct was engaged in to comply with the request or direction in the course of duty; and
  - (b) the requirements (if any) prescribed by regulation have been met.
- (3) Any civil liability (including reasonable costs) that would, apart from this section, attach to the issuing agency or officer attaches instead to the law enforcement agency.

## **Part 4 Effect of authority**

### **26 Assumed identity may be acquired and used**

- (1) An authorised officer may acquire an assumed identity if the acquisition is—
  - (a) in accordance with an authority; and
  - (b) in the course of duty.
- (2) An authorised officer may use an assumed identity if the use is—
  - (a) in accordance with an authority or for a controlled operation; and
  - (b) in the course of duty.
- (3) An authorised civilian may acquire an assumed identity if the acquisition is in accordance with—
  - (a) an authority; and
  - (b) any direction by the civilian’s supervisor under the authority.
- (4) An authorised civilian may use an assumed identity if the use is in accordance with—
  - (a) an authority or for a controlled operation; and
  - (b) any direction by the civilian’s supervisor under the authority.

### **27 Protection from criminal responsibility—authorised people**

- (1) This section applies if an authorised person engages in conduct (in the ACT or elsewhere) that would, apart from this section, be an offence.

- (2) Despite any other territory law, the person is not criminally responsible for the offence if—
- (a) the conduct is engaged in in the course of—
    - (i) acquiring an assumed identity in accordance with an authority; or
    - (ii) using an assumed identity in accordance with an authority or for a controlled operation; and
  - (b) the conduct is engaged in—
    - (i) for an authorised officer—in the course of the officer's duty; or
    - (ii) for an authorised civilian—in accordance with any direction by the civilian's supervisor under the authority; and
  - (c) engaging in the conduct would not be an offence if the assumed identity were the person's real identity.

## **28 Protection from civil liability—authorised people**

- (1) This section applies if the chief officer of a law enforcement agency grants an authority in relation to an authorised person.
- (2) The authorised person is not civilly liable for conduct (in the ACT or elsewhere) engaged in honestly and without recklessness if—
- (a) the conduct is engaged in in the course of—
    - (i) acquiring an assumed identity in accordance with an authority; or
    - (ii) using an assumed identity in accordance with an authority or for a controlled operation; and

- (b) the conduct is engaged in—
    - (i) for an authorised officer—in the course of the officer’s duty; or
    - (ii) for an authorised civilian—in accordance with any direction by the civilian’s supervisor under the authority; and
  - (c) the requirements (if any) prescribed by regulation have been met.
- (3) Any civil liability (including reasonable costs) that would, apart from this section, attach to the authorised person attaches instead to the law enforcement agency.

**29 Particular qualifications**

- (1) Section 27 and section 28 do not apply to conduct engaged in by an authorised person if—
- (a) a particular qualification is needed to engage in the conduct; and
  - (b) the person does not have the qualification.
- (2) Subsection (1) applies whether or not the person has acquired, as evidence of an assumed identity, a document indicating that the person has the qualification.

**30 Effect of being unaware of amendment or cancellation of authority**

- (1) If an authority is amended in a way that limits its scope, this part continues to apply to the authorised person to whom the authority relates as if it had not been amended in that way, for so long as the person—
- (a) is unaware of the amendment; and
  - (b) is not reckless about the existence of the amendment.



- (2) If an authority is cancelled, this part continues to apply to the authorised person to whom the authority related as if it had not been cancelled, for so long as the person—
- (a) is unaware of the cancellation; and
  - (b) is not reckless about the existence of the cancellation.
- (3) For this section, a person is *reckless* about the existence of the amendment or cancellation of an authority if—
- (a) the person is aware of a substantial risk that the authority has been amended or cancelled; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

## Part 5 Mutual recognition under corresponding laws

### 31 Request to participating jurisdiction for evidence of assumed identity

- (1) This section applies if an authority authorises a request under this section.

*Note* **Authority** means an authority granted under s 9 to acquire and use an assumed identity, and includes the authority as amended under s 14 (see dict).

- (2) The chief officer of a law enforcement agency who grants the authority may ask the chief officer of an issuing agency of a participating jurisdiction stated in the authority to—
- (a) produce evidence of an assumed identity in accordance with the authority; and
  - (b) give evidence of the assumed identity to the authorised person stated in the authority.

*Note* The chief officer may delegate a function under this section (see s 42).

### 32 Request from participating jurisdiction for evidence of assumed identity

- (1) This section applies if—
- (a) a corresponding authority authorises a request for—
    - (i) the production of evidence of an assumed identity in the ACT; and
    - (ii) the giving of evidence of the assumed identity to the authorised person stated in the authority; and
  - (b) the request is made to the chief officer of an issuing agency in the ACT; and

- (c) the request states a reasonable period for compliance with the request.
- (2) The chief officer of a government issuing agency who receives the request must comply with the request within the reasonable period stated in the request.
- (3) The chief officer of a non-government issuing agency who receives the request may comply with the request.

**33 Direction from participating jurisdiction to cancel evidence of assumed identity**

- (1) This section applies if the chief officer of an issuing agency produces evidence of an assumed identity because of a request mentioned in section 32.
- (2) The chief officer of the issuing agency must cancel the evidence if given a written direction to do so by the chief officer of a law enforcement agency who made the request.
- (3) In this section:  
*cancel* includes delete or alter an entry in a record of information.

**34 Protection from civil liability—issuing agencies and officers of participating jurisdictions**

- (1) This section applies if the chief officer of a law enforcement agency makes a request under section 31 of, or gives a direction under section 33 to, the chief officer of an issuing agency of a participating jurisdiction.
- (2) The issuing agency, or an officer of the issuing agency, is not civilly liable for conduct engaged in honestly and without recklessness if—
  - (a) the conduct is engaged in (in the ACT or elsewhere) by the agency or officer—
    - (i) to comply with the request in the course of duty; or

- (ii) in the reasonable belief that the conduct was engaged in to comply with the request in the course of duty; and
- (b) the requirements (if any) prescribed by regulation have been met.
- (3) Any civil liability (including reasonable costs) that would, apart from this section, attach to the issuing agency or officer attaches instead to the law enforcement agency.

### **35 Application of Act to corresponding authorities**

The following provisions apply, with any necessary changes, to anything done in the ACT in relation to a corresponding authority as if it were an authority granted under section 9:

- (a) section 23 (Protection from criminal responsibility—officers of issuing agencies);
- (b) section 26 (Assumed identity may be acquired and used);
- (c) section 27 (Protection from criminal responsibility—authorised people);
- (d) section 29 (Particular qualifications);
- (e) section 30 (Effect of being unaware of amendment or cancellation of authority);
- (f) section 36 (Misuse of assumed identity);
- (g) section 37 (Unauthorised disclosure of information about assumed identity).

## **Part 6 Compliance and monitoring**

### **Division 6.1 Misuse of assumed identity and information**

#### **36 Misuse of assumed identity**

- (1) An authorised officer commits an offence if—
- (a) the officer acquires evidence of an assumed identity; and
  - (b) the acquisition is not—
    - (i) in accordance with the officer's authority; or
    - (ii) in the course of duty; and
  - (c) the officer is reckless about whether the acquisition is not—
    - (i) in accordance with the authority; or
    - (ii) in the course of duty.

Maximum penalty: imprisonment for 2 years.

*Note* The fault element of recklessness can be satisfied by proof of intention, knowledge or recklessness (see Criminal Code, s 20 (4)).

- (2) An authorised officer commits an offence if—
- (a) the officer uses an assumed identity; and
  - (b) the use is not—
    - (i) in accordance with the officer's authority or for a controlled operation; or
    - (ii) in the course of duty; and

- (c) the officer is reckless about whether the use is not—
  - (i) in accordance with the authority or for a controlled operation; or
  - (ii) in the course of duty.

Maximum penalty: imprisonment for 2 years.

- (3) An authorised civilian commits an offence if—
  - (a) the civilian acquires evidence of an assumed identity; and
  - (b) the acquisition is not—
    - (i) in accordance with the civilian’s authority; or
    - (ii) in accordance with a direction of the civilian’s supervisor under the authority; and
  - (c) the civilian is reckless about whether the acquisition is not—
    - (i) in accordance with the authority; or
    - (ii) in accordance with a direction of the civilian’s supervisor under the authority.

Maximum penalty: imprisonment for 2 years.

- (4) An authorised civilian commits an offence if—
  - (a) the civilian uses an assumed identity; and
  - (b) the use is not—
    - (i) in accordance with the civilian’s authority or for a controlled operation; or
    - (ii) in accordance with a direction of the civilian’s supervisor under the authority; and
  - (c) the civilian is reckless about whether the use is not—
    - (i) in accordance with the authority or for a controlled operation; or

- (ii) in accordance with a direction of the civilian's supervisor under the authority.

Maximum penalty: imprisonment for 2 years.

**37 Unauthorised disclosure of information about assumed identity**

- (1) A person commits an offence if—
  - (a) the person discloses information; and
  - (b) the information reveals, or is likely to reveal, that an assumed identity acquired or used by someone else is not the other person's real identity; and
  - (c) the person knows that the information reveals, or is likely to reveal, that an assumed identity acquired or used by someone else is not the other person's real identity; and
  - (d) the disclosure is not made—
    - (i) in connection with the administration or execution of this Act or a corresponding law; or
    - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this Act or a corresponding law or of any report of any such proceeding; or
    - (iii) in accordance with any requirement imposed by law; and
  - (e) the person is reckless about whether the disclosure is not made as mentioned in paragraph (d).

Maximum penalty: imprisonment for 2 years.

- (2) A person commits an offence if—
  - (a) the person discloses information; and

- (b) the information reveals, or is likely to reveal, that an assumed identity acquired or used by someone else is not the other person's real identity; and
- (c) the person is reckless about whether the information reveals, or is likely to reveal, that an assumed identity acquired or used by someone else is not the other person's real identity; and
- (d) the disclosure is not made—
  - (i) in connection with the administration or execution of this Act or a corresponding law; or
  - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this Act or a corresponding law or of any report of any such proceeding; or
  - (iii) in accordance with any requirement imposed by law; and
- (e) the person is reckless about whether the disclosure is not made as mentioned in paragraph (d).

Maximum penalty: imprisonment for 2 years.

- (3) A person commits an offence if the person commits an offence against subsection (1) or (2) in circumstances in which the person—
  - (a) intends to endanger the health or safety of anyone; or
  - (b) is reckless about whether the disclosure of the information endangers or will endanger the health or safety of anyone.

Maximum penalty: imprisonment for 10 years.

- (4) A person commits an offence if the person commits an offence against subsection (1) or (2) in circumstances in which the person—
  - (a) intends to prejudice the effective conduct of an investigation or intelligence-gathering in relation to criminal activity; or



- (b) is reckless about whether the disclosure of the information prejudices or will prejudice the effective conduct of investigation or intelligence-gathering in relation to criminal activity.

Maximum penalty: imprisonment for 10 years.

## **Division 6.2                      Reporting and record-keeping**

### **38                      Report about authorities for assumed identities etc**

- (1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must give a written report to the Minister that includes the following information for the year:
  - (a) the number of authorities granted during the year;
  - (b) a general description of the activities undertaken by authorised people when using assumed identities under this Act during the year;
  - (c) the number of applications for authorities that were refused during the year;
  - (d) a statement whether or not any fraud or other unlawful activity was identified by an audit under section 40 during the year;
  - (e) any other information relating to authorities, assumed identities or the administration of this Act that the Minister considers appropriate.
- (2) The chief officer must advise the Minister of any information in the report that, in the chief officer's opinion, should be excluded from the report before the report is presented to the Legislative Assembly because the information, if made public, could reasonably be expected to—
  - (a) endanger a person's safety; or
  - (b) prejudice an investigation or prosecution; or

- (c) compromise any law enforcement agency's operational activities or methodologies.
- (3) The Minister must exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2).
- (4) The Minister must present a copy of the report to the Legislative Assembly within 15 sitting days after the day the Minister receives the report.

### **39 Record-keeping**

- (1) The chief officer of a law enforcement agency must cause appropriate records to be kept about this Act's operation in relation to the agency.
- (2) The records must include the following in relation to each authority granted, amended or cancelled under this Act in relation to the agency:
  - (a) the date the authority was granted, amended or cancelled and the name of the person who granted, amended or cancelled it;
  - (b) the name of the authorised person under the authority, together with details of the assumed identity to which the authority applies;
  - (c) details of any request made to an issuing agency under section 19 (Request for evidence of assumed identity) in relation to the authority;
  - (d) the general nature of the duties undertaken by the authorised person under the assumed identity;
  - (e) general details of relevant financial transactions entered into using the assumed identity;

- (f) for an authority granted to an authorised officer—details of reviews of the authority under section 15 (Review of authority granted to authorised officer).

#### **40 Audit of records**

- (1) The chief officer of a law enforcement agency must have the records kept under section 39 for each authority in relation to the agency audited—
  - (a) at least once every 6 months while the authority is in force; and
  - (b) at least once in the 6 months after the authority ends or is cancelled.
- (2) The chief officer must appoint a person to conduct the audit.
- (3) The person appointed to conduct the audit—
  - (a) may, but need not, be an officer of the law enforcement agency; and
  - (b) must not be a person—
    - (i) who granted, amended or cancelled any of the authorities to which the records under section 39 relate; or
    - (ii) who is or was an authorised person under any of the authorities to which the records relate.
- (4) A person who conducts an audit under this section for a law enforcement agency must give the chief officer of the agency a written report of the results of the audit.

### **Division 6.3 Inspection**

#### **41 Inspection of records by ombudsman**

- (1) The ombudsman may inspect the records of a law enforcement agency to determine the extent of compliance with this Act by the agency and law enforcement officers of the agency.

- (2) For the purpose of an inspection under this section, the ombudsman—
  - (a) after notifying the chief officer of the law enforcement agency, may enter at any reasonable time premises occupied by the agency; and
  - (b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and
  - (c) may require a member of staff of the agency to give the ombudsman any information that the ombudsman considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.
- (3) The chief officer must ensure that members of staff of the agency give the ombudsman any assistance the ombudsman reasonably requires to enable the ombudsman to exercise functions under this section.
- (4) The ombudsman must give a written report prepared under the *Annual Reports (Government Agencies) Act 2004*, on the results of each inspection under this section in the preceding financial year.
- (5) The report must include a report on the comprehensiveness and adequacy of the records of the agency and the cooperation given by the agency in facilitating the inspection by the ombudsman of those records.
- (6) The report must not include any information that, if made public, could reasonably be expected to—
  - (a) endanger a person's safety; or
  - (b) prejudice an investigation or prosecution; or
  - (c) compromise any law enforcement agency's operational activities or methodologies.

## Part 7                      Miscellaneous

### 42                      Delegation

- (1) Despite any other territory law, the functions of a chief officer of a law enforcement agency under this Act must not be delegated to anyone else.
- (2) However, a chief officer of a law enforcement agency may delegate to a senior officer of the law enforcement agency any of the chief officer's functions under this Act.
- (3) Not more than 4 delegations may be in force under this section at any one time in relation to any 1 law enforcement agency.
- (4) In this section:

*senior officer* means—

- (a) in relation to the Australian Federal Police—a deputy chief police officer; or
- (b) in relation to the Australian Crime Commission—any of the following:
  - (i) the Director National Operations;
  - (ii) a Director;
  - (iii) a Head of Investigation/Operation;
  - (iv) a position of the Australian Crime Commission prescribed by regulation.

### 43                      Regulation-making power

The Executive may make regulations for this Act.

*Note*     A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- chief police officer
- Commonwealth
- entity
- exercise, a function
- financial year
- function
- in relation to
- Legislative Assembly
- Minister (see s 162)
- police officer
- position
- registrar-general
- territory law.

***acquire*** an assumed identity, means acquire evidence of the identity, and includes taking steps towards acquiring evidence of the identity.

***agency*** means—

- (a) an issuing agency; or
- (b) a law enforcement agency.

***Australian Crime Commission*** means the Australian Crime Commission established by the *Australian Crime Commission Act 2002* (Cwlth).

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**authorised civilian** means a person (other than a law enforcement officer) who is authorised under an authority to acquire or use an assumed identity.

**authorised officer** means a law enforcement officer who is authorised under an authority to acquire or use an assumed identity.

**authorised person** means—

- (a) an authorised civilian; or
- (b) an authorised officer.

**authority** means an authority granted under section 9 to acquire and use an assumed identity, and includes the authority as amended under section 14.

**chief officer**—

- (a) of a law enforcement agency, means—
  - (i) in relation to the Australian Federal Police—the chief police officer; and
  - (ii) in relation to the Australian Crime Commission—the chief executive officer of the Australian Crime Commission; and
- (b) of an issuing agency—means the chief executive officer (however described) of the agency.

**conduct** means an act or omission to do an act.

**controlled operation**—see the *Crimes (Controlled Operations) Act 2008*, dictionary.

**corresponding authority** means an authority under a corresponding law—

- (a) to acquire or use an assumed identity in the ACT; or
- (b) to request the production of evidence of an assumed identity.

***corresponding law*** means a law of another jurisdiction that corresponds to this Act, and includes a law of another jurisdiction that is declared by regulation to correspond to this Act.

***criminal activity*** means conduct that involves the commission of an offence by 1 or more people.

***doing*** a thing, includes failing to do the thing.

***evidence*** of identity, means a document or other thing (for example, a driver's licence, birth certificate, credit card or identity card) that evidences or indicates, or can be used to evidence or indicate, a person's identity or any aspect of a person's identity.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***government issuing agency***, in relation to an authority, means any of the following stated in the authority that issues evidence of identity:

- (a) an entity that exercises a function of the government of the ACT;
- (b) an entity prescribed by regulation.

***issuing agency*** means—

- (a) a government issuing agency; or
- (b) a non-government issuing agency.

***jurisdiction*** means the Commonwealth or a State or Territory of the Commonwealth.

***law enforcement agency*** means—

- (a) the Australian Federal Police; or
- (b) the Australian Crime Commission.



***law enforcement officer***—

- (a) means—
- (i) a police officer; or
  - (ii) a member of staff of the Australian Crime Commission; and
- (b) includes a person who is seconded to a law enforcement agency, including (but not limited to) a member of the police force or police service, and a police officer (however described), of another jurisdiction.

***non-government issuing agency***, in relation to an authority, means an entity (other than a government issuing agency) stated in the authority that issues evidence of identity.

***officer*** of an agency, includes a person employed or engaged in the agency.

***participating jurisdiction*** means a jurisdiction in which a corresponding law is in force.

***supervisor*** of an authorised civilian, means the law enforcement officer who supervises or is to supervise the acquisition or use of an assumed identity by the authorised civilian.

***use*** an assumed identity, includes representing (whether expressly or impliedly, or by saying or doing something) the identity to be real when it is not.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 20 August 2009.

**2 Notification**

Notified under the Legislation Act on 22 September 2009.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Crimes (Assumed Identities) Bill 2009, which was passed by the Legislative Assembly on 17 September 2009.

Clerk of the Legislative Assembly

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