



Australian Capital Territory

# Workplace Privacy Amendment Act 2016

A2016-22

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J2015-420

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Australian Capital Territory

# Workplace Privacy Amendment Act 2016

A2016-22

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An Act to amend the *Workplace Privacy Act 2011*, and for other purposes

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

## **1 Name of Act**

This Act is the *Workplace Privacy Amendment Act 2016*.

## **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 Legislation amended**

This Act amends the *Workplace Privacy Act 2011*.

*Note* This Act also amends the following legislation:

- [Magistrates Court Act 1930](#) (see s 21)
- [Work Health and Safety Act 2011](#) (see s 22).

## **4 Additional requirements for tracking devices New section 17 (2)**

*insert*

- (2) However, subsection (1) does not apply if—
- (a) it is not reasonably practicable to have a notice on the vehicle or other thing; and
  - (b) the employer has taken reasonable steps to notify workers that the vehicle or other thing is being tracked.

**5 Section 24**

*substitute*

**24 Meaning of *covert surveillance***

In this Act:

*covert surveillance*—

- (a) means surveillance conducted by an employer of a worker—
  - (i) in a workplace without notifying the worker under part 3 (Notified surveillance); or
  - (ii) outside a workplace; but
- (b) does not include prohibited surveillance.

**6 Definitions—pt 4  
Section 25, definition of *unlawful activity***

*omit*

territory law or the law of another jurisdiction

*substitute*

law in force in the Territory

**7 Application for covert surveillance authority  
Section 26 (1), except notes**

*omit everything after*

surveillance of a worker

*substitute*

only for the purpose of finding out if the worker is engaged in an unlawful activity—

- (a) in the workplace; or

- (b) outside the workplace but in relation to the worker's work for the employer.

## **8 Section 26 (2) (a)**

*substitute*

- (a) the reasonable grounds that the employer has for suspecting a worker is involved in an unlawful activity; and
- (aa) for surveillance of a worker outside a workplace—the reasonable grounds that the employer has for believing a worker is engaged in an unlawful activity; and

## **9 Issuing covert surveillance authority Section 28 (2) and note**

*substitute*

- (2) In considering whether there are reasonable grounds to issue the covert surveillance authority, the Magistrates Court must consider—
  - (a) for surveillance of a worker in a workplace—
    - (i) the seriousness of the suspected unlawful activity; and
    - (ii) whether there are other appropriate ways to find out if the worker is engaged in the unlawful activity; and
    - (iii) whether it is more appropriate for the unlawful activity to be investigated by a law enforcement agency; and
    - (iv) if the proposed surveillance may be conducted in a non-work area—a worker's heightened expectation of privacy in the area; and

*Note 1* Surveillance is prohibited in some non-work areas (see s 41).

*Note 2* **Non-work area**—see the dictionary.

- (b) for surveillance of a worker outside a workplace—
  - (i) the seriousness of the unlawful activity in which the worker is reasonably believed to be engaged; and
  - (ii) whether there are other appropriate ways to find out if the worker is engaged in the unlawful activity; and
  - (iii) whether it is more appropriate for the unlawful activity to be investigated by a law enforcement agency; and
  - (iv) whether the unlawful activity is directly related to the worker's work for the employer; and
  - (v) whether surveillance of the worker will be undertaken in a place in which a person would have a heightened expectation of privacy; and
- (c) whether, and the extent to which, the proposed surveillance might intrude on the worker's or someone else's privacy; and
- (d) whether the person nominated to be the surveillance supervisor in the application is suitable.

*Note* Section 29 deals with appointing a surveillance supervisor.

## **10 Section 28 (4) (a)**

*substitute*

- (a) the name of the worker (if practicable) in relation to which the authority is issued; and
- (aa) the nature of the unlawful activity that the worker is suspected of being, or believed to be, engaged in; and

**11 New section 28 (5) and (6)**

*insert*

(5) A covert surveillance authority authorising surveillance outside the workplace—

- (a) may only authorise surveillance to be undertaken from a public place; and
- (b) may only authorise surveillance to be undertaken in a place that, if it were in a workplace, would be a prohibited non-work area, if the Magistrates Court is satisfied there are exceptional circumstances justifying the surveillance; and

**Examples—par (b)**

- 1 a toilet facility
- 2 a change room

*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).

(c) must not authorise surveillance to be undertaken of a person in part of a premises that is being used for residential purposes.

**Examples—par (c)**

- 1 the interior of a residence
- 2 the enclosed yard of a residence

(6) In this section:

***public place*** means a place to which the public or a section of the public has access, whether—

- (a) by payment, membership of a body or otherwise; or
- (b) by entitlement or permission.



**12 Conditions on covert surveillance authority  
New section 31 (1A)**

*insert*

- (1A) A covert surveillance authority that authorises surveillance outside the workplace is subject to the following conditions:
- (a) any surveillance of people other than the worker is destroyed or obscured as soon as possible after the record is made;
  - (b) if the surveillance is undertaken by a third party—the third party complies with this Act and any applicable privacy laws.

**13 New section 34A**

*in division 4.2, insert*

**34A Review of provisions about covert surveillance outside workplace**

- (1) The Minister must review the operation of this Act, as amended by the *Workplace Privacy Amendment Act 2016* (the **amending Act**), in relation to the operation of provisions about covert surveillance outside a workplace.
- (2) The review must be started as soon as practicable 2 years after the commencement of the amending Act.
- (3) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (4) This section expires 4 years after the day it commences.

**14 Offence—use and disclosure of covert surveillance other than for a relevant purpose  
Section 39 (3) (b) and (c)**

*omit*

while at work for the employer

*substitute*

in relation to the worker's work for the employer

**15 Section 39 (3) (d)**

*omit everything after*

unlawful activity

*substitute*

in relation to the worker's work for the employer of a kind identified by the covert surveillance record to occur in relation to the work;

**16 Surveillance of workers not at work  
New section 42 (2) (d)**

*before the note, insert*

(d) the surveillance is conducted in accordance with a covert surveillance authority.

**17 New part 5A***insert***Part 5A Enforcement****43A The regulator**

- (1) The regulator has the following functions:
  - (a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;
  - (b) to monitor and enforce compliance with this Act;
  - (c) to provide advice and information on workplace privacy to employers and employees under this Act and to the community;
  - (d) to conduct and defend proceedings under this Act before a court or tribunal;
  - (e) any other function given to the regulator by this Act.

*Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including a regulation and any law or instrument applied, adopted or incorporated by the Act (see [Legislation Act](#), s 104).

- (2) The regulator has the same powers to obtain information in relation to a possible contravention of this Act or that will assist the regulator to monitor or enforce compliance with this Act that the regulator has under the *Work Health and Safety Act 2011*, section 155 in relation to that Act.
- (3) In addition, the regulator has all the powers that an inspector has under this Act.

- (4) The regulator may delegate the regulator's powers and functions under this Act to another person.

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

### **43B Inspectors**

An inspector under the [Work Health and Safety Act 2011](#) is an inspector for this Act.

### **43C Functions and powers of inspectors**

- (1) An inspector has the following functions and powers under this Act:
- (a) to provide information and advice about compliance with this Act;
  - (b) to require compliance with this Act through the issuing of notices under the [Work Health and Safety Act 2011](#), part 10 (Enforcement measures);
  - (c) to investigate contraventions of this Act and assist in the prosecution of offences.
- (2) The [Work Health and Safety Act 2011](#), section 161 (Conditions on inspectors' compliance powers) and section 162 (Inspectors subject to regulator's directions) apply to an inspector in relation to the exercise of a function or power under this Act.

### **43D Securing compliance**

- (1) An inspector may exercise powers the inspector has under the following provisions of the [Work Health and Safety Act 2011](#) for the purpose of securing compliance with this Act:
- (a) division 9.3 (Powers relating to entry);
  - (b) division 9.5 (Other matters).

- (2) The following provisions of the *Work Health and Safety Act 2011* apply in relation to any exercise of those functions:
  - (a) division 9.4 (Damage and compensation);
  - (b) division 9.6 (Offences in relation to inspectors).
- (3) For this section, the provisions of the *Work Health and Safety Act 2011* mentioned in this section apply as if—
  - (a) a reference in those provisions to a workplace were a reference to a workplace under this Act; and
  - (b) any other necessary changes were made.

#### **43E Enforcement measures**

- (1) The *Work Health and Safety Act 2011*, part 10 (Enforcement measures) applies for the purpose of enforcing compliance with this Act.
- (2) For this section, the *Work Health and Safety Act 2011*, part 10 applies as if—
  - (a) a reference in that part to a workplace were a reference to a workplace under this Act; and
  - (b) a reference to contravening a provision were a reference to contravening a provision of this Act; and
  - (c) any other necessary changes were made.

*Note* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including a regulation and any law or instrument applied, adopted or incorporated by the Act (see [Legislation Act](#), s 104).

**18 Offences—security of surveillance records  
Section 44 (2) (b)**

*omit*

de-indentify

*substitute*

de-identify

**19 Report on covert surveillance to Legislative Assembly  
Section 45**

*omit*

**20 Dictionary, new definition of *regulator***

*insert*

*regulator*—see the [Work Health and Safety Act 2011](#), dictionary.

**21 Magistrates Court Act 1930  
New section 291Q (1) (a) (vi)**

*insert*

(vi) the [Workplace Privacy Act 2011](#);

**22 Work Health and Safety Act 2011  
Schedule 2, part 2.1, new section 2.2 (2) (i)**

*before the note, insert*

(i) the operation of the [Workplace Privacy Act 2011](#).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 18 February 2016.

**2 Notification**

Notified under the [Legislation Act](#) on 14 April 2016.

**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 Workplace Privacy Amendment Bill 2016, which was passed by the Legislative Assembly on 7 April 2016.

Clerk of the Legislative Assembly

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