

2008

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

# Crimes (Controlled Operations) Bill 2008

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(Attorney-General)

## **Crimes (Controlled Operations) Bill 2008**

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### **A Bill for**

An Act to provide for the authorisation, conduct and monitoring of controlled operations

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes (Controlled Operations) Act 2008*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Dictionary**

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

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

13 For example, the signpost definition '*urgent application*—see  
14 section 9.' means that the term 'urgent application' is defined in that  
15 section.

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

20 **4 Notes**

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

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

1     **5           Offences against Act—application of Criminal Code etc**

2           Other legislation applies in relation to offences against this Act.

3           *Note 1   Criminal Code*

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

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

10          *Note 2   Penalty units*

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

13     **6           Objects of Act**

14           The objects of this Act are—

15           (a) to provide for the authorisation, conduct and monitoring of  
16           controlled operations, including operations conducted in the  
17           ACT, in the ACT and 1 or more other jurisdictions or in 1 or  
18           more participating jurisdictions—

19                   (i) for the purpose of obtaining evidence that may lead to the  
20                   prosecution of people for particular offences; and

21                   (ii) that involve or may involve conduct for which  
22                   participants in the operation would otherwise be  
23                   criminally responsible; and

24           (b) to facilitate mutual recognition of things done in relation to  
25           controlled operations authorised under laws of other  
26           jurisdictions corresponding to this Act; and

27           (c) to ensure, as far as practicable, that appropriately trained  
28           people may act as participants in authorised operations; and

- 1 (d) to ensure that a person who may act as a participant in an  
2 authorised operation engages in otherwise unlawful activities  
3 only as part of the authorised operation; and
- 4 (e) to provide appropriate protection from civil and criminal  
5 liability for people acting under this Act; and
- 6 (f) to clarify the status of evidence obtained by participants in  
7 authorised operations.

8 **7 Relationship to other laws and matters**

- 9 (1) This Act does not affect any territory law that authorises, controls or  
10 monitors the conduct of operations wholly within the ACT—
- 11 (a) that are for the purpose of obtaining evidence that may lead to  
12 the prosecution of a person for an offence; and
- 13 (b) that involve, or may involve, conduct for which participants in  
14 the operation would otherwise be criminally responsible.
- 15 *Note* **Territory law** includes the common law (see Legislation Act, dict, pt 1,  
16 def **territory law** and **law**, of the Territory).
- 17 (2) A function conferred in relation to the activities of the Australian  
18 Crime Commission under this Act is only conferred for the purpose  
19 of the function conferred on the Australian Crime Commission  
20 under the *Australian Crime Commission (ACT) Act 2003* relating to  
21 suspected serious and organised crime as defined in that Act.
- 22 (3) Subject to subsection (4), this Act does not limit a discretion a court  
23 has—
- 24 (a) to admit or exclude evidence in a proceeding; or  
25 (b) to stay a criminal proceeding in the interests of justice.

- 1 (4) However, in deciding whether evidence should be admitted or  
2 excluded in a proceeding, the fact that the evidence was obtained as  
3 a result of a person engaging in criminal activity is to be disregarded  
4 if—
- 5 (a) the person was a participant or corresponding participant acting  
6 in the course of an authorised operation or corresponding  
7 authorised operation; and
- 8 (b) the criminal activity was controlled conduct within the  
9 meaning of this Act or controlled conduct within the meaning  
10 of a corresponding law.
- 11 (5) The following Acts do not apply to investigations, operations,  
12 activities and records under this Act:
- 13 (a) the *Freedom of Information Act 1989*;
- 14 (b) the *Territory Records Act 2002*.

15 **8 Controlled operation taken to be conducted in ACT**

16 For this Act, a controlled operation in relation to a relevant offence  
17 is taken to be conducted in the ACT, whether or not it is also  
18 conducted in another jurisdiction, if a participant in the operation is  
19 a law enforcement officer of the ACT.

- 1 **Part 2** **Authorisation of controlled**  
2 **operations**
- 3 **9 Application for authority to conduct controlled operation**
- 4 (1) A law enforcement officer of a law enforcement agency may apply  
5 to the chief officer of the agency for an authority to conduct a  
6 controlled operation on behalf of the agency.
- 7 (2) An application for an authority may be made—  
8 (a) in writing signed by the applicant (a *standard application*); or  
9 (b) if the applicant has reason to believe that the delay caused by  
10 making a standard application may affect the success of the  
11 operation—orally in person or by telephone, fax, email or any  
12 other means of communication (an *urgent application*).
- 13 (3) This part does not prevent an application for an authority being  
14 made in relation to a controlled operation that has been the subject  
15 of a previous application.
- 16 (4) In any application, whether standard or urgent, the applicant must—  
17 (a) provide sufficient information to enable the chief officer to  
18 decide whether or not to grant the application; and  
19 (b) state whether or not the proposed operation, or any other  
20 controlled operation in relation to the same criminal activity,  
21 has been the subject of an earlier application for an authority or  
22 amendment of an authority and, if so, whether or not the  
23 authority or amendment was granted.
- 24 (5) The chief officer may require the applicant to give the chief officer  
25 the additional information the chief officer reasonably needs to  
26 decide the application.

- 1 (6) As soon as practicable after making an urgent application, the  
2 applicant must make a written record of the application and give a  
3 copy of it to the chief officer.

4 **10 Decision on application for authority**

- 5 (1) After considering an application for an authority to conduct a  
6 controlled operation, and any additional information given under  
7 section 9 (5), the chief officer may—

- 8 (a) authorise the operation by granting the authority, either  
9 unconditionally or subject to conditions; or  
10 (b) refuse the application.

- 11 (2) An authority to conduct a controlled operation may not be granted  
12 unless the chief officer is satisfied on reasonable grounds that—

- 13 (a) a relevant offence has been, is being or is likely to be  
14 committed; and

- 15 (b) the controlled operation will be, or is likely to be, conducted in  
16 the ACT, in the ACT and 1 or more other jurisdictions or in 1  
17 or more participating jurisdictions; and

- 18 (c) the nature and extent of the suspected criminal activity justify  
19 the conduct of a controlled operation in the ACT, in the ACT  
20 and 1 or more other jurisdictions or in 1 or more participating  
21 jurisdictions; and

- 22 (d) any unlawful conduct involved in conducting the operation will  
23 be limited to the minimum necessary to conduct an effective  
24 controlled operation; and

- 25 (e) the operation will be conducted in a way that will minimise the  
26 risk of more illicit goods being under the control of people,  
27 other than law enforcement officers, at the end of the operation  
28 than are reasonably necessary to enable the officers to achieve  
29 the purpose of the controlled operation; and

- 1 (f) the proposed controlled conduct will be able to be accounted  
2 for in a way that will enable the reporting requirements of part  
3 4 to be complied with; and
- 4 (g) the operation will not be conducted in a way that a person is  
5 likely to be induced to commit an offence against a law of any  
6 jurisdiction or the Commonwealth that the person would not  
7 otherwise have committed; and
- 8 (h) any conduct involved in the operation will not—
- 9 (i) endanger the health or safety of any person; or
- 10 (ii) cause the death of, or injury to, any person; or
- 11 (iii) involve the commission of a sexual offence against any  
12 person; or
- 13 (iv) result in unlawful loss of or serious damage to property  
14 (other than illicit goods); and
- 15 (i) any role assigned to a civilian participant in the operation is not  
16 one that could be adequately performed by a law enforcement  
17 officer.

18 **11 Form of authority**

- 19 (1) An authority to conduct a controlled operation may be granted—
- 20 (a) in writing signed by the chief officer (a *standard authority*); or
- 21 (b) if the chief officer is satisfied that the delay caused by granting  
22 a standard authority may affect the success of the operation—  
23 orally in person or by telephone, fax, email or any other means  
24 of communication (an *urgent authority*).
- 25 (2) This part does not prevent an authority being granted in relation to a  
26 controlled operation that has been the subject of a previous  
27 authority.

- 1           (3) An authority, whether standard or urgent, must—
- 2               (a) state the name and rank or position of the person granting the
- 3                     authority; and
- 4               (b) identify the principal law enforcement officer and, if the
- 5                     principal law enforcement officer is not the applicant for the
- 6                     authority, the name of the applicant; and
- 7               (c) state whether the application is a standard application or an
- 8                     urgent application; and
- 9               (d) identify each person who may engage in controlled conduct for
- 10                  the purposes of the controlled operation; and
- 11               (e) state the participating jurisdictions in which the controlled
- 12                  conduct is, or is likely, to be engaged in; and
- 13               (f) identify the nature of the criminal activity (including the
- 14                  suspected relevant offences) in relation to which the controlled
- 15                  conduct is to be engaged in; and
- 16               (g) identify—
- 17                     (i) in relation to the law enforcement participants—the
- 18                       nature of the controlled conduct that the participants may
- 19                       engage in; and
- 20                     (ii) in relation to the civilian participants—the particular
- 21                       controlled conduct (if any) that each participant may
- 22                       engage in; and
- 23               (h) identify (to the extent known) any suspect; and
- 24               (i) state the period (not longer than 3 months for a standard
- 25                     authority or 7 days for an urgent authority) of validity of the
- 26                     authority; and
- 27               (j) state any conditions to which the conduct of the operation is
- 28                     subject; and
- 29               (k) state the date and time when the authority is granted; and

- 1 (l) identify (to the extent known)—
- 2 (i) the nature and quantity of any illicit goods that will be
- 3 involved in the operation; and
- 4 (ii) the route through which those goods will pass in the
- 5 course of the operation.
- 6 (4) A person is sufficiently identified for subsection (3) (d) if the person
- 7 is identified—
- 8 (a) by an assumed name under which the person is operating; or
- 9 (b) by a code name or code number—
- 10 so long as the assumed name, code name or code number can be
- 11 matched to the person's identity.
- 12 (5) The chief officer must ensure that written notes are kept of the
- 13 details mentioned in subsection (3) for each urgent authority.

14 **12 Duration of authority**

15 Unless sooner cancelled, an authority has effect for the period of

16 validity stated in it in accordance with section 11 (3) (i).

17 **13 Amendment of authority**

- 18 (1) The chief officer may amend an authority—
- 19 (a) at any time on the chief officer's own initiative; or
- 20 (b) on application under subsection (3).
- 21 (2) However, an amendment cannot be made that has the effect of—
- 22 (a) extending the period of validity of an urgent authority; or
- 23 (b) extending the period of validity of a standard authority for
- 24 longer than 3 months after the date it was granted.

- 1           (3) The principal law enforcement officer for an authorised operation,  
2           or any other law enforcement officer on behalf of the principal law  
3           enforcement officer, may apply to the chief officer for an  
4           amendment of an authority for any 1 or more of the following  
5           purposes:
- 6           (a) to extend the period of validity of the authority (except as  
7           provided by subsection (2));
- 8           (b) to authorise additional or alternative people to engage in  
9           controlled conduct for the purposes of the operation;
- 10          (c) to authorise participants in the operation to engage in  
11          additional or alternative controlled conduct;
- 12          (d) to identify additional suspects (to the extent known).
- 13          (4) More than 1 application for amendment may be made in relation to  
14          the same authority.
- 15          (5) An application for amendment of an authority may be made—
- 16          (a) in writing signed by the applicant (a *standard amendment*  
17          *application*); or
- 18          (b) if the applicant has reason to believe that the delay caused by  
19          making a standard amendment application may affect the  
20          success of the operation—orally in person or by telephone, fax,  
21          email or any other means of communication (an *urgent*  
22          *amendment application*).
- 23          (6) The chief officer may require the applicant to give the information  
24          concerning the proposed amendment that is necessary for the chief  
25          officer’s proper consideration of the application.
- 26          (7) As soon as practicable after making an urgent amendment  
27          application, the applicant must make a written record of the  
28          application and give a copy of it to the chief officer.

- 1 (8) After considering an application for amendment of an authority, and  
2 any additional information given under subsection (6), the chief  
3 officer may—
- 4 (a) amend the authority in accordance with the application, either  
5 unconditionally or subject to conditions; or
- 6 (b) refuse the application.
- 7 (9) Section 10 (2) applies to an application for amendment of an  
8 authority under this section in the same way as it applies to an  
9 application for an authority under section 10 (1).
- 10 (10) Without limiting subsection (9), an amendment of an authority may  
11 not be granted unless the chief officer is satisfied on reasonable  
12 grounds that the amendment will not authorise a significant  
13 alteration of the nature of the authorised operation concerned.
- 14 (11) An amendment of an authority may be granted only—
- 15 (a) in writing signed by the chief officer (a *standard amendment*  
16 *of authority*); or
- 17 (b) if the chief officer is satisfied that the delay caused by granting  
18 a standard amendment of authority may affect the success of  
19 the operation—orally in person or by telephone, fax, email or  
20 any other means of communication (an *urgent amendment of*  
21 *authority*).
- 22 (12) The chief officer must—
- 23 (a) ensure that written notes are kept of the following matters:
- 24 (i) the date and time when the amendment of authority was  
25 granted;
- 26 (ii) the identity of the law enforcement officer to whom the  
27 amendment of authority was granted;
- 28 (iii) particulars of the amendments of the original authority  
29 that are approved under this section; and

1 (b) as soon as practicable, prepare and give to the applicant a  
2 written amendment of authority that complies with section 14.

3 (13) The applicant must take all reasonable steps to inform participants  
4 in a controlled operation about the grant of a standard amendment of  
5 authority no later than 48 hours after the day the standard  
6 amendment of authority is granted.

#### 7 **14 Form of amendment of authority**

8 An amendment of an authority must—

9 (a) identify the authorised operation for which the authority is in  
10 force; and

11 (b) state the name, and rank or position, of the person granting the  
12 amendment; and

13 (c) if the application for amendment is made under  
14 section 13 (3)—state the name of the applicant; and

15 (d) state whether the application is a standard amendment  
16 application or was an urgent amendment application; and

17 (e) state the date and time when the amendment of an authority is  
18 or was granted; and

19 (f) describe the amendment having regard to the purposes  
20 mentioned in section 13 (3) in relation to which the application  
21 was made.

#### 22 **15 Cancellation of authority**

23 (1) The chief officer may, by written order given to the principal law  
24 enforcement officer for an authorised operation, cancel the authority  
25 at any time and for any reason.

26 (2) Without limiting subsection (1), the chief officer may cancel an  
27 authority for an authorised operation at any time at the request of the  
28 principal law enforcement officer for the operation.

- 1 (3) Cancellation of an authority for a controlled operation takes effect—  
2 (a) when the order is made; or  
3 (b) if the order states a later time of effect—at the later time.

4 **16 Effect of authority**

- 5 (1) While it has effect, an authority for a controlled operation  
6 authorises—  
7 (a) each law enforcement participant to engage in the controlled  
8 conduct stated in the authority in relation to the law  
9 enforcement participants; and  
10 (b) each civilian participant (if any) to engage in the particular  
11 controlled conduct (if any) stated in the authority in relation to  
12 the participant; and  
13 (c) each participant to engage in that conduct in the ACT or any  
14 participating jurisdiction (subject to any corresponding law of  
15 that participating jurisdiction).  
16 (2) The authority to engage in controlled conduct given to a participant  
17 cannot be delegated to any other person.

18 **17 Defect in authority**

19 An application for an authority or amendment of an authority, and  
20 any authority or amendment of an authority granted on the basis of  
21 an application, is not invalidated by any defect, other than a defect  
22 that affects the application, authority or amendment in a material  
23 particular.

1 **Part 3** **Conduct of controlled operations**

2 **Division 3.1** **Controlled conduct engaged in for**  
3 **authorised operation**

4 **18** **Protection from criminal responsibility for controlled**  
5 **conduct during authorised operation**

6 Despite any other territory law, a participant who engages in  
7 conduct (whether in the ACT or elsewhere) in an authorised  
8 operation in the course of, and for the purposes of, the operation is  
9 not, if engaging in that conduct is an offence, criminally responsible  
10 for the offence if—

11 (a) the conduct is authorised by, and is engaged in in accordance  
12 with, the authority for the operation; and

13 (b) the conduct does not involve the participant intentionally  
14 inducing a person to commit an offence against a law of any  
15 jurisdiction or the Commonwealth that the person would not  
16 otherwise have committed; and

17 (c) the conduct does not involve the participant engaging in any  
18 conduct that is likely to—

19 (i) cause the death of, or serious injury to, any person; or

20 (ii) involve the commission of a sexual offence against any  
21 person; and

22 (d) if the participant is a civilian participant—the participant acts  
23 in accordance with the instructions of a law enforcement  
24 officer.

25 **19** **Civil liability not incurred**

26 (1) This section applies if a controlled operation has been authorised by  
27 the chief officer of a law enforcement agency under section 10.

- 1 (2) A participant in the authorised operation does not incur any civil  
2 liability because of conduct that the participant engages in if—
- 3 (a) the participant engages in the conduct in the course of, and for  
4 the purposes of, the operation in accordance with the authority  
5 for the operation; and
- 6 (b) the conduct does not involve the participant intentionally  
7 inducing a person to commit an offence under a law of any  
8 jurisdiction or the Commonwealth that the person would not  
9 otherwise have committed; and
- 10 (c) the conduct does not involve the participant engaging in any  
11 conduct that is likely to—
- 12 (i) cause the death of, or serious injury to, any person; or  
13 (ii) involve the commission of a sexual offence against any  
14 person; and
- 15 (d) if the participant is a civilian participant—the participant acts  
16 in accordance with the instructions of a law enforcement  
17 officer; and
- 18 (e) the requirements (if any) prescribed by regulation have been  
19 met.
- 20 (3) Any liability that would, apart from this section, attach to the  
21 participant, attaches instead to the Territory.

22 **20 Effect of s 18 and s 19 on other laws relating to criminal**  
23 **investigation**

24 Section 18 and section 19 do not apply to a person's conduct that is,  
25 or could have been, authorised under a territory law relating to the  
26 following:

- 27 (a) arrest or detention of individuals;  
28 (b) searches of individuals;

- 1 (c) entry onto, or searches or inspection of, premises;  
2 (d) searches, inspections or seizures of other property;  
3 (e) forensic procedures;  
4 (f) electronic surveillance devices or telecommunications  
5 interception;  
6 (g) identification procedures;  
7 (h) the acquisition or use of assumed identities;  
8 (i) any other matter concerning powers of criminal investigation.

9 **21 Effect of being unaware of amendment or cancellation of**  
10 **authority**

- 11 (1) If an authority for a controlled operation is amended in a way that  
12 limits its scope, this part continues to apply to a participant in the  
13 operation as if the authority had not been amended in that way, for  
14 so long as the participant—  
15 (a) is unaware of the amendment; and  
16 (b) is not reckless about the existence of the amendment.  
17 (2) If an authority for a controlled operation is cancelled, this part  
18 continues to apply to a participant in the operation as if the authority  
19 had not been cancelled, for so long as the participant—  
20 (a) is unaware of the cancellation; and  
21 (b) is not reckless about the existence of the cancellation.

1     **22**           **Protection from criminal responsibility for certain**  
2                   **ancillary conduct**

3           (1) This section applies to conduct (*ancillary conduct*) for which a  
4           person may be criminally responsible because it involves conduct  
5           engaged in by another person that is controlled conduct for which  
6           the other person would (apart from section 18) be criminally  
7           responsible (the *related controlled conduct*).

8                   **Examples—ancillary conduct**

- 9           1     aiding and abetting (see Criminal Code, s 45)  
10          2     conspiracy (see Criminal Code, s 48)

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

14          (2) Despite any other territory law, a person who engages in ancillary  
15          conduct that is an offence is not criminally responsible for the  
16          offence if at the time the person engaged in the ancillary conduct—  
17               (a) the person believed the related controlled conduct was being  
18               engaged in, or would be engaged in, by a participant in an  
19               authorised operation; and  
20               (b) the person was a participant in, or was otherwise authorised to  
21               know about, the operation.

22                   **Division 3.2**                   **Compensation and notification of**  
23   **third parties**

24     **23**           **Compensation for property loss or serious damage**

25           (1) If a person suffers loss of or serious damage to property as a direct  
26           result of an authorised operation conducted under this Act by the  
27           Australian Federal Police, the Territory is liable to pay to the person  
28           compensation as agreed between the Territory and the person or, in  
29           default of agreement, as decided by action against the Territory in a  
30           court of competent jurisdiction.

- 1           (2) Subsection (1) does not apply if the person—  
2                 (a) suffered the loss or damage in the course of, or as a direct  
3                 result of, engaging in any criminal activity (other than criminal  
4                 activity that is controlled conduct); or  
5                 (b) was a law enforcement officer involved in the authorised  
6                 operation at the time of suffering the loss or damage.

7   **24           Notification requirements**

- 8           (1) If any loss of or serious damage to property occurs in the course of  
9           or as a direct result of an authorised operation (other than property  
10           of the law enforcement agency on behalf of which the operation is  
11           conducted or a participant in the operation), the principal law  
12           enforcement officer for the operation must report the loss or damage  
13           to the chief officer of the law enforcement agency as soon as  
14           practicable.  
15           (2) The chief officer must take all reasonable steps to notify the owner  
16           of the property of the loss or damage.  
17           (3) The chief officer is not required to notify the owner of the property  
18           until satisfied that notification would not—  
19                 (a) compromise or hinder the authorised operation; or  
20                 (b) compromise the identity of a participant in the authorised  
21                 operation; or  
22                 (c) endanger the life or safety of any person; or  
23                 (d) prejudice any legal proceeding; or  
24                 (e) otherwise be contrary to the public interest.

1 **Division 3.3 Mutual recognition**

2 **25 Mutual recognition of corresponding authority**

3 The following provisions apply, with any necessary changes, to a  
4 corresponding authority under a corresponding law, and to a  
5 corresponding authorised operation under that law, as if the  
6 corresponding authority were an authority given under section 10:

- 7 (a) section 16 (Effect of authority);  
8 (b) section 17 (Defect in authority);  
9 (c) section 18 (Protection from criminal responsibility for  
10 controlled conduct during authorised operation);  
11 (d) section 19 (Civil liability not incurred);  
12 (e) section 20 (Effect of s 18 and s 19 on other laws relating to  
13 criminal investigation);  
14 (f) section 21 (Effect of being unaware of amendment or  
15 cancellation of authority);  
16 (g) section 22 (Protection from criminal responsibility for certain  
17 ancillary conduct).

1 **Part 4** **Compliance and monitoring**

2 **Division 4.1** **Restrictions on disclosure of**  
3 **information**

4 **26** **Unauthorised disclosure of information**

5 (1) A person commits an offence if—

6 (a) the person is a participant in, or is otherwise authorised to have  
7 information about, an authorised operation or a corresponding  
8 authorised operation; and

9 (b) the person discloses information; and

10 (c) the information relates to the authorised operation or  
11 corresponding authorised operation; and

12 (d) the disclosure is not made—

13 (i) in connection with the administration or execution of this  
14 Act or a corresponding law; or

15 (ii) for the purposes of any legal proceeding arising out of or  
16 otherwise related to this Act or a corresponding law or of  
17 any report of any such proceeding; or

18 (iii) in accordance with any requirement imposed by law.

19 Maximum penalty: imprisonment for 2 years.

20 (2) A person commits an offence if the person commits an offence  
21 against subsection (1) in circumstances in which the person—

22 (a) intends to endanger the health or safety of any person; or

- 1 (b) is reckless about whether the disclosure of the information  
2 endangers or will endanger the health or safety of any person.
- 3 Maximum penalty: imprisonment for 10 years.
- 4 (3) A person commits an offence if the person commits an offence  
5 against subsection (1) in circumstances in which the person—
- 6 (a) intends to prejudice the effective conduct of an authorised  
7 operation or a corresponding authorised operation; or
- 8 (b) is reckless about whether the disclosure of the information  
9 prejudices or will prejudice the effective conduct of an  
10 authorised operation or a corresponding authorised operation.
- 11 Maximum penalty: imprisonment for 2 years.

## 12 **Division 4.2 Reporting and record-keeping**

### 13 **27 Principal law enforcement officers' reports**

- 14 (1) Within 2 months after the completion of an authorised operation, the  
15 principal law enforcement officer for the operation must make a  
16 report in accordance with this section to the chief officer of the law  
17 enforcement agency.
- 18 (2) The report must include the following details:
- 19 (a) the dates and times when the authorised operation began and  
20 was completed;
- 21 (b) the nature of the controlled conduct engaged in for the  
22 purposes of the operation;
- 23 (c) details of the outcome of the operation;
- 24 (d) if the operation involved illicit goods, a statement (to the extent  
25 known) of—
- 26 (i) the nature and quantity of the illicit goods; and

- 1                   (ii) the route through which the illicit goods passed in the  
2                   course of the operation;
- 3                   (e) details of any loss of or serious damage to property, or any  
4                   personal injuries, occurring in the course of or as a direct result  
5                   of the operation.

6   **28           Chief officers' annual reports**

- 7                   (1) As soon as practicable after 30 July in each year, the chief officer of  
8                   each law enforcement agency must give the Minister a report setting  
9                   out the details required by subsection (2) in relation to controlled  
10                  operations conducted on behalf of the agency during the previous  
11                  financial year.
- 12                  (2) The report must include the following details:
- 13                   (a) the number of standard authorities that were granted or  
14                   amended by the chief officer, and the number of standard  
15                   applications for the granting or amendment of authorities that  
16                   were refused by the chief officer, during the period to which  
17                   the report relates;
- 18                   (b) the number of urgent authorities or urgent amendments of  
19                   authorities that were granted by the chief officer, and the  
20                   number of urgent applications for authorities or urgent  
21                   amendments of authorities that were refused by the chief  
22                   officer, during the period to which the report relates;
- 23                   (c) the nature of the criminal activities against which the  
24                   authorised operations were directed;
- 25                   (d) the nature of the controlled conduct engaged in for the  
26                   purposes of the authorised operations;
- 27                   (e) if any of the authorised operations involved illicit goods—a  
28                   statement (to the extent known) of—
- 29                   (i) the nature and quantity of the illicit goods; and

- 1 (ii) the route through which the illicit goods passed in the  
2 course of the operations;
- 3 (f) details of any loss of or serious damage to property, or any  
4 personal injuries, occurring in the course of or as a direct result  
5 of the authorised operations;
- 6 (g) the number of authorities cancelled by the chief officer or that  
7 expired during the period to which the report relates;
- 8 (h) any seizure, arrest and prosecution arising from the authorised  
9 operations.
- 10 (3) The Minister may require the chief officer to give additional  
11 information in relation to any authorised operation to which a report  
12 relates.
- 13 (4) The details mentioned in subsection (2) must be classified into  
14 controlled operations conducted in the ACT, in the ACT and 1 or  
15 more other jurisdictions or in 1 or more participating jurisdictions.
- 16 (5) The report must not disclose any information that identifies any  
17 suspect or a participant in an authorised operation or that is likely to  
18 lead to a suspect or participant being identified.
- 19 (6) This section does not require particulars of an authorised operation  
20 to be included in a report for a year if the operation had not been  
21 completed as at 30 June in that year, but the particulars must instead  
22 be included in the report for the year in which the operation is  
23 completed.
- 24 (7) The chief officer must advise the Minister of any information in the  
25 report that, in the chief officer's opinion, should be excluded from  
26 the report before the report is presented to the Legislative Assembly  
27 because the information, if made public, could reasonably be  
28 expected to—
- 29 (a) endanger a person's safety; or  
30 (b) prejudice an investigation or prosecution; or

1 (c) compromise any law enforcement agency's operational  
2 activities or methodologies.

3 (8) The Minister must exclude information from the report if satisfied  
4 on the advice of the chief officer of any of the grounds set out in  
5 subsection (7).

6 (9) The Minister must present a copy of the report to the Legislative  
7 Assembly within 15 sitting days from the day on which the report is  
8 received by the Minister.

9 **29 Keeping documents connected with authorised operation**

10 The chief officer of a law enforcement agency must cause the  
11 following to be kept:

12 (a) each standard application made by a law enforcement officer  
13 of the agency;

14 (b) each standard authority granted to a law enforcement officer of  
15 the agency;

16 (c) each standard amendment application made by a law  
17 enforcement officer of the agency;

18 (d) each standard amendment of authority granted to a law  
19 enforcement officer of the agency;

20 (e) each order cancelling an authority granted to a law  
21 enforcement officer of the agency;

22 (f) each report of a principal law enforcement officer of the  
23 agency under section 24 (1) or section 27.

24 **30 General register**

25 (1) The chief officer of a law enforcement agency must cause a general  
26 register to be kept.

- 1 (2) The general register is to specify—
- 2 (a) for each application under this Act made by a law enforcement  
3 officer of the agency (including an application for amendment  
4 of an authority)—
- 5 (i) the date of the application; and
- 6 (ii) whether the application was standard or urgent; and
- 7 (iii) whether the application was made for a controlled  
8 operation conducted in the ACT, in the ACT and 1 or  
9 more other jurisdictions or in 1 or more participating  
10 jurisdictions; and
- 11 (iv) whether the application was granted, refused or  
12 withdrawn; and
- 13 (v) if the application was refused or withdrawn, the date and  
14 time of the refusal or withdrawal; and
- 15 (vi) if the authority was amended, the date and time of the  
16 amendment; and
- 17 (b) for each authority under this Act granted to a law enforcement  
18 officer of the agency—
- 19 (i) the date and time when the authority was granted; and
- 20 (ii) whether the authority was standard or urgent; and
- 21 (iii) whether the application was made for a controlled  
22 operation conducted in the ACT, in the ACT and 1 or  
23 more other jurisdictions or in 1 or more participating  
24 jurisdictions; and
- 25 (iv) the name, and rank or position, of the person who granted  
26 the authority; and
- 27 (v) each relevant offence in respect of which controlled  
28 conduct under the authority was to be engaged in; and

- 1 (vi) the period of validity of the authority; and  
2 (vii) if the authority was cancelled, the date and time of  
3 cancellation; and  
4 (viii) the date and time when the authorised operation began  
5 and the date of completion of the operation; and  
6 (ix) the date on which the principal law enforcement officer  
7 for the operation made a report on the operation under  
8 section 27; and  
9 (x) if the authorised operation involved illicit goods (to the  
10 extent known)—  
11 (A) the nature and quantity of the illicit goods; and  
12 (B) the route through which the illicit goods passed in  
13 the course of the operation; and  
14 (xi) details of any loss of or serious damage to property, or  
15 any personal injuries, occurring in the course of or as a  
16 direct result of the operation; and  
17 (c) for each amendment of an authority—  
18 (i) the date and time when the amendment was made; and  
19 (ii) whether the amendment was standard or urgent; and  
20 (iii) the name, and rank or position, of the person who made  
21 the amendment.

## 22 **Division 4.3 Inspections**

### 23 **31 Inspection of records by ombudsman**

- 24 (1) The ombudsman must, from time to time and at least once every  
25 12 months, inspect the records of a law enforcement agency to  
26 determine the extent of compliance with this Act by the agency and  
27 law enforcement officers of the agency.

- 1 (2) For the purpose of an inspection under this section, the  
2 ombudsman—
- 3 (a) after notifying the chief officer of the law enforcement agency,  
4 may enter at any reasonable time premises occupied by the  
5 agency; and
- 6 (b) is entitled to have full and free access at all reasonable times to  
7 all records of the agency that are relevant to the inspection; and
- 8 (c) may require a member of staff of the agency to give the  
9 ombudsman any information that the ombudsman considers  
10 necessary, being information that is in the member's  
11 possession, or to which the member has access, and that is  
12 relevant to the inspection.
- 13 (3) The chief officer must ensure that members of staff of the agency  
14 give the ombudsman any assistance the ombudsman reasonably  
15 requires to enable the ombudsman to exercise functions under this  
16 section.
- 17 (4) The ombudsman must give a written report prepared under the  
18 *Annual Reports (Government Agencies) Act 2004*, on the results of  
19 each inspection under this section in the preceding financial year.
- 20 (5) The report must include a report on the comprehensiveness and  
21 adequacy of the records of the agency and the cooperation given by  
22 the agency in facilitating the inspection by the ombudsman of those  
23 records.

1 **Part 5** **Miscellaneous**

2 **32 Evidence of authorities**

3 (1) A document purporting to be an authority granted under  
4 section 10—

5 (a) is admissible in any legal proceedings; and

6 (b) in the absence of evidence to the contrary, is proof in any  
7 proceedings (not being criminal or disciplinary proceedings  
8 against a law enforcement officer) that the person who granted  
9 the authority was satisfied of the facts of which he or she was  
10 required to be satisfied before granting the authority.

11 (2) A document purporting to be an authority within the meaning of a  
12 corresponding law granted under a provision of the corresponding  
13 law that corresponds to section 10—

14 (a) is admissible in any legal proceedings in the ACT; and

15 (b) in the absence of evidence to the contrary, is proof in any  
16 proceedings (not being criminal or disciplinary proceedings  
17 against a law enforcement officer) that the person who granted  
18 the authority was satisfied of the facts of which he or she was  
19 required to be satisfied under the corresponding law before  
20 granting the authority.

21 **33 Delegation**

22 (1) Except as provided by this section, and despite any other Act or law  
23 to the contrary, the functions of a chief officer under this Act must  
24 not be delegated to any other person.

- 1 (2) A chief officer may delegate to a senior officer of the law  
2 enforcement agency any of the chief officer's functions under this  
3 Act relating to the authorisation of controlled operations (including  
4 the amendment and cancellation of controlled operations and  
5 notifications under section 24 (2)).
- 6 (3) In this section:
- 7 *senior officer* means a person for the time being holding office as—
- 8 (a) in relation to the Australian Federal Police—a deputy chief  
9 police officer; or
- 10 (b) in relation to the Australian Crime Commission, any of the  
11 following:
- 12 (i) the Director National Operations;
- 13 (ii) a Director;
- 14 (iii) an office of the Australian Crime Commission that is  
15 prescribed by regulation.

16 **34 Regulation-making power**

17 The Executive may make regulations for this Act.

18 *Note* A regulation must be notified, and presented to the Legislative  
19 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:

- chief police officer
- function
- Legislative Assembly
- ombudsman
- territory law
- the Territory.

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

***authorised operation*** means a controlled operation for which an authority is in force.

***authority*** means an authority in force under part 2 (Authorisation of controlled operations).

***chief officer*** means—

- (a) in relation to the Australian Federal Police—the chief police officer; and
- (b) in relation to the Australian Crime Commission—means the chief executive officer of the Australian Crime Commission.

***civilian participant***, in an authorised operation, means a participant in the operation who is not a law enforcement officer.

***conduct*** includes an act or omission.

1           **controlled conduct** means conduct for which a person would, apart  
2           from section 18 (Protection from criminal responsibility for  
3           controlled conduct during authorised operation) or section 25  
4           (Mutual recognition of corresponding authority), be criminally  
5           responsible.

6           **controlled operation** means an operation that—

7           (a) is conducted, or intended to be conducted, for the purpose of  
8           obtaining evidence that may lead to the prosecution of a person  
9           for a relevant offence; and

10          (b) involves, or may involve, controlled conduct.

11          **corresponding authorised operation** means any operation in the  
12          nature of a controlled operation that is authorised by or under the  
13          provisions of a corresponding law.

14          **corresponding authority** means an authority authorising a  
15          controlled operation (within the meaning of a corresponding law)  
16          that is in force under a corresponding law.

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

20          **corresponding participant** means a person who is authorised by a  
21          corresponding authority to participate in a corresponding authorised  
22          operation.

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

25          **illicit goods** means goods the possession of which is a contravention  
26          of the law of the ACT.

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

28          **law enforcement agency** means—

29          (a) the Australian Federal Police; or

- 1 (b) the Australian Crime Commission.
- 2 ***law enforcement officer***—
- 3 (a) means—
- 4 (i) a police officer; or
- 5 (ii) a member of staff of the Australian Crime Commission;
- 6 and
- 7 (b) includes a person who is seconded to a law enforcement
- 8 agency, including (but not limited to) a member of the police
- 9 force or police service, and a police officer (however
- 10 described), of another jurisdiction.
- 11 ***law enforcement participant***, in an authorised operation, means a
- 12 participant in the operation who is a law enforcement officer.
- 13 ***participant***, in an authorised operation, means a person who is
- 14 authorised under this Act to engage in controlled conduct for the
- 15 purposes of the operation.
- 16 ***participating jurisdiction*** means a jurisdiction in which a
- 17 corresponding law is in force.
- 18 ***principal law enforcement officer***, for an authorised operation,
- 19 means the law enforcement officer who is responsible for the
- 20 conduct of the operation.
- 21 ***relevant offence*** means—
- 22 (a) an offence against an ACT law punishable by imprisonment of
- 23 3 years or more; or
- 24 (b) an offence against an ACT law that is prescribed by regulation.
- 25 ***standard amendment application***—see section 13.
- 26 ***standard amendment of authority***—see section 13.
- 27 ***standard application***—see section 9.
- 28 ***standard authority***—see section 11.

1            *suspect* means a person reasonably suspected of having committed  
2            or being likely to have committed, or of committing or being likely  
3            to commit, a relevant offence.

4            *urgent amendment application*—see section 13.

5            *urgent amendment of authority*—see section 13.

6            *urgent application*—see section 9.

7            *urgent authority*—see section 11.

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## Endnotes

**1        Presentation speech**

Presentation speech made in the Legislative Assembly on        2008.

**2        Notification**

Notified under the Legislation Act on                                2008.

**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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