

2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Surveillance Devices) Bill 2010

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(As presented)

(Attorney-General)

Crimes (Surveillance Devices) Bill 2010

A Bill for

An Act to provide for the authorisation of the installation, use, maintenance and retrieval of surveillance devices for law enforcement purposes

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 (Surveillance Devices) Act 2010*.

4 **2 Commencement**

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

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

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

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

15 **3 Dictionary**

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

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

20 For example, the signpost definition '*protected information*, for
21 division 5.1—see section 33.' means that the term 'protected
22 information' is defined in that section for that division.

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

1 **4** **Notes**

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

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

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

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

7 *Note 1* *Criminal Code*

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

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

14 *Note 2* *Penalty units*

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

17 **6** **Purposes of Act**

18 The main purposes of this Act are—

19 (a) to establish procedures for law enforcement officers to obtain
20 warrants or emergency authorisations for the installation, use,
21 maintenance and retrieval of surveillance devices in criminal
22 investigations, including investigations extending beyond the
23 ACT; and

24 (b) to recognise warrants and emergency authorisations issued in
25 other jurisdictions; and

26 (c) to restrict the use, communication and publication of
27 information obtained through the use of surveillance devices or
28 otherwise connected with surveillance device operations; and

- 1 (d) to impose requirements for the secure storage and destruction
2 of records, and the making of reports to the Legislative
3 Assembly, in connection with surveillance device operations.

4 **7 Relationship to other laws and matters**

- 5 (1) This Act does not affect any other territory law that prohibits or
6 regulates the use of surveillance devices wholly within the ACT.

7 *Note* **Territory law** includes the common law (see Legislation Act, dict, pt 1,
8 def **territory law** and **law**, of the Territory).

- 9 (2) A function conferred in relation to the activities of the Australian
10 Crime Commission under this Act is only conferred for the purpose
11 of the function conferred on the Australian Crime Commission
12 under the *Australian Crime Commission (ACT) Act 2003* relating to
13 suspected serious and organised crime as defined in that Act.

- 14 (3) This Act does not stop a law enforcement officer from using an
15 optical surveillance device in a place where the presence of a police
16 officer is not an offence.

- 17 (4) This Act does not limit a discretion that a court has—

- 18 (a) to admit or exclude evidence in any proceeding; or
19 (b) to stay criminal proceedings in the interests of justice.

- 20 (5) To remove any doubt, a warrant may be issued, or an emergency
21 authorisation given, in the ACT under this Act for the installation,
22 use, maintenance or retrieval of a surveillance device in the ACT or
23 a participating jurisdiction or both.

- 24 (6) The following Acts do not apply in relation to activities, documents
25 and records under this Act:

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

1 **8 Investigation taken to be conducted in ACT**

2 For this Act, an investigation into a relevant offence is taken to be
3 conducted in the ACT, whether or not it is also conducted in another
4 jurisdiction, if a law enforcement officer participates in the
5 investigation.

6 *Note* This section is intended to cover the situation where a law enforcement
7 officer of the ACT is conducting or participating in an investigation
8 wholly in another jurisdiction for the purposes of an offence against a
9 territory law (eg a law enforcement of the ACT officer is investigating a
10 conspiracy to import drugs into the ACT from NSW and all the
11 evidence of the offence is in NSW).

1 **Part 2 Warrants**

2 **Division 2.1 Introduction**

3 **9 Kinds of warrant**

- 4 (1) The following kinds of warrant may be issued under this part:
- 5 (a) a surveillance device warrant;
- 6 (b) a retrieval warrant.
- 7 (2) A warrant may be issued in relation to 1 or more kinds of
- 8 surveillance device.

9 **10 Who may issue warrants?**

- 10 (1) A judge may issue any warrant under this part.
- 11 (2) A magistrate may issue—
- 12 (a) a surveillance device warrant that authorises the use of a
- 13 tracking device only; or
- 14 (b) a retrieval warrant in relation to a tracking device authorised
- 15 under a warrant mentioned in paragraph (a), if a magistrate
- 16 issued the original warrant.

17 **Division 2.2 Surveillance device warrants**

18 **11 Surveillance device warrant—application**

- 19 (1) A law enforcement officer (or another person on the officer's
- 20 behalf) may apply for the issue of a surveillance device warrant if
- 21 the law enforcement officer suspects on reasonable grounds that—
- 22 (a) a relevant offence has been, is being, is about to be or is likely
- 23 to be committed; and

- 1 (b) an investigation into that offence is being, will be or is likely to
2 be conducted in the ACT, in the ACT and in 1 or more
3 participating jurisdictions or in 1 or more participating
4 jurisdictions; and
- 5 (c) the use of a surveillance device in the ACT, in the ACT and in
6 1 or more participating jurisdictions or in 1 or more
7 participating jurisdictions is or will be necessary in the course
8 of that investigation for the purpose of enabling evidence or
9 information to be obtained of the commission of the relevant
10 offence or the identity or location of the offender.
- 11 (2) The application may be made to—
- 12 (a) a judge; or
- 13 (b) for an application for a surveillance device warrant authorising
14 the use of a tracking device only—a magistrate.
- 15 (3) An application—
- 16 (a) must state—
- 17 (i) the name of the applicant; and
- 18 (ii) the nature and duration of the warrant sought, including
19 the kind of surveillance device sought to be authorised;
20 and
- 21 (b) subject to this section, must be supported by an affidavit
22 setting out the grounds on which the warrant is sought.
- 23 (4) An application for a warrant may be made before an affidavit is
24 prepared or sworn if a law enforcement officer believes that—
- 25 (a) the immediate use of a surveillance device is necessary for a
26 purpose mentioned in subsection (1) (c); and
- 27 (b) it is impracticable for an affidavit to be prepared or sworn
28 before an application for a warrant is made.

- 1 (5) If subsection (4) applies, the applicant must—
2 (a) give as much information as the judge or magistrate considers
3 is reasonably practicable in the circumstances; and
4 (b) not later than 72 hours after making the application, send a
5 sworn affidavit to the judge or magistrate, whether or not a
6 warrant has been issued.
7 (6) An application for a warrant must not be heard in open court.

8 **12 Surveillance device warrant—remote application**

- 9 (1) If a law enforcement officer believes that it is impracticable for an
10 application for a surveillance device warrant to be made in person,
11 the application may be made under section 11 by telephone, fax,
12 email or any other means of communication.
13 (2) If transmission by fax is available and an affidavit has been
14 prepared, the person applying must send a copy of the affidavit,
15 whether sworn or unsworn, to the judge or magistrate who is to
16 decide the application.

17 **13 Surveillance device warrant—deciding the application**

- 18 (1) A judge or magistrate may issue a surveillance device warrant if
19 satisfied that—
20 (a) there are reasonable grounds for the suspicion or belief
21 founding the application for the warrant; and
22 (b) for an unsworn application—it would have been impracticable
23 for an affidavit to have been prepared or sworn before the
24 application was made; and
25 (c) for a remote application—it would have been impracticable for
26 the application to have been made in person.

- 1 (2) In deciding whether a surveillance device warrant should be issued,
2 the judge or magistrate must have regard to the following:
- 3 (a) the nature and gravity of the alleged offence in relation to
4 which the warrant is sought;
- 5 (b) the extent to which the privacy of any person is likely to be
6 affected;
- 7 (c) the existence of any alternative means of obtaining the
8 evidence or information sought to be obtained and the extent to
9 which those means may assist or prejudice the investigation;
- 10 (d) the evidentiary or intelligence value of any information sought
11 to be obtained;
- 12 (e) any previous warrant sought or issued under this division or a
13 corresponding law (if known) in connection with the same
14 offence.

15 **14 What must a surveillance device warrant contain?**

- 16 (1) A surveillance device warrant must—
- 17 (a) state that the judge or magistrate is satisfied of the matters
18 mentioned in section 13 (1) and has had regard to the matters
19 mentioned in section 13 (2); and
- 20 (b) state the following:
- 21 (i) the name of the applicant;
- 22 (ii) the alleged offence in relation to which the warrant is
23 issued;
- 24 (iii) the date the warrant is issued;
- 25 (iv) the kind of surveillance device authorised to be used;
- 26 (v) if the warrant authorises the use of a surveillance device
27 on premises—the premises where the use of the
28 surveillance device is authorised;

- 1 (vi) if the warrant authorises the use of a surveillance device
2 in or on an object or class of object—the object or class of
3 object in or on which the use of the surveillance device is
4 authorised;
- 5 (vii) if the warrant authorises the use of a surveillance device
6 in relation to the conversations, activities or geographical
7 location of a person—the name of the person (if known);
- 8 (viii) the period (not more than 90 days) during which the
9 warrant is in force;
- 10 (ix) the name of the law enforcement officer primarily
11 responsible for executing the warrant;
- 12 (x) any conditions subject to which premises may be entered,
13 or a surveillance device may be used, under the warrant.
- 14 (2) For a warrant mentioned in subsection (1) (b) (vii), if the identity of
15 the person is unknown, the warrant must state that fact.
- 16 (3) A warrant must be signed by the person issuing it and include the
17 person's name.
- 18 (4) If the judge or magistrate issues a warrant on a remote application,
19 the judge or magistrate must—
- 20 (a) tell the applicant—
- 21 (i) the terms of the warrant; and
22 (ii) the date and time the warrant was issued; and
- 23 (b) enter the terms and date mentioned in paragraph (a) in a
24 register kept by the judge or magistrate for the purpose; and
- 25 (c) give the applicant a copy of the warrant as soon as practicable.

1 **15 What a surveillance device warrant authorises**

2 (1) A surveillance device warrant may authorise, as stated in the
3 warrant, 1 or more of the following:

- 4 (a) the use of a surveillance device on stated premises;
- 5 (b) the use of a surveillance device in or on a stated object or class
6 of objects;
- 7 (c) the use of a surveillance device in relation to the conversations,
8 activities or geographical location of a stated person or a
9 person whose identity is unknown.

10 (2) A surveillance device warrant authorises—

- 11 (a) for a warrant mentioned in subsection (1) (a)—
- 12 (i) the installation, use and maintenance of a surveillance
13 device of the kind stated in the warrant on the stated
14 premises; and
- 15 (ii) the entry, by force if necessary, onto the premises, or
16 other stated premises adjoining or providing access to the
17 premises, for a purpose mentioned in subparagraph (i) or
18 subsection (3);
- 19 (b) for a warrant mentioned in subsection (1) (b)—
- 20 (i) the installation, use and maintenance of a surveillance
21 device of the kind stated in the warrant in or on the stated
22 object or an object of the stated class; and
- 23 (ii) the entry, by force if necessary, onto any premises where
24 the object, or an object of the class, is believed on
25 reasonable grounds to be or is likely to be, or other
26 premises adjoining or providing access to those premises,
27 for a purpose mentioned in subparagraph (i) or
28 subsection (3);

- 1 (c) for a warrant mentioned in subsection (1) (c)—
- 2 (i) the installation, use and maintenance of a surveillance
3 device of the kind stated in the warrant, on premises
4 where the person is believed on reasonable grounds to be
5 or likely to be; and
- 6 (ii) the entry, by force if necessary, onto the premises
7 mentioned in subparagraph (i), or other premises
8 adjoining or providing access to those premises, for a
9 purpose mentioned in subparagraph (i) or subsection (3).
- 10 (3) Each surveillance device warrant also authorises the following:
- 11 (a) the retrieval of the surveillance device;
- 12 (b) the installation, use, maintenance and retrieval of any
13 enhancement equipment in relation to the surveillance device;
- 14 (c) the temporary removal of an object or vehicle from premises
15 for the purpose of the installation, maintenance or retrieval of
16 the surveillance device or enhancement equipment and the
17 return of the object or vehicle to the premises;
- 18 (d) the breaking open of anything for the purpose of the
19 installation, maintenance or retrieval of the surveillance device
20 or enhancement equipment;
- 21 (e) the connection of the surveillance device or enhancement
22 equipment to an electricity supply system and the use of
23 electricity from that system to operate the surveillance device
24 or enhancement equipment;
- 25 (f) the connection of the surveillance device or enhancement
26 equipment to any object or system that may be used to transmit
27 information in any form and the use of that object or system in
28 connection with the operation of the surveillance device or
29 enhancement equipment;

- 1 (g) the provision of assistance or technical expertise to the law
2 enforcement officer primarily responsible for executing the
3 warrant in the installation, use, maintenance or retrieval of the
4 surveillance device or enhancement equipment.
- 5 (4) A surveillance device warrant may authorise the doing of anything
6 reasonably necessary to conceal the fact that anything has been done
7 in relation to the installation, use, maintenance or retrieval of a
8 surveillance device or enhancement equipment under the warrant.
- 9 (5) A law enforcement officer may use a surveillance device under a
10 warrant only if the officer is acting in the performance of the
11 officer's duty.
- 12 (6) This section applies to a surveillance device warrant subject to any
13 conditions stated in the warrant.
- 14 (7) Nothing in this section authorises the doing of anything for which a
15 warrant would be required under the *Telecommunications*
16 *(Interception and Access) Act 1979* (Cwlth).

17 **16 Extension and amendment of surveillance device warrant**

- 18 (1) A law enforcement officer to whom a surveillance device warrant
19 has been issued (or another person on the officer's behalf) may
20 apply, at any time before the expiry of the warrant—
- 21 (a) for an extension of the warrant for a period not exceeding 90
22 days after the day when it would otherwise expire; or
- 23 (b) for an amendment of any of the other terms of the warrant.
- 24 (2) The application must be made to—
- 25 (a) a judge, if the warrant was issued by a judge; or
- 26 (b) a magistrate, if the warrant was issued by a magistrate.

- 1 (3) Section 11 (Application for a surveillance device warrant) and
2 section 12 (Remote application) apply, with any necessary changes,
3 to an application under this section as if it were an application for
4 the warrant.
- 5 (4) The judge or magistrate may grant an application, subject to any
6 conditions the judge or magistrate thinks fit, if satisfied that the
7 matters mentioned in section 13 (1) (Deciding the application) still
8 exist, having regard to the matters in section 13 (2).
- 9 (5) If the judge or magistrate grants the application, the judge or
10 magistrate must endorse the new expiry date or the other amended
11 term on the original warrant.
- 12 (6) An application may be made under this section more than once.

13 **17 Revocation of surveillance device warrant**

- 14 (1) A surveillance device warrant may be revoked at any time before
15 the end of the period of validity stated in it by—
- 16 (a) a judge, if a judge issued the warrant; or
17 (b) a magistrate, if a magistrate issued the warrant.
- 18 (2) A judge or magistrate may revoke a surveillance device warrant on
19 application by or on behalf of a law enforcement officer.
- 20 (3) A judge or magistrate who revokes a warrant must give notice of the
21 revocation to the chief officer of the law enforcement agency of
22 which the law enforcement officer to whom the warrant was issued
23 is a member.
- 24 (4) If the judge or magistrate revokes the warrant on the application of a
25 law enforcement officer, the judge or magistrate is taken to have
26 notified the chief officer under subsection (3) when the judge or
27 magistrate revokes the warrant.

- 1 **18 Discontinuance of use of surveillance device under**
2 **warrant**
- 3 (1) This section applies if a surveillance device warrant is issued to a
4 law enforcement officer of a law enforcement agency.
- 5 (2) If the chief officer of the law enforcement agency is satisfied that
6 the use of a surveillance device under the warrant is no longer
7 necessary for the purpose of enabling evidence to be obtained of the
8 commission of the relevant offence or the identity or location of the
9 offender, the chief officer must—
- 10 (a) take the steps necessary to ensure that use of the surveillance
11 device authorised by the warrant is discontinued as soon as
12 practicable; and
- 13 (b) ensure an application is made for the revocation of the warrant
14 under section 17.
- 15 (3) If the chief officer is notified that the warrant has been revoked
16 under section 17, the chief officer must take the steps necessary to
17 ensure that use of the surveillance device authorised by the warrant
18 is discontinued immediately.
- 19 (4) If the law enforcement officer to whom the warrant is issued, or who
20 is primarily responsible for executing the warrant, believes that use
21 of a surveillance device under the warrant is no longer necessary for
22 the purpose of enabling evidence to be obtained of the commission
23 of the relevant offence or the identity or location of the offender, the
24 officer must tell the chief officer of the law enforcement agency
25 immediately.

1 **Division 2.3 Retrieval warrants**

2 **19 Retrieval warrant—application**

- 3 (1) A law enforcement officer (or another person on the officer's
4 behalf) may apply for the issue of a retrieval warrant in relation to a
5 surveillance device that—
- 6 (a) was lawfully installed on premises, or in or on an object, under
7 a surveillance device warrant; and
- 8 (b) the law enforcement officer suspects or believes on reasonable
9 grounds is still on those premises or in or on that object, or on
10 other premises or in or on another object.
- 11 (2) The application may be made to—
- 12 (a) a judge; or
- 13 (b) for an application for a retrieval warrant authorising the
14 retrieval of a tracking device only—a magistrate.
- 15 (3) Subject to this section, an application must be supported by an
16 affidavit setting out the grounds on which the warrant is sought.
- 17 (4) An application for a retrieval warrant may be made before an
18 affidavit is prepared or sworn if a law enforcement officer believes
19 that—
- 20 (a) the immediate retrieval of a surveillance device is necessary;
21 and
- 22 (b) it is impracticable for an affidavit to be prepared or sworn
23 before an application for a warrant is made.
- 24 (5) If subsection (4) applies, the applicant must—
- 25 (a) give as much information as the judge or magistrate considers
26 is reasonably practicable in the circumstances; and

1 (b) not later than 72 hours after making the application, send a
2 sworn affidavit to the judge or magistrate who determined the
3 application, whether or not a warrant has been issued.

4 (6) An application for a warrant must not be heard in open court.

5 **20 Retrieval warrant—remote application**

6 (1) If a law enforcement officer believes that it is impracticable for an
7 application for a retrieval warrant to be made in person, the
8 application may be made under section 19 by telephone, fax, email
9 or any other means of communication.

10 (2) If transmission by fax is available and an affidavit has been
11 prepared, the person applying must send a copy of the affidavit,
12 whether sworn or unsworn, to the judge or magistrate who is to
13 decide the application.

14 **21 Retrieval warrant—deciding the application**

15 (1) A judge or magistrate may issue a retrieval warrant if satisfied
16 that—

17 (a) there are reasonable grounds for the suspicion or belief
18 founding the application for the warrant; and

19 (b) for an unsworn application—it would have been impracticable
20 for an affidavit to have been prepared or sworn before the
21 application was made; and

22 (c) for a remote application—it would have been impracticable for
23 the application to have been made in person.

24 (2) In deciding whether a retrieval warrant should be issued, the judge
25 or magistrate must have regard to—

26 (a) the extent to which the privacy of any person is likely to be
27 affected; and

1 (b) the public interest in retrieving the device sought to be
2 retrieved.

3 **22 What must a retrieval warrant contain?**

4 (1) A retrieval warrant must—

5 (a) state that the judge or magistrate is satisfied of the matters
6 mentioned in section 21 (1) and has had regard to the matters
7 mentioned in section 21 (2); and

8 (b) state the following:

9 (i) the name of the applicant;

10 (ii) the date the warrant is issued;

11 (iii) the kind of surveillance device authorised to be retrieved;

12 (iv) the premises or object from which the surveillance device
13 is to be retrieved;

14 (v) the period (not more than 90 days) during which the
15 warrant is in force;

16 (vi) the name of the law enforcement officer primarily
17 responsible for executing the warrant;

18 (vii) any conditions subject to which premises may be entered
19 under the warrant.

20 (2) A warrant must be signed by the person issuing it and include the
21 person's name.

22 (3) If the judge or magistrate issues a warrant on a remote application,
23 the judge or magistrate must—

24 (a) tell the applicant—

25 (i) the terms of the warrant; and

26 (ii) the date and time the warrant was issued; and

1 (b) enter the terms and date mentioned in paragraph (a) in a
2 register kept by the judge or magistrate for the purpose; and

3 (c) give the applicant a copy of the warrant as soon as practicable.

4 **23 What a retrieval warrant authorises**

5 (1) A retrieval warrant authorises the following:

6 (a) the retrieval of the surveillance device stated in the warrant and
7 any enhancement equipment in relation to the device;

8 (b) the entry, by force if necessary, onto the premises where the
9 surveillance device is believed on reasonable grounds to be, or
10 other premises adjoining or providing access to those premises,
11 for the purpose of retrieving the device and equipment;

12 (c) the breaking open of any thing for the purpose of retrieving the
13 device and equipment;

14 (d) if the device or equipment is installed on or in an object, the
15 temporary removal of the object from any premises where it is
16 located for the purpose of retrieving the device and equipment
17 and the return of the object to those premises;

18 (e) the provision of assistance or technical expertise to the law
19 enforcement officer primarily responsible for executing the
20 warrant in the retrieval of the device or equipment.

21 (2) If the retrieval warrant authorises the retrieval of a tracking device,
22 the warrant also authorises the use of the tracking device and any
23 enhancement equipment in relation to the device solely for the
24 purposes of the location and retrieval of the device or equipment.

25 (3) A retrieval warrant may authorise the doing of anything reasonably
26 necessary to conceal the fact that anything has been done in relation
27 to the retrieval of a surveillance device or enhancement equipment
28 under the warrant.

- 1 (4) This section applies to a retrieval warrant subject to any conditions
2 stated in the warrant.

3 **24 Revocation of retrieval warrant**

- 4 (1) A retrieval warrant may be revoked at any time before the end of the
5 period of validity stated in it by—
6 (a) a judge, if a judge issued the warrant; or
7 (b) a magistrate, if a magistrate issued the warrant.
- 8 (2) A judge or magistrate may revoke a retrieval warrant on application
9 by or on behalf of a law enforcement officer.
- 10 (3) A judge or magistrate who revokes a warrant must give notice of the
11 revocation to the chief officer of the law enforcement agency of
12 which the law enforcement officer to whom the warrant was issued
13 is a member.
- 14 (4) If the judge or magistrate revokes the warrant on the application of a
15 law enforcement officer, the judge or magistrate is taken to have
16 notified the chief officer under subsection (3) when the judge or
17 magistrate revokes the warrant.
- 18 (5) If the chief officer of a law enforcement agency is satisfied that the
19 grounds for issue of a retrieval warrant to a law enforcement officer
20 of the agency no longer exist, the chief officer must ensure an
21 application is made for the revocation of the warrant under this
22 section.
- 23 (6) If the law enforcement officer to whom a retrieval warrant has been
24 issued, or who is primarily responsible for executing a retrieval
25 warrant, believes that the grounds for issue of the warrant no longer
26 exist, the officer must tell the chief officer of the law enforcement
27 agency immediately.

- 1 **26** **Emergency authorisation—continued use of authorised**
2 **surveillance device in participating jurisdiction**
- 3 (1) A law enforcement officer of a law enforcement agency may apply
4 to the chief officer of the agency for an emergency authorisation for
5 the use of a surveillance device if—
- 6 (a) use of the surveillance device in the ACT is authorised under a
7 territory law, in connection with an investigation into a
8 relevant offence; and
- 9 (b) the law enforcement officer suspects or believes on reasonable
10 grounds that—
- 11 (i) the investigation in relation to which the surveillance
12 device is authorised in the ACT is likely to extend to a
13 participating jurisdiction; and
- 14 (ii) the use of the surveillance device in a participating
15 jurisdiction is immediately necessary to prevent the loss
16 of any evidence; and
- 17 (iii) the circumstances are so serious and the matter is of such
18 urgency that the use of the surveillance device in the
19 participating jurisdiction is warranted; and
- 20 (iv) it is not practicable in the circumstances to apply for a
21 surveillance device warrant.
- 22 (2) An application may be made orally, in writing or by telephone, fax,
23 email or any other means of communication.
- 24 (3) The chief officer may give an emergency authorisation for the use of
25 a surveillance device on an application under subsection (1) if
26 satisfied that—
- 27 (a) use of the surveillance device in the ACT is authorised under a
28 territory law, in connection with an investigation into a
29 relevant offence; and

1 (b) there are reasonable grounds for the suspicion or belief
2 founding the application.

3 (4) An emergency authorisation given under this section may authorise
4 the law enforcement officer to whom it is given to do anything that a
5 surveillance device warrant may authorise the officer to do.

6 **27 Application for approval after use of surveillance device**
7 **under emergency authorisation**

8 (1) Within 2 working days after giving an emergency authorisation, the
9 chief officer (or another person on the officer's behalf) must apply
10 to a judge for approval of the exercise of powers under the
11 emergency authorisation.

12 (2) An application—

13 (a) must state—

14 (i) the name of the applicant; and

15 (ii) the kind of surveillance device sought to be approved and,
16 if a warrant is sought, the nature and duration of the
17 warrant; and

18 (b) must be supported by an affidavit setting out the grounds on
19 which the approval (and warrant, if any) is sought.

20 (3) The judge may refuse to consider the application until the applicant
21 gives the judge all the information the judge requires about the
22 application in the way the judge requires.

23 (4) An application must not be heard in open court.

- 1 **28 Consideration of application**
- 2 (1) Before deciding an application for approval in relation to an
- 3 emergency authorisation given under section 25 (Emergency
- 4 authorisation—risk of serious personal violence or substantial
- 5 property damage), the judge must, in particular, and being mindful
- 6 of the intrusive nature of using a surveillance device, consider the
- 7 following:
- 8 (a) the nature of the risk of serious violence to a person or
- 9 substantial damage to property;
- 10 (b) the extent to which issuing a surveillance device warrant would
- 11 have helped reduce or avoid the risk;
- 12 (c) the extent to which law enforcement officers could have used
- 13 alternative methods of investigation to help reduce or avoid the
- 14 risk;
- 15 (d) how much the use of alternative methods of investigation could
- 16 have helped reduce or avoid the risk;
- 17 (e) how much the use of alternative methods of investigation
- 18 would have prejudiced the safety of the person or property
- 19 because of delay or for another reason;
- 20 (f) whether or not it was practicable in the circumstances to apply
- 21 for a surveillance device warrant.
- 22 (2) Before deciding an application for approval in relation to an
- 23 emergency authorisation given under section 26 (Emergency
- 24 authorisation—continued use of authorised surveillance device in
- 25 participating jurisdiction), the judge must, in particular, and being
- 26 mindful of the intrusive nature of using a surveillance device,
- 27 consider the following:
- 28 (a) the nature of the risk of the loss of evidence;
- 29 (b) the extent to which issuing a surveillance device warrant would
- 30 have helped reduce or avoid the risk;

1 (c) the terms of the existing authorisation for the use of the
2 surveillance device;

3 (d) whether or not it was practicable in the circumstances to apply
4 for a surveillance device warrant.

5 **29 Judge may approve emergency use of powers**

6 (1) After considering an application for approval in relation to an
7 emergency authorisation given under section 25 (Emergency
8 authorisation—risk of serious personal violence or substantial
9 property damage), the judge may approve the application if satisfied
10 that there were reasonable grounds to suspect or believe that—

11 (a) there was a risk of serious violence to a person or substantial
12 damage to property; and

13 (b) using a surveillance device may have helped reduce the risk;
14 and

15 (c) it was not practicable in the circumstances to apply for a
16 surveillance device warrant.

17 (2) After considering an application for approval in relation to an
18 emergency authorisation given under section 26 (Emergency
19 authorisation—continued use of authorised surveillance device in
20 participating jurisdiction), the judge may approve the application if
21 satisfied that—

22 (a) use of the surveillance device in the ACT was authorised under
23 a territory law, in connection with an investigation into a
24 relevant offence; and

25 (b) there were reasonable grounds to suspect or believe that—

26 (i) there was a risk of loss of evidence; and

27 (ii) using the surveillance device in a participating
28 jurisdiction may have helped reduce the risk; and

- 1 (c) it was not practicable in the circumstances to apply for a
2 surveillance device warrant.
- 3 (3) If the judge approves an application under this section, the judge
4 may issue a surveillance device warrant for the continued use of the
5 surveillance device as if the application were an application for a
6 surveillance device warrant under division 2 (Surveillance device
7 warrants).
- 8 (4) If the judge does not approve an application under this section, the
9 judge may order that the use of the surveillance device cease.
- 10 (5) The judge may order that any information obtained from or relating
11 to the exercise of powers under the emergency authorisation or any
12 record of that information be dealt with in the way stated in the
13 order.

14 **30 Admissibility of evidence**

15 If the exercise of powers under an emergency authorisation is
16 approved under section 29, evidence obtained because of the
17 exercise of those powers is not inadmissible in any proceeding only
18 because the evidence was obtained before the approval.

- 1 **Part 5** **Compliance and monitoring**
- 2 **Division 5.1** **Restrictions on use, communication**
3 **and publication of information**
- 4 **33** **What is *protected information*?—div 5.1**
- 5 In this division:
- 6 *protected information* means—
- 7 (a) any information obtained from the use of a surveillance device
8 under a warrant, emergency authorisation, corresponding
9 warrant or corresponding emergency authorisation; or
- 10 (b) any information relating to—
- 11 (i) an application for, issue of, existence of or expiry of a
12 warrant, emergency authorisation, corresponding warrant
13 or corresponding emergency authorisation; or
- 14 (ii) an application for approval of powers exercised under an
15 emergency authorisation; or
- 16 (iii) an application under a corresponding law for approval of
17 powers exercised under a corresponding emergency
18 authorisation.
- 19 **34** **Prohibition on communication or publication of protected**
20 **information**
- 21 (1) A person commits an offence if—
- 22 (a) the person uses information; and
- 23 (b) the information is protected information; and
- 24 (c) the use of the information is not permitted by this section; and

1 (d) the person is reckless about whether the use of the information
2 is not permitted by this section.

3 Maximum penalty: imprisonment for 2 years.

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

6 (2) A person commits an offence if—

7 (a) the person communicates information; and

8 (b) the information is protected information; and

9 (c) the communication of the information is not permitted by this
10 section; and

11 (d) the person is reckless about whether the communication of the
12 information is not permitted by this section.

13 Maximum penalty: imprisonment for 2 years.

14 (3) A person commits an offence if—

15 (a) the person publishes information; and

16 (b) the information is protected information; and

17 (c) the publication of the information is not permitted by this
18 section; and

19 (d) the person is reckless about whether the publication of the
20 information is not permitted by this section.

21 Maximum penalty: imprisonment for 2 years.

22 (4) A person commits an offence if the person commits an offence
23 against subsection (1), (2) or (3) in circumstances in which the
24 person—

25 (a) intends to endanger the health or safety of anyone; or

- 1 (b) is reckless about whether the disclosure of the information
2 endangers or will endanger the health or safety of anyone.
- 3 Maximum penalty: imprisonment for 10 years.
- 4 (5) A person commits an offence if the person commits an offence
5 against subsection (1), (2) or (3) in circumstances in which the
6 person—
- 7 (a) intends to prejudice the effective conduct of an investigation;
8 or
- 9 (b) is reckless about whether the disclosure of the information
10 prejudices or will prejudice the effective conduct of an
11 investigation.
- 12 Maximum penalty: imprisonment for 10 years.
- 13 (6) Subsections (1) to (5) do not apply to—
- 14 (a) the use, communication or publication of—
- 15 (i) any information if the information has been disclosed in
16 proceedings in open court; or
- 17 (ii) any information if the information has entered the public
18 domain; or
- 19 (b) the use or communication of protected information by a person
20 if the person believes on reasonable grounds that the use or
21 communication is necessary to help prevent or reduce the risk
22 of serious violence to a person or substantial damage to
23 property; or
- 24 (c) the communication to the Director-General (within the
25 meaning of the *Australian Security Intelligence Organisation*
26 *Act 1979* (Cwlth)) of protected information if the protected
27 information relates or appears to relate to activities prejudicial
28 to security (within the meaning of that Act); or

- 1 (d) the use or communication of information mentioned in
2 paragraph (c) by an officer of the Australian Security
3 Intelligence Organisation if the use or communication is in the
4 performance of the officer's official functions; or
- 5 (e) the use or communication of information to a foreign country
6 or an appropriate authority of a foreign country if the use or
7 communication is in accordance with the *Mutual Assistance in*
8 *Criminal Matters Act 1987* (Cwlth).
- 9 (7) Protected information may be used, communicated or published if it
10 is necessary to do so for any of the following purposes:
- 11 (a) the investigation of a relevant offence within the meaning of
12 this Act or a relevant offence within the meaning of a
13 corresponding law;
- 14 (b) the making of a decision whether or not to bring a prosecution
15 for a relevant offence within the meaning of this Act or a
16 relevant offence within the meaning of a corresponding law;
- 17 (c) a relevant proceeding within the meaning of this Act or a
18 relevant proceeding within the meaning of a corresponding
19 law;
- 20 (d) an investigation of a complaint against, or the conduct of, a
21 public officer within the meaning of this Act or a public officer
22 within the meaning of a corresponding law;
- 23 (e) the making of a decision in relation to the appointment, re-
24 appointment, term of appointment, termination or retirement of
25 a person mentioned in paragraph (d);
- 26 (f) the keeping of records and the making of reports by—
- 27 (i) a law enforcement agency in accordance with the
28 obligations imposed by division 5.2 (Reporting and
29 record-keeping); or

- 1 (ii) a law enforcement agency (within the meaning of a
2 corresponding law) in accordance with the obligations
3 imposed by provisions of the corresponding law that
4 correspond to division 5.2;
- 5 (g) an inspection by the ombudsman under section 42 (Inspection
6 of records by ombudsman) or an inspection under a provision
7 of a corresponding law that corresponds to section 42;
- 8 (h) an investigation under the *Privacy Act 1988* (Cwlth) or a law
9 of a participating jurisdiction or another law of the
10 Commonwealth concerning the privacy of personal
11 information.
- 12 (8) Subsections (6) (c) and (d) and (7) (a), (b) and (c) do not authorise
13 the use, communication or publication of protected information in
14 relation to an emergency authorisation or corresponding emergency
15 authorisation unless the use of powers under that emergency
16 authorisation has been approved under section 29 (Judge may
17 approve emergency use of powers) or the provisions of a
18 corresponding law that correspond to section 29.
- 19 (9) A reference in subsection (8) to a relevant offence (whether of the
20 ACT or another jurisdiction) is a reference to any relevant offence
21 of the relevant jurisdiction, whether or not it is the offence of the
22 relevant jurisdiction in relation to which the relevant warrant or
23 emergency authorisation was issued or given.

1 **35 Dealing with records obtained by use of surveillance**
2 **devices**

- 3 (1) The chief officer of a law enforcement agency must cause—
- 4 (a) every record or report obtained by use of a surveillance device
5 by a law enforcement officer of the agency under a warrant,
6 emergency authorisation, corresponding warrant or
7 corresponding emergency authorisation to be kept in a secure
8 place that is not accessible to people who are not entitled to
9 deal with the record or report; and
- 10 (b) any record or report mentioned in paragraph (a) to be
11 destroyed, if satisfied that it is not likely to be required in
12 connection with a purpose mentioned in section 34 (6) or (7).
- 13 (2) Subsection (1) does not apply to a record or report that is received
14 into evidence in legal proceedings or disciplinary proceedings.

15 **36 Protection of surveillance device technologies and**
16 **methods**

- 17 (1) In any proceeding, a person may object to the disclosure of
18 information on the ground that the information, if disclosed, could
19 reasonably be expected to reveal details of surveillance device
20 technology or methods of installation, use or retrieval of
21 surveillance devices.
- 22 (2) If the person conducting or presiding over the proceeding is satisfied
23 that the ground of objection is made out, the person may order that
24 the person who has the information not be required to disclose it in
25 the proceeding.
- 26 (3) In determining whether or not to make an order under
27 subsection (2), the person conducting or presiding over the
28 proceeding must take into account whether disclosure of the
29 information—
- 30 (a) is necessary for the fair trial of the defendant; or

- 1 (b) is in the public interest.
- 2 (4) Subsection (2) does not affect a provision of another law under
3 which a law enforcement officer cannot be compelled to disclose
4 information or make statements in relation to the information.
- 5 (5) If the person conducting or presiding over a proceeding is satisfied
6 that publication of any information disclosed in the proceeding
7 could reasonably be expected to reveal details of surveillance device
8 technology or methods of installation, use or retrieval of
9 surveillance devices, the person must make any orders prohibiting
10 or restricting publication of the information that the person
11 considers necessary to ensure that those details are not revealed.
- 12 (6) Subsection (5) does not apply to the extent that the person
13 conducting or presiding over the proceeding considers that the
14 interests of justice require otherwise.
- 15 (7) In this section:
- 16 *proceeding* includes a proceeding before a court, tribunal or Royal
17 Commission.

18 **37 Protected information in the custody of a court**

19 A person is not entitled to search any protected information in the
20 custody of a court unless the court otherwise orders in the interests
21 of justice.

1 **Division 5.2** **Reporting and record-keeping**

2 **38** **Annual reports**

3 (1) The chief officer of a law enforcement agency must give a written
4 report to the Minister that includes the following information in
5 relation to each financial year:

6 (a) the number of applications for warrants by and the number of
7 warrants issued to law enforcement officers of the agency
8 during the year;

9 (b) the number of applications for emergency authorisations by
10 and the number of emergency authorisations given to law
11 enforcement officers of the agency during the year;

12 (c) the number of remote applications for warrants by law
13 enforcement officers of the agency during the year;

14 (d) the number of applications for warrants or emergency
15 authorisations by law enforcement officers of the agency that
16 were refused during the year, and the reasons for refusal;

17 (e) the number of applications for extensions of warrants by law
18 enforcement officers of the agency during the year, the number
19 of extensions granted or refused and the reasons why the
20 extensions were granted or refused;

21 (f) the number of arrests made by law enforcement officers of the
22 agency during the year on the basis (wholly or partly) of
23 information obtained by the use of a surveillance device under
24 a warrant or emergency authorisation;

25 (g) the number of prosecutions that were commenced in the ACT
26 during the year in which information obtained by the use of a
27 surveillance device under a warrant or emergency authorisation
28 was given in evidence and the number of those prosecutions in
29 which a person was found guilty;

- 1 (h) any other information relating to the use of surveillance
2 devices and the administration of this Act that the Minister
3 considers appropriate.
- 4 (2) The information mentioned in subsection (1) (a) and (b) must be
5 presented in a way that identifies the number of warrants issued and
6 emergency authorisations given in relation to each different kind of
7 surveillance device.
- 8 (3) The report must be given to the Minister as soon as practicable after
9 the end of each financial year, and in any event within 3 months
10 after the end of the financial year.
- 11 (4) The Minister must present a copy of the report to the Legislative
12 Assembly within 15 sitting days after the day the Minister receives
13 it.

14 **39 Keeping documents connected with warrants and**
15 **emergency authorisations**

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

- 18 (a) each warrant issued to a law enforcement officer of the agency;
- 19 (b) each notice given to the chief officer under section 17 (3)
20 (Revocation of surveillance device warrant) of revocation of a
21 warrant;
- 22 (c) each emergency authorisation given to a law enforcement
23 officer of the agency;
- 24 (d) each application made by a law enforcement officer of the
25 agency for an emergency authorisation;
- 26 (e) a copy of each application made by a law enforcement officer
27 of the agency for the following:
- 28 (i) a warrant;
- 29 (ii) extension, amendment or revocation of a warrant;

- 1 (iii) approval of the exercise of powers under an emergency
2 authorisation;
- 3 (f) a copy of each certificate issued by the chief officer, or person
4 assisting the officer, under section 43 (Evidentiary certificates).

5 **40 Other records to be kept**

6 The chief officer of a law enforcement agency must keep the
7 following records:

- 8 (a) a statement as to whether each application made by a law
9 enforcement officer of the agency for a warrant, or extension,
10 amendment or revocation of a warrant, was granted, refused or
11 withdrawn;
- 12 (b) for each warrant issued to a law enforcement officer of the
13 agency, a statement about whether the warrant was executed;
- 14 (c) for each surveillance device warrant mentioned in a statement
15 under paragraph (b) that was executed, a statement setting out
16 the following information:
- 17 (i) the name of each person involved in the execution of the
18 warrant;
- 19 (ii) the kind of surveillance device used;
- 20 (iii) the period during which the device was used;
- 21 (iv) the name, if known, of any person whose conversations or
22 activities were overheard, recorded, monitored, listened to
23 or observed by the use of the device;
- 24 (v) the name, if known, of any person whose geographical
25 location was worked out by the use of a tracking device;
- 26 (vi) details of any premises on which the device was installed
27 or any place at which the device was used;

- 1 (vii) details of any object in or on which the device was
2 installed or any premises where the object was located
3 when the device was installed;
- 4 (viii) details of the benefit to the investigation of the use of the
5 device and of the general use made or to be made of any
6 evidence or information obtained by the use of the device;
- 7 (ix) details of the compliance with the conditions (if any) to
8 which the warrant was subject;
- 9 (x) if the warrant was extended or amended, the number of
10 extensions or amendments and the reasons for them;
- 11 (d) for each retrieval warrant mentioned in a statement under
12 paragraph (b) that was executed, a statement setting out the
13 following information:
- 14 (i) details of any premises entered, anything opened and any
15 object removed and replaced under the warrant;
- 16 (ii) whether the surveillance device was retrieved under the
17 warrant;
- 18 (iii) if the device was not retrieved, the reason why;
- 19 (iv) details of the compliance with the conditions (if any) to
20 which the warrant was subject;
- 21 (e) a statement as to whether each application made by a law
22 enforcement officer of the agency for an emergency
23 authorisation, or for approval of powers exercised under an
24 emergency authorisation, was granted, refused or withdrawn;
- 25 (f) details of each use by the agency, or by a law enforcement
26 officer of the agency, of information obtained by the use of a
27 surveillance device by a law enforcement officer of the agency;

- 1 (g) details of each communication by a law enforcement officer of
2 the agency to a person other than a law enforcement officer of
3 the agency of information obtained by the use of a surveillance
4 device by a law enforcement officer of the agency;
- 5 (h) details of each occasion when, to the knowledge of a law
6 enforcement officer of the agency, information obtained by the
7 use of a surveillance device by a law enforcement officer of the
8 agency was given in evidence in a relevant proceeding;
- 9 (i) details of the destruction of records or reports under
10 section 35 (1) (b) (Dealing with records obtained by use of
11 surveillance devices).

12 **41 Register of warrants and emergency authorisations**

- 13 (1) The chief officer of a law enforcement agency must keep a register
14 of warrants and emergency authorisations.
- 15 (2) The register must state, for each warrant issued to a law
16 enforcement officer of the agency—
- 17 (a) the date of issue of the warrant; and
- 18 (b) the name of the judge or magistrate who issued the warrant;
19 and
- 20 (c) the name of the law enforcement officer named in the warrant
21 as the person primarily responsible for executing it; and
- 22 (d) the relevant offence in relation to which the warrant was
23 issued; and
- 24 (e) the period during which the warrant is in force; and
- 25 (f) details of any amendment or extension of the warrant.
- 26 (3) The register must state, for each emergency authorisation given to a
27 law enforcement officer of the agency—
- 28 (a) the date the emergency authorisation was given; and

- 1 (b) the name of the chief officer who gave the emergency
2 authorisation; and
- 3 (c) the name of the law enforcement officer to whom the
4 emergency authorisation was given; and
- 5 (d) the relevant offence in relation to which the emergency
6 authorisation was given; and
- 7 (e) the date when the application for approval of powers exercised
8 under the emergency authorisation was made.

9 **Division 5.3 Inspections**

10 **42 Inspection of records by ombudsman**

- 11 (1) The ombudsman may inspect the records of a law enforcement
12 agency to determine the extent of compliance with this Act by the
13 agency and law enforcement officers of the agency.
- 14 (2) For an inspection under this section, the ombudsman—
- 15 (a) after notifying the chief officer of the law enforcement agency,
16 may enter at any reasonable time premises occupied by the
17 agency; and
- 18 (b) is entitled to have full and free access at all reasonable times to
19 all records of the agency that are relevant to the inspection; and
- 20 (c) may require a member of staff of the agency to give the
21 ombudsman any information that the ombudsman considers
22 necessary, being information that is in the member's
23 possession, or to which the member has access, and that is
24 relevant to the inspection.
- 25 (3) The chief officer must ensure that members of staff of the agency
26 give the ombudsman any assistance the ombudsman reasonably
27 requires to enable the ombudsman to exercise functions under this
28 section.

- 1 (4) The ombudsman must give a written report prepared under the
2 *Annual Reports (Government Agencies) Act 2004* on the results of
3 each inspection under this section in the preceding financial year.
- 4 (5) The report must include a report on the comprehensiveness and
5 adequacy of the records of the agency and the cooperation given by
6 the agency in facilitating the inspection by the ombudsman of those
7 records.
- 8 (6) The report must not include any information that, if made public,
9 could reasonably be expected to—
- 10 (a) endanger a person's safety; or
11 (b) prejudice an investigation or prosecution; or
12 (c) compromise any law enforcement agency's operational
13 activities or methodologies.

14 **Division 5.4 General**

15 **43 Evidentiary certificates**

- 16 (1) The chief officer of a law enforcement agency, or a person assisting
17 the officer, may issue a written certificate signed by the officer or
18 person setting out any facts the officer or person considers relevant
19 in relation to—
- 20 (a) anything done by a law enforcement officer of the agency, or
21 by a person assisting or providing technical expertise to the
22 officer, in connection with the execution of a warrant or in
23 accordance with an emergency authorisation; or
- 24 (b) anything done by a law enforcement officer of the agency in
25 connection with—
- 26 (i) the communication by a person to someone else of; or
27 (ii) the making use of; or
28 (iii) the making of a record of; or

- 1 (iv) the custody of a record of—
2 information obtained by the use of a surveillance device under
3 a warrant, emergency authorisation, corresponding warrant or
4 corresponding emergency authorisation.
- 5 (2) A document purporting to be a certificate issued under
6 subsection (1) or under a provision of a corresponding law that
7 corresponds to subsection (1) is admissible in evidence in any
8 proceeding.
- 9 (3) Subsection (2) does not apply to a certificate to the extent that the
10 certificate sets out facts in relation to anything done in accordance
11 with an emergency authorisation or corresponding emergency
12 authorisation unless the use of powers under that authorisation has
13 been approved under section 29 (Judge may approve emergency use
14 of powers) or under a provision of a corresponding law that
15 corresponds to section 29.

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
- Commonwealth
- function
- in relation to
- judge
- Legislative Assembly
- magistrate
- territory law
- working day.

applicant, for a warrant, means the law enforcement officer who applies, or on whose behalf an application is made, for the warrant.

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

chief officer means—

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

computer means an electronic device for storing or processing information.

corresponding emergency authorisation means an authorisation given under the provisions of a corresponding law that correspond to part 3 (Emergency authorisations).

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

4 **corresponding warrant** means a warrant issued under the provisions
5 of a corresponding law that correspond to part 2 (Warrants).

6 **data surveillance device**—

7 (a) means a device or program capable of being used to record or
8 monitor the input of information into or the output of
9 information from a computer; but

10 (b) does not include an optical surveillance device.

11 **device** includes instrument, apparatus and equipment.

12 **disciplinary proceeding** means a proceeding of a disciplinary nature
13 under a law of any jurisdiction or of the Commonwealth.

14 **emergency authorisation** means an emergency authorisation given
15 under part 3 (Emergency authorisations).

16 **enhancement equipment**, in relation to a surveillance device, means
17 equipment capable of enhancing a signal, image or other
18 information obtained by the use of the surveillance device.

19 **install** includes attach.

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

21 **law enforcement agency** means—

22 (a) the Australian Federal Police; or

23 (b) the Australian Crime Commission.

24 **law enforcement officer**—

25 (a) means—

26 (i) a police officer; or

1 (ii) a member of staff of the Australian Crime Commission;
2 and

3 (b) includes a person who is seconded to a law enforcement
4 agency, including (but not limited to) a member of the police
5 force or police service, and a police officer (however
6 described), of another jurisdiction.

7 ***listening device***—

8 (a) means a device capable of being used to overhear, record,
9 monitor or listen to a conversation or words spoken to or by
10 any person in conversation; but

11 (b) does not include a hearing aid or similar device used by a
12 person with impaired hearing to overcome the impairment and
13 permit that person to hear only sounds ordinarily audible to the
14 human ear.

15 ***maintain***, in relation to a surveillance device, includes—

16 (a) adjust, relocate, repair or service the device; and

17 (b) replace a faulty device.

18 ***optical surveillance device***—

19 (a) means a device capable of being used to record visually or
20 observe an activity; but

21 (b) does not include spectacles, contact lenses or a similar device
22 used by a person with impaired sight to overcome that
23 impairment.

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

26 ***premises*** includes the following, whether in or outside the ACT:

27 (a) land;

28 (b) a building or vehicle;

-
- 1 (c) a part of a building or vehicle;
- 2 (d) any place, whether built on or not.
- 3 ***protected information***, for division 5.1 (Restrictions on use,
4 communication and publication of information)—see section 33.
- 5 ***public officer***—
- 6 (a) means—
- 7 (i) a person employed by, or holding an office established
8 under a law of, the Territory; or
- 9 (ii) a person employed by a territory authority; and
- 10 (b) includes a law enforcement officer.
- 11 ***record*** includes the following:
- 12 (a) an audio, visual or audiovisual record;
- 13 (b) a record in digital form;
- 14 (c) a documentary record prepared from a record mentioned in
15 paragraph (a) or (b).
- 16 ***relevant offence*** means—
- 17 (a) an offence against an ACT law punishable by imprisonment of
18 3 years or more; or
- 19 (b) an offence against an ACT law prescribed by regulation.
- 20 ***relevant proceeding*** means any of the following:
- 21 (a) the prosecution of a relevant offence;
- 22 (b) a proceeding for the confiscation, forfeiture or restraint of
23 property or for the imposition of a pecuniary penalty in
24 connection with a relevant offence;
- 25 (c) a proceeding for the protection of a child or intellectually
26 impaired person;

- 1 (d) a proceeding concerning the validity of a warrant, emergency
2 authorisation, corresponding warrant or corresponding
3 emergency authorisation;
- 4 (e) a disciplinary proceeding against a public officer;
- 5 (f) a coronial inquest or inquiry if, in the opinion of the coroner,
6 the event that is the subject of the inquest or inquiry may have
7 resulted from the commission of a relevant offence;
- 8 (g) a proceeding under the *Mutual Assistance in Criminal Matters*
9 *Act 1987* (Cwlth), section 13 in relation to a criminal matter
10 that concerns an offence—
- 11 (i) against the laws of the foreign country that made the
12 request resulting in the proceeding; and
- 13 (ii) punishable by imprisonment of 3 years or more.
- 14 (h) a proceeding for the taking of evidence under the *Extradition*
15 *Act 1988* (Cwlth), section 43 to the extent that the proceeding
16 relates to a relevant offence;
- 17 (i) a proceeding for the extradition of a person from another
18 jurisdiction to the ACT, to the extent that the proceeding
19 relates to a relevant offence;
- 20 (j) a proceeding under the *International War Crimes Tribunals*
21 *Act 1995* (Cwlth), part 4.1;
- 22 (k) a proceeding of the International Criminal Court.
- 23 **remote application** for a warrant, means an application mentioned
24 in section 12 or section 20.
- 25 **report**, of a conversation or activity, includes a report of the
26 substance, meaning or purport of the conversation or activity.
- 27 **retrieval warrant** means a warrant issued under division 2.3
28 (Retrieval warrants).

- 1 ***surveillance device*** means—
- 2 (a) a data surveillance device, a listening device, an optical
- 3 surveillance device or a tracking device; or
- 4 (b) a device that is a combination of any 2 or more of the devices
- 5 mentioned in paragraph (a); or
- 6 (c) a device of a kind prescribed by regulation.
- 7 ***surveillance device warrant*** means a warrant issued under
- 8 division 2.2 (Surveillance device warrants) or under section 29 (3)
- 9 (Judge may approve emergency use of powers).
- 10 ***tracking device*** means an electronic device capable of being used to
- 11 work out or monitor the location of a person or an object or the
- 12 status of an object.
- 13 ***unsworn application*** for a warrant, means an application mentioned
- 14 in section 11 (4) (Application for surveillance device warrant) or
- 15 section 19 (4) (Application for retrieval warrant).
- 16 ***use***, of a surveillance device, includes use of the device to record a
- 17 conversation or other activity.
- 18 ***vehicle*** includes aircraft and vessel.
- 19 ***warrant*** means surveillance device warrant or retrieval warrant.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2010.

2 Notification

Notified under the Legislation Act on 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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