

2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Justice and Consumer Affairs)

# Workplace Privacy Amendment Bill 2016

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# Workplace Privacy Amendment Bill 2016

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## A Bill for

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

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

- 1 **1 Name of Act**
- 2 This Act is the *Workplace Privacy Amendment Act 2016*.
- 3 **2 Commencement**
- 4 This Act commences on a day fixed by the Minister by written  
5 notice.
- 6 *Note 1* The naming and commencement provisions automatically commence on  
7 the notification day (see [Legislation Act](#), s 75 (1)).
- 8 *Note 2* A single day or time may be fixed, or different days or times may be  
9 fixed, for the commencement of different provisions (see [Legislation](#)  
10 [Act](#), s 77 (1)).
- 11 *Note 3* If a provision has not commenced within 6 months beginning on the  
12 notification day, it automatically commences on the first day after that  
13 period (see [Legislation Act](#), s 79).
- 14 **3 Legislation amended**
- 15 This Act amends the *Workplace Privacy Act 2011*.
- 16 *Note* This Act also amends the following legislation:
- 17 • [Magistrates Court Act 1930](#) (see s 20)
- 18 • [Work Health and Safety Act 2011](#) (see s 21).
- 19 **4 Additional requirements for tracking devices**  
20 **New section 17 (2)**
- 21 *insert*
- 22 (2) However, subsection (1) does not apply if—
- 23 (a) it is not reasonably practicable to have a notice on the vehicle  
24 or other thing; and
- 25 (b) the employer has taken reasonable steps to notify workers that  
26 the vehicle or other thing is being tracked.

- 1 **5 Section 24**
- 2 *substitute*
- 3 **24 Meaning of *covert surveillance***
- 4 In this Act:
- 5 *covert surveillance*—
- 6 (a) means surveillance conducted by an employer of a worker—
- 7 (i) in a workplace without notifying the worker under part 3
- 8 (Notified surveillance); or
- 9 (ii) outside a workplace; but
- 10 (b) does not include prohibited surveillance.
- 11 **6 Definitions—pt 4**
- 12 **Section 25, definition of *unlawful activity***
- 13 *omit*
- 14 territory law or the law of another jurisdiction
- 15 *substitute*
- 16 law in force in the Territory
- 17 **7 Application for covert surveillance authority**
- 18 **Section 26 (1), except notes**
- 19 *omit everything after*
- 20 surveillance of a worker
- 21 *substitute*
- 22 only for the purpose of finding out if the worker is engaged in an
- 23 unlawful activity—
- 24 (a) in the workplace; or

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

3 **8 Section 26 (2) (a)**

4 *substitute*

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

10 **9 Issuing covert surveillance authority**  
11 **Section 28 (2) and note**

12 *substitute*

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

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

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

- 1 (b) for surveillance of a worker outside a workplace—
- 2 (i) the seriousness of the unlawful activity in which the
- 3 worker is reasonably believed to be engaged; and
- 4 (ii) whether there are other appropriate ways to find out if the
- 5 worker is engaged in the unlawful activity; and
- 6 (iii) whether it is more appropriate for the unlawful activity to
- 7 be investigated by a law enforcement agency; and
- 8 (iv) whether the unlawful activity is directly related to the
- 9 worker's work for the employer; and
- 10 (v) whether surveillance of the worker will be undertaken in
- 11 a place in which a person would have a heightened
- 12 expectation of privacy; and
- 13 (c) whether, and the extent to which, the proposed surveillance
- 14 might intrude on the worker's or someone else's privacy; and
- 15 (d) whether the person nominated to be the surveillance supervisor
- 16 in the application is suitable.
- 17 *Note* Section 29 deals with appointing a surveillance supervisor.

18 **10 Section 28 (4) (a)**

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

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

*insert*

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

(a) may only authorise surveillance to be undertaken from a public place; and

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

**Examples—par (b)**

1 a toilet facility

2 a change room

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

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

**Examples—par (c)**

1 the interior of a residence

2 the enclosed yard of a residence

(6) In this section:

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

(a) by payment, membership of a body or otherwise; or

(b) by entitlement or permission.



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

3 *insert*

4 (1A) A covert surveillance authority that authorises surveillance outside  
5 the workplace is subject to the following conditions:

6 (a) any surveillance of people other than the worker is destroyed  
7 or obscured as soon as possible after the record is made;

8 (b) if the surveillance is undertaken by a third party—the third  
9 party complies with this Act and any applicable privacy laws.

10 **13 Offence—use and disclosure of covert surveillance other**  
11 **than for a relevant purpose**  
12 **Section 39 (3) (b) and (c)**

13 *omit*

14 while at work for the employer

15 *substitute*

16 in relation to the worker's work for the employer

17 **14 Section 39 (3) (d)**

18 *omit everything after*

19 unlawful activity

20 *substitute*

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

1 **15 Surveillance of workers not at work**  
2 **New section 42 (2) (d)**

3 *before the note, insert*

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

6 **16 New part 5A**

7 *insert*

8 **Part 5A Enforcement**

9 **43A The regulator**

10 (1) The regulator has the following functions:

11 (a) to advise and make recommendations to the Minister and  
12 report on the operation and effectiveness of this Act;

13 (b) to monitor and enforce compliance with this Act;

14 (c) to provide advice and information on workplace privacy to  
15 employers and employees under this Act and to the  
16 community;

17 (d) to conduct and defend proceedings under this Act before a  
18 court or tribunal;

19 (e) any other function given to the regulator by this Act.

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

23 (2) The regulator has the same powers to obtain information in relation  
24 to a possible contravention of this Act or that will assist the  
25 regulator to monitor or enforce compliance with this Act that the  
26 regulator has under the *Work Health and Safety Act 2011*,  
27 section 155 in relation to that Act.

1 (3) In addition, the regulator has all the powers that an inspector has  
2 under this Act.

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

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

7 **43B Inspectors**

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

10 **43C Functions and powers of inspectors**

11 (1) An inspector has the following functions and powers under this Act:

12 (a) to provide information and advice about compliance with this  
13 Act;

14 (b) to require compliance with this Act through the issuing of  
15 notices under the [Work Health and Safety Act 2011](#), part 10  
16 (Enforcement measures);

17 (c) to investigate contraventions of this Act and assist in the  
18 prosecution of offences.

19 (2) The [Work Health and Safety Act 2011](#), section 161 (Conditions on  
20 inspectors' compliance powers) and section 162 (Inspectors subject  
21 to regulator's directions) apply to an inspector in relation to the  
22 exercise of a function or power under this Act.

- 1     **43D     Securing compliance**
- 2           (1) An inspector may exercise powers the inspector has under the
- 3           following provisions of the *Work Health and Safety Act 2011* for the
- 4           purpose of securing compliance with this Act:
- 5               (a) division 9.3 (Powers relating to entry);
- 6               (b) division 9.5 (Other matters).
- 7           (2) The following provisions of the *Work Health and Safety Act 2011*
- 8           apply in relation to any exercise of those functions:
- 9               (a) division 9.4 (Damage and compensation);
- 10              (b) division 9.6 (Offences in relation to inspectors).
- 11          (3) For this section, the provisions of the *Work Health and Safety*
- 12          *Act 2011* mentioned in this section apply as if—
- 13              (a) a reference in those provisions to a workplace were a reference
- 14              to a workplace under this Act; and
- 15              (b) any other necessary changes were made.
- 16     **43E     Enforcement measures**
- 17           (1) The *Work Health and Safety Act 2011*, part 10 (Enforcement
- 18           measures) applies for the purpose of enforcing compliance with this
- 19           Act.
- 20           (2) For this section, the *Work Health and Safety Act 2011*, part 10
- 21           applies as if—
- 22              (a) a reference in that part to a workplace were a reference to a
- 23              workplace under this Act; and
- 24              (b) a reference to contravening a provision were a reference to
- 25              contravening a provision of this Act; and

1 (c) any other necessary changes were made.

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

6 **17 Offences—security of surveillance records**  
7 **Section 44 (2) (b)**

8 *omit*

9 de-indentify

10 *substitute*

11 de-indentify

12 **18 Report on covert surveillance to Legislative Assembly**  
13 **Section 45**

14 *omit*

15 **19 Dictionary, new definition of *regulator***

16 *insert*

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

18 **20 Magistrates Court Act 1930**  
19 **New section 291Q (1) (a) (vi)**

20 *insert*

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

22 **21 Work Health and Safety Act 2011**  
23 **Schedule 2, part 2.1, new section 2.2 (2) (i)**

24 *before the note, insert*

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

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## Endnotes

**1 Presentation speech**

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

**2 Notification**

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

**3 Republications of amended laws**

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

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