

2000  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Stanhope)

## Surveillance Cameras (Privacy) Bill 2000

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(Mr Stanhope)

**Surveillance Cameras (Privacy) Bill 2000**

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**A BILL**

FOR

**An Act to regulate the collection of information by  
surveillance cameras**

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

**PART 1—PRELIMINARY**

**1 Name of Act**

This Act is the *Surveillance Cameras (Privacy) Act 2000*.

**2 Commencement**

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

*Note 1* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

*Note 2* A single day or time may be fixed, or different days or times may be fixed for different provisions (see *Interpretation Act 1967*, s 10C (1)).

5 *Note 3* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

### 3 Dictionary

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 words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*model code*—see section 9 and Schedule 2' means that the expression '*model code*' is defined in those provisions and the definition applies to this Act as a whole.

15 *Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

### 4 Notes

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

20 *Note* See *Interpretation Act 1967*, subsections 12 (1), (4) and (5) for the legal status of notes.

### 5 Objects

The objects of this Act are as follows:

- 25 (a) to protect the privacy of persons whose lawful activity is recorded in the course of surveillance;
- (b) to ensure that information collected in the course of surveillance is used only for the following purposes:
- 30 (i) to deter or prevent the commission of offences;
- (ii) to assist in the prosecution of offences;
- (iii) to assist in civil proceedings related to the commission of offences;
- (iv) to enforce laws imposing civil penalties;
- (v) to protect public revenue;
- (vi) purposes related to those mentioned elsewhere in this paragraph.

## **PART 2—CONTROL OF SURVEILLANCE**

### **6 Compliance with Surveillance Camera Principles**

A person must not, without reasonable excuse, contravene a surveillance camera principle.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **7 Compliance with Surveillance Camera Code**

(1) A surveillance manager must not, without reasonable excuse, contravene the Surveillance Camera Code.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A surveillance operator, or a surveillance record-keeper, engaged by a surveillance manager must not, without reasonable excuse, contravene the Surveillance Camera Code (in its application to the surveillance manager).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **8 Inspection**

(1) The Minister may, in writing, appoint a public servant as an inspector for this section.

(2) An inspector may, for the purpose of ensuring compliance with this Act, require any or all of the following persons to make relevant records, surveillance equipment or surveillance facilities under the person's control available for inspection by the inspector (or another inspector):

- (a) a person who has authorised a surveillance operation;
- (b) a surveillance manager;
- (c) a surveillance operator;
- (d) a surveillance record-keeper.

(3) An inspector may require a person mentioned in subsection (2) to provide facilities for the inspector to view a film that is a surveillance record under the person's control at the place where the film is kept, or at another place occupied by the person.

(4) An inspector may require a person mentioned in subsection (2) to provide any other assistance (including answering questions about the surveillance operation) reasonably necessary for the purposes of an inspection.

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(5) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(6) In this section—

- 5     ***relevant records*** means surveillance records or any other documents relating to a surveillance operation or the decision to undertake a surveillance operation (including an annual evaluation report under clause 4 of the Surveillance Camera Code).

## PART 3—PRINCIPLES AND CODE

### *Division 3.1—Surveillance Camera Principles*

#### 9 What are the Surveillance Camera Principles?

The *Surveillance Camera Principles* are the principles set out in Schedule 1.

### *Division 3.2—Surveillance Camera Code*

#### 10 What is the Surveillance Camera Code?

(1) The model Surveillance Camera Code (the *model code*) is the code set out in Schedule 2.

(2) The model code applies (as the *Surveillance Camera Code*) to a surveillance manager or a surveillance operator or surveillance record-keeper engaged by the manager as varied (if at all) under section 11.

#### 11 Variation of model code for individual surveillance operators

(1) On the written application of a surveillance manager, the Minister may, by written notice to the manager, vary the model code as it applies to the manager and any surveillance operator or surveillance record-keeper engaged by the manager.

(2) The Minister may approve a variation of the model code only if—

(a) the variation is necessary for operational purposes; and

(b) the model code, as varied, would be consistent with the Surveillance Camera Principles and the rest of this Act.

### *Division 3.3—Review of code variations*

#### 12 Definitions

In this Division, the following definitions apply:

*AAT reviewable decision* means a code variation decision actually made by any of the following persons:

(a) the Minister (not including a delegate of the Minister);

(b) the chief police officer;

(c) the chief executive.

**code variation decision** means a decision of the Minister—

- (a) to approve an application for the variation of the model code under section 11; or
- (b) to refuse to approve such an application.

5     **internally reviewable decision** means a code variation decision made by a delegate of the Minister other than the chief police officer or the chief executive.

### 13     **Notice of code variation decisions**

(1)     The Minister must—

- 10     (a) give written notice of a code variation decision to the applicant for the variation of the model code; and
- (b) publish a notice of the decision in a daily newspaper (published and circulating in the Territory).

(2)     A notice of a code variation decision must—

- 15     (a) state the reasons for the decision;
- (b) for an internally reviewable decision—state the requirements for making an objection to the decision under section 15; and
- (c) for an AAT reviewable decision—be in accordance with the requirements of the code of practice in force under
- 20     subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

### 14     **Review of AAT reviewable decisions**

Application may be made to the administrative appeals tribunal for the review of an AAT reviewable decision.

### 25     15     **Review of internally reviewable decisions**

(1)     A person whose interests are affected by an internally reviewable decision may object to the decision by written notice to the Minister.

(2)     An objection must be made within 4 weeks after the notice of the decision is given under section 13.

30     (3)     An objection must be in writing stating the grounds for the objection.



(4) The Minister must ensure that the individual who considers the objection is not the individual who made the decision against which the objection is made.

*Example*

The Minister could do this by delegating the functions conferred by this section to a person other than the person who made the initial decision.

## **16 Decisions on objections**

(1) On an objection being made under section 15, the Minister must, by written notice to the objector within 4 weeks after receiving the objection—

- (a) allow the objection and substitute a new decision for the decision objected to; or
- (b) disallow the objection.

(2) The Minister must—

- (a) give written notice of a decision on an objection to the applicant for the variation of the model code, if the applicant is not the objector; and
- (b) publish a notice of the decision in a daily newspaper (published and circulating in the Territory).

(3) A notice of a decision on an objection must be in accordance with the requirements of the code of practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

## **17 AAT review of decisions on objections**

Application may be made to the administrative appeals tribunal for a review of a decision on an objection under section 16.

## PART 4—MISCELLANEOUS

### 18 Relationship between this Act and the Information Privacy Principles

(1) If the Information Privacy Principles apply to surveillance by a surveillance manager, this Act must be interpreted in that application, so far as is reasonably possible, to be consistent with those principles.

(2) If, there is nevertheless an inconsistency in that application between this Act and the Information Privacy Principles, it is intended that the Information Privacy Principles prevail to the extent of the inconsistency.

*Note* The Information Privacy Principles (see dictionary definition below) apply to federal and ACT Government agencies and courts. For the ACT application of those principles, see *Privacy Act 1988* (Cwlth), section 15A.

### 19. Conduct of directors, servants and agents

(1) If, for this Act, it is necessary to establish the state of mind of a corporation or a natural person in relation to particular conduct, it is sufficient to show—

(a) that a director, servant or agent of the corporation, or a servant or agent of the person, had that state of mind; and

(b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a corporation or person includes a reference to—

(a) the knowledge, intention, opinion, belief or purpose of the corporation or person; and

(b) the corporation's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a corporation or a natural person by a director, servant or agent of the corporation, or a servant or agent of the person, within the scope of his or her actual or apparent authority must be taken, for this Act, to have been engaged in also by the corporation or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) A natural person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted.

(5) In this section—

5 *conduct* includes a failure or refusal to engage in conduct.

*director*, of a corporation, includes a member of a corporation incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

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## SCHEDULE 1

(See s 9)

### SURVEILLANCE CAMERA PRINCIPLES

(*Surveillance Cameras (Privacy) Act 2000*, sch 1)

5 *Note* See the dictionary to the *Surveillance Cameras (Privacy) Act 2000* for definitions of expressions used in these principles.

#### 1 Permissible surveillance purposes

10 A person may only manage a surveillance operation, undertake surveillance or keep surveillance records, or authorise another person to do so, for 1 or more of the following purposes (*permissible surveillance purposes*):

- (a) to deter or prevent the commission of offences;
- (b) to assist in the prosecution of offences;
- (c) to assist in civil proceedings related to the commission of offences;
- 15 (d) to enforce laws imposing civil penalties;
- (e) to protect public revenue.

#### 2 Authorisation of surveillance

A person may authorise surveillance to be undertaken only if the person believes on reasonable grounds that—

- 20 (a) surveillance will promote a permissible surveillance purpose that is directly related to a function or activity of the person; and
- (b) no reasonable alternative would promote that purpose as effectively as surveillance; and
- 25 (c) the benefit to the person from promotion of that purpose by surveillance would substantially outweigh the detriment to other persons from the infringement of privacy and other rights resulting from the surveillance.

30 *Note* The model Surveillance Camera Code (*Surveillance Cameras (Privacy) Act 2000*, sch 2, cl 1) provides that a surveillance manager must not undertake surveillance without an authorisation that sets out the reasons for the authoriser's belief that surveillance is justified under this principle.

#### 3 Unlawful and unfair surveillance

A person must not undertake surveillance by unlawful or unfair means.

**SCHEDULE 1—continued**

**4 Notice of surveillance**

(1) A person must not manage a surveillance operation without giving notice of the surveillance by—

- (a) a sign displayed in the place to be subject to surveillance during any period during which surveillance may be being undertaken; and
- (b) if the surveillance is for a particular period—a notice prominently published in a daily newspaper (published and circulating in the Territory) no earlier than 7 days before the commencement of the surveillance.

(2) A notice of surveillance must indicate—

- (a) the period during which surveillance is undertaken, or whether the surveillance is for an indefinite period; and
- (b) the times of day during which surveillance is undertaken; and
- (c) that at those times of day during any such period cameras operated by trained personnel may be monitoring activities in the area.

**5 Storage and security of surveillance records**

A surveillance record-keeper must take reasonable measures—

- (a) to protect the surveillance records against loss, unauthorised access, use, modification and disclosure and other misuse; and
- (b) if it is necessary for the surveillance records to be given to a person in connection with the provision of a service to the surveillance record-keeper—to prevent unauthorised use or disclosure of information contained in the surveillance record.

**6 Information relating to surveillance records kept by surveillance record-keeper**

(1) A surveillance record-keeper of surveillance records must take reasonable measures to enable a person to ascertain—

- (a) whether any of the surveillance records depict the person or contain personal information about the person; and
- (b) if any of the surveillance records contain personal information about the person—
  - (i) the nature of that information; and

**SCHEDULE 1—continued**

(ii) the main purposes for which that information may be used;  
and

(iii) the steps that the person must take if the person wishes to  
view a film or otherwise to obtain access to the  
information.

5

(2) A surveillance record-keeper is not required under subclause (1) to  
give a person information if the surveillance record-keeper is required or  
authorised to refuse to give that information to the person under a law of  
the Territory that provides for access by persons to documents.

10 (3) A surveillance record-keeper must maintain a record setting out the  
following:

(a) the nature of the surveillance records kept by the surveillance  
record-keeper that contain personal information (*personal  
information records*);

15 (b) the purpose for which each type of personal information record is  
kept;

(c) the classes of individuals about whom personal information  
records are kept;

20 (d) the period for which each type of personal information record is  
kept;

(e) the persons who are entitled to have access to personal  
information contained in the surveillance records, and the  
conditions under which they are entitled to have that access;

25 (f) the steps that should be taken by persons wishing to obtain access  
to that information.

(4) A surveillance record-keeper must—

(a) make the record maintained under subclause (3) available for  
inspection by members of the public; and

30 (b) give the chief executive, in the month of June in each year, a copy  
of the record that is up-dated to reflect the surveillance records  
currently kept by the surveillance record-keeper.

**7 Access to surveillance records containing personal information**

35 (1) A surveillance record-keeper of a surveillance record that contains  
personal information must not refuse to provide the individual concerned  
with access to the information.

**SCHEDULE 1—continued**

(2) A surveillance record-keeper is not required under subclause (1) to give an individual access to a surveillance record to the extent that the surveillance record-keeper is expressly required or authorised to refuse to provide the individual with access to that record under a law of the Territory that provides for access by persons to documents.

(3) If a surveillance record contains personal information about a number of persons, in giving access to any of those persons under this clause, the surveillance record-keeper must take reasonable measures to protect the privacy of the others, subject to these principles.

**8 Change of surveillance records containing personal information**

(1) A surveillance record-keeper of a surveillance record that contains personal information must take any reasonable measures, by making appropriate changes to the record that are necessary to ensure that the record—

(a) is accurate; and

(b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up-to-date, complete and not misleading.

(2) The obligation imposed on a surveillance record-keeper by subclause (1) is subject to any applicable limitation in a law of the Territory that provides a right to require the documents to be changed.

(3) If an individual requests that a surveillance record-keeper change personal information about the individual on a surveillance record held by the surveillance record-keeper, and the surveillance record-keeper refuses to comply with the request, the surveillance record-keeper must (if so required by the individual) take reasonable measures to attach to the surveillance record any statement provided by the individual of the change sought.

(4) A surveillance record-keeper must take reasonable measures to comply with a request under subclause (3) if a decision or recommendation is made under a law of the Territory to the effect that the surveillance record should be changed as requested.

(5) In this principle—

*change* includes correction, addition and deletion of a part or all of a surveillance record.

**SCHEDULE 1—continued**

**9 Use of personal information in surveillance records**

(1) This principle applies to the use of personal information contained in a surveillance record by the surveillance record-keeper of that record.

5 (2) The surveillance record-keeper may use the information only for a permissible surveillance purpose, unless subclause (3) applies.

(3) The surveillance record-keeper may use the information for a purpose other than a permissible surveillance purpose if—

(a) the individual concerned has consented to the use; or

10 (b) the surveillance record-keeper believes on reasonable grounds that the use is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person; or

(c) the use is expressly required or authorised by or under law; or

15 (d) the use is reasonably necessary for the administration of the *Surveillance Cameras (Privacy) Act 2000* (which includes these principles and the Surveillance Camera Code); or

(e) the use is for a purpose reasonably related to a permissible surveillance purpose or a purpose mentioned elsewhere in this subclause.

20 *Example (paragraph (e)):*

Use of an actual surveillance record to monitor the effectiveness of lawful surveillance methods or equipment (eg in the conduct of an audit).

25 (4) The surveillance record-keeper must attach to the surveillance record containing the information a note of any use mentioned in subclause (3).

(5) The surveillance record-keeper must not use the information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the permissible surveillance purposes, the information is accurate, up-to-date and complete.

30 **10 Disclosure of personal information in surveillance records**

(1) This principle applies to the disclosure of personal information contained in a surveillance record by the surveillance record-keeper of that record.



**SCHEDULE 1—continued**

(2) The surveillance record-keeper may disclose the information to another person, body or agency (other than the individual concerned) only for a permissible surveillance purpose, unless subclause (3) applies.

(3) The surveillance record-keeper may disclose the information to another person, body or agency (other than the individual concerned) for a purpose other than a permissible surveillance purpose if—

- (a) the individual concerned has consented to the disclosure; or
- (b) the surveillance record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person; or
- (c) the disclosure is expressly required or authorised by or under law; or
- (d) the disclosure is reasonably necessary for the administration of the *Surveillance Cameras (Privacy) Act 2000* (which includes these principles and the Surveillance Camera Code); or
- (e) the disclosure is for a purpose reasonably related to a permissible surveillance purpose or a purpose mentioned elsewhere in this subclause.

*Example (paragraph (e)):*

Disclosure of an actual surveillance record to monitor the effectiveness of lawful surveillance methods or equipment (eg in the conduct of an audit).

(4) The surveillance record-keeper must attach a note of any disclosure mentioned in subclause (3) to the surveillance record containing the information.

## SCHEDULE 2

(See s 10)

### MODEL SURVEILLANCE CAMERA CODE

*(Surveillance Cameras (Privacy) Act 2000, sch 2)*

*Note 1* See the dictionary to the *Surveillance Cameras (Privacy) Act 2000* for definitions of expressions used in this code.

*Note 2* This code may be varied in its application to a particular surveillance manager and surveillance operators and surveillance record-keepers engaged by the manager (see *Surveillance Cameras (Privacy) Act 2000*, s 11).

#### 1 Authorisation to undertake surveillance

(1) A surveillance manager must not undertake a surveillance operation for another person unless the person gives the manager a written authorisation under this clause.

(2) An authorisation must be—

(a) if the surveillance is to be undertaken for an administrative unit or a part of an administrative unit—signed by the chief executive of the administrative unit (and not by a delegate of the chief executive); and

(b) if the surveillance is to be undertaken for a Commonwealth agency—signed by the person in charge of the agency (and not by a delegate of that person); and

(c) if the surveillance is to be undertaken for an individual or a partnership—signed by the individual or a partner; and

(d) if the surveillance is being undertaken for a corporation—signed by a director, member or senior officer of the corporation, or the manager of operations of the corporation at the place or premises where the surveillance is to be undertaken.

(3) An authorisation must state the reasons for the surveillance, and the reasons for the authoriser's belief that—

(a) surveillance will promote a permissible surveillance purpose that is directly related to a function or activity of the authoriser; and

(b) no reasonable alternative would promote that purpose as effectively as surveillance; and

(c) the benefit to the authoriser from promotion of that purpose by surveillance would substantially outweigh the detriment to other persons from the infringement of privacy and other rights resulting from the surveillance.

**SCHEDULE 2—continued**

*Note* The Surveillance Camera Principles (Surveillance Cameras (Privacy) Act 2000, sch 1, cl 2) provide that a person may only authorise a surveillance operation if there are reasonable grounds for the beliefs listed in paragraphs (a), (b) and (c) of this clause.

**2 Training**

(1) A surveillance manager who undertakes a surveillance operation must take reasonable measures to ensure that all surveillance operators and surveillance record-keepers engaged for the operation (including the manager, if he or she personally undertakes surveillance for the operation) have undertaken adequate training to achieve the objects mentioned in subclause (2).

(2) The objects of surveillance training are to ensure that surveillance operators and surveillance record-keepers have the following abilities, competence and knowledge, as relevant to each of their functions in a surveillance operation:

- (a) ability to avoid undue infringements of privacy or other rights of persons while undertaking surveillance or record-keeping;
- (b) competence to ensure that only material relevant to the purpose for which the operation is being undertaken is collected;
- (c) knowledge of the obligations of surveillance managers, surveillance operators and surveillance record-keepers under the *Surveillance Cameras (Privacy) Act 2000* (which includes this Code and the Surveillance Camera Principles) and the Information Privacy Principles (if relevant);
- (d) technical knowledge and competence to operate the relevant surveillance equipment.

(3) This clause does not apply if it is necessary for an untrained person to operate surveillance equipment (or to keep surveillance records) because of an emergency that threatens significant injury to persons or damage to property.

**3 Private areas**

(1) A surveillance manager must take reasonable measures to ensure that private areas are not subject to surveillance.

(2) A surveillance operator must not subject private areas to surveillance.

**SCHEDULE 2—continued**

(3) A surveillance record-keeper must take reasonable measures to ensure that surveillance records are not kept of surveillance of private areas.

(4) In this clause—

5       *private area* means private premises, or toilets or changing rooms in public premises or a public place.

**4 Annual evaluation**

10       (1) As soon as possible after 1 July each financial year, a surveillance manager must commission an independent evaluation report of all surveillance operations conducted by the manager in the previous financial year.

(2) The surveillance manager must not commission a person to prepare an independent evaluation report if—

- 15       (a) the person is employed or engaged, or has a substantial direct or indirect interest, in the business of the surveillance manager; or
- (b) the person is employed or engaged, or has a substantial direct or indirect interest, in the business of a person who has authorised the surveillance manager to undertake surveillance; or
- 20       (c) the person has close personal ties with the surveillance manager (or a person engaged by the surveillance manager for a surveillance operation) or a person who has authorised the surveillance manager to undertake surveillance.

25       (3) An independent evaluation report must include an assessment of the extent to which each surveillance operation evaluated has been undertaken in accordance with the *Surveillance Cameras (Privacy) Act 2000* (which includes this code and the Surveillance Camera Principles) and the Information Privacy Principles (if relevant).

(4) A surveillance manager must keep a copy of an independent evaluation report for at least 5 years after it is given to the manager.

## DICTIONARY

(See s 3)

**camera** includes a device capable of depicting a view of place, whether or not that depiction is recorded on film.

**film** includes video tape and any other means for recording images (with or without sound) by surveillance.

**Information Privacy Principles** means the principles set out in the *Privacy Act 1988* (Cwlth), section 14, in their application in the Territory.

**model code**—see section 10 and Schedule 2.

**offence** means an offence against a law of the Territory.

**permissible surveillance purpose**—see *Surveillance Camera Principles*, clause 1.

**personal information** means information or an opinion (whether true or not) depicted or included in a surveillance record, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**public place** means a place or vehicle to which the public has access, while it has such access, whether or not payment is required to enter the place.

**surveillance** means the observation of a public place by means of a camera for the purpose of observing individuals in or at that place, whether or not the observation is recorded on film.

**Surveillance Camera Code**, in relation to surveillance means the model code as varied (if at all) in its application to the relevant surveillance manager under section 11.

**Surveillance Camera Principles**—see section 9 and Schedule 1.

**surveillance manager** means the person in charge of a surveillance operation.

**surveillance operator** means a person who undertakes surveillance.

**surveillance record** means—

- (a) a film recorded in the course of surveillance; or
- (b) any documents or databases containing information obtained from a film recorded in the course of surveillance.

**DICTIONARY—continued**

*surveillance record-keeper*, of a surveillance record, means a person who possesses or controls the record.

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**Endnote**

**Penalty units**

See section 33AA of the *Interpretation Act 1967*.