

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**SURVEILLANCE CAMERAS (PRIVACY) BILL
2000**

EXPLANATORY MEMORANDUM

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Surveillance Cameras (Privacy) Bill 2000

Outline

This is a Bill for an Act to regulate the collection of information by surveillance cameras and to ensure the protection of the privacy of persons whose lawful activity is recorded in the course of surveillance and that information collected in the course of surveillance is used only for the permitted purposes.

Formal Clauses

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill and its commencement date.

Clause 3 - Dictionary

The dictionary at the end of the Bill defines certain words and expressions used in it, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in the Bill.

Clause 4 - Notes

This clause provides that a note included in the Bill is explanatory and is not part of the Bill.

Clause 5 - Objects

This clause sets out the objects of the Bill as being:

- to protect the privacy of persons whose lawful activity is recorded in the course of surveillance;
- to ensure that information collected in the course of surveillance is used only for the following purposes:
- to deter or prevent the commission of offences;
- to assist in the prosecution of offences;

- to assist in civil proceedings related to the commission of offences;
- to enforce laws imposing civil penalties;
- to protect public revenue; and
- purposes related to those mentioned elsewhere in this paragraph.

Part 2—Control of Surveillance

Clause 6 - Compliance with Surveillance Camera Principles

This clause provides that a person must not, without reasonable excuse, contravene a surveillance camera principle.

The maximum penalty for breach of this provision is 50 penalty units, imprisonment for 6 months or both.

Clause 7 - Compliance with Surveillance Camera Code

This clause provides that a surveillance manager, surveillance operator or a surveillance record keeper must not, without reasonable excuse, contravene the Surveillance Camera Code.

The maximum penalty for breach of this provision is 50 penalty units, imprisonment for 6 months or both.

Clause 8 - Inspection

This clause provides that the Minister may, in writing, appoint a public servant as an inspector for this section. The 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:

- a person who has authorised a surveillance operation;
- a surveillance manager;
- a surveillance operator;
- a surveillance record-keeper.

An inspector will have the power to:

- require a person to provide facilities for the inspector to view a film that is a surveillance record under the person's control
- provide any other assistance (including answering questions about the surveillance operation) that is reasonably necessary for the purpose of the inspection.

It will be an offence for a person, without reasonable excuse, to fail to comply with a requirement under this section.

The maximum penalty for breach of this provision is 50 penalty units, imprisonment for 6 months or both.

Part 3—Principles and Code

Division 1.1—Surveillance Camera Principles

Clause 9 – What are the Surveillance Camera Principles

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

Division 1.2—Surveillance Camera Code

Clause 10 - What is the Surveillance Camera Code?

This clause establishes that the model Surveillance Camera Code (the *model code*) is the code set out in Schedule 2. The model code applies to a surveillance manager or a surveillance operator or surveillance record-keeper engaged by the manager as varied (if at all) under the next section.

Clause 11 - Variation of model code for individual surveillance operators

This provision establishes the method of varying the model code to apply to a particular manager or operator. On the written application of a surveillance manager, the Minister may vary the model code as it applies to the manager and any surveillance operator or surveillance record-keeper engaged by the manager.

However, the Minister may approve a variation of the model code only if the variation is necessary for operational purposes; and the model code, as

varied, would be consistent with the Surveillance Camera Principles and the rest of this Act.

Division 1.3—Review of code variations

Clause 12 - Definitions

This provision sets out definitions to be used in this Division.

Clause 13 - Notice of code variation decisions

Under this provision, the Minister must give written notice of a code variation decision to the applicant for the variation of the model code; and publish a notice of the decision in a daily newspaper (published and circulating in the Territory).

A notice of a code variation decision must—

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

Clause 14 - Review of AAT reviewable decisions

Under this provision, an application may be made to the administrative appeals tribunal for the review of an AAT reviewable decision.

Clause 15 - Review of internally reviewable decisions

Under this provision, a person whose interests are affected by an internally reviewable decision may object, in writing, to the decision by written notice to the Minister within 4 weeks after the notice of the decision is given.

The Minister must ensure that the person who considers the objection is not the person who made the decision against which the objection is made.

Clause 16 - Decisions on objections

This provision ensures that on an objection being made, the Minister must, by written notice to the objector within 4 weeks after receiving the objection allow the objection and substitute a new decision for the decision objected to; or disallow the objection.

The Minister must 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 publish a notice of the decision in a daily newspaper (published and circulating in the Territory).

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*.

Clause 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.

Part 2—miscellaneous

Clause 18 - Relationship between this Act and the Information Privacy Principles

This clause provides that 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.

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.

Clause 19 - Conduct of directors, servants and agents

This clause provides that if 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

- that a director, servant or agent of the corporation, or a servant or agent of the person, had that state of mind; and
- that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

The clause also provides that 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 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.

SCHEDULE 1(See section 9)

SURVEILLANCE CAMERA PRINCIPLES

Principle 1 - Permissible surveillance purposes

This principle reflects the objects of the Act and provides that 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*):

- to deter or prevent the commission of offences;
- to assist in the prosecution of offences;
- to assist in civil proceedings related to the commission of offences;
- to enforce laws imposing civil penalties;
- to protect public revenue.

Principle 2 - Authorisation of surveillance

This principle consideration of alternatives to surveillance by providing that a person may authorise surveillance to be undertaken only if the person believes on reasonable grounds that—

- surveillance will promote a permissible surveillance purpose that is directly related to a function or activity of the person; and
- no reasonable alternative would promote that purpose as effectively as surveillance; and
- 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.

(The model Surveillance Camera Code set out in Schedule 2 to the Bill 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.)

Principle 3 - Unlawful and unfair surveillance

Under this Principle, a person must not undertake surveillance by unlawful or unfair means.

Principle 4 - Notice of surveillance

Under this Principle, a person must not manage a surveillance operation without giving notice of the surveillance by—

- a sign displayed in the place to be subject to surveillance during any period during which surveillance may be being undertaken; and
- 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.

The Principle also sets out the contents of any notice of surveillance.

Principle 5 - Storage and security of surveillance records

This Principle requires a surveillance record-keeper to take reasonable measures—

- to protect the surveillance records against loss, unauthorised access, use, modification and disclosure and other misuse; and
- 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.

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

This principle sets out the information which must be kept by a surveillance record keeper. A surveillance record-keeper must take reasonable measures to enable a person to ascertain—

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

- the main purposes for which that information may be used; and
- the steps that the person must take if the person wishes to view a film or otherwise to obtain access to the information.

A surveillance record-keeper is not required under the Principle 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.

The Principle also requires a surveillance record-keeper to maintain a record setting out information about personal information records that may be kept by him or her and the steps that should be taken by persons wishing to obtain access to that information.

Principle 7 - Access to surveillance records containing personal information

This Principle provides that 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 unless the record-keeper is expressly required or authorised by law to do so.

Principle 8 - Change of surveillance records containing personal information

This Principle provides a mechanism for a person to have a record changed and requires a surveillance record-keeper to take any reasonable measures that are necessary to ensure that the record is accurate, relevant, up-to-date, complete and not misleading.

If a surveillance record-keeper refuses to change personal information about the individual on a surveillance record, the surveillance record-keeper must (if so required) take reasonable measures to attach to the surveillance record any statement provided by the individual of the change sought.

Principle 9 - Use of personal information in surveillance records

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

The surveillance record-keeper may use the information only for a permissible surveillance purpose, unless

- the individual concerned has consented to the use; or

- 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
- the use is expressly required or authorised by or under law; or
- 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
- the use is for a purpose reasonably related to a permissible surveillance purpose or a purpose mentioned elsewhere in this subclause.

Principle 10 - Disclosure of personal information in surveillance records

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

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, if—

- the individual concerned has consented to the disclosure; or
- 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
- the disclosure is expressly required or authorised by or under law; or
- 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
- the disclosure is for a purpose reasonably related to a permissible surveillance purpose or a purpose mentioned elsewhere in this subclause.

SCHEDULE 2(See section 10)

MODEL SURVEILLANCE CAMERA CODE

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*, section 11).

Clause 1 - Authorisation to undertake surveillance

Under this clause, a surveillance manager must not undertake a surveillance operation for another person unless the person gives the manager a written authorisation under this clause.

An authorisation must be signed by a person having appropriate authority and must state the reasons for the surveillance. It must also state the reasons for the authorising person's belief that

- surveillance will promote a permissible surveillance purpose that is directly related to a function or activity of the authoriser; and
- no reasonable alternative would promote that purpose as effectively as surveillance; and
- 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.

Clause 2 - Training

This clause provides that a reasonable measures must be taken to ensure that all surveillance operators and surveillance record-keepers engaged for any surveillance operation (including the manager, if he or she personally undertakes surveillance for the operation) have undertaken adequate training to achieve the following objects

- the ability to avoid undue infringements of privacy or other rights of persons while undertaking surveillance or record-keeping;

- the competence to ensure that only material relevant to the purpose for which the operation is being undertaken is collected;
- the 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);
- the technical knowledge and competence to operate the relevant surveillance equipment.

Clause 3 - Private areas

This clause provides that a surveillance manager and surveillance operator must take reasonable measures to ensure that private areas are not subject to surveillance. A surveillance record-keeper must take reasonable measures to ensure that surveillance records are not kept of surveillance of private areas.

In this clause, *private area* means private premises, or toilets or changing rooms in public premises or a public place.

Clause 4 - Annual evaluation

This clause provides that 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. The surveillance manager must not commission a person to prepare an independent evaluation report if—

- the person is employed or engaged, or has a substantial direct or indirect interest, in the business of the surveillance manager; or
- 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
- 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.

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).

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