



Australian Capital Territory

Crimes (Controlled Operations) Act 2008

A2008-32

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J2008-161

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Australian Capital Territory

Crimes (Controlled Operations) Act 2008

A2008-32

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

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

Part 1 Preliminary

1 Name of Act

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

2 Commencement

This Act commences on the day after its notification day.

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

3 Dictionary

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

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

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

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 Legislation Act, s 155 and s 156 (1)).

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

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

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

Note 2 Penalty units

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

6 Objects of Act

The objects of this Act are—

- (a) to provide for the authorisation, conduct and monitoring of controlled operations, including operations conducted in the ACT, in the ACT and 1 or more other jurisdictions or in 1 or more participating jurisdictions—
 - (i) for the purpose of obtaining evidence that may lead to the prosecution of people for particular offences; and
 - (ii) that involve or may involve conduct for which participants in the operation would otherwise be criminally responsible; and
- (b) to facilitate mutual recognition of things done in relation to controlled operations authorised under laws of other jurisdictions corresponding to this Act; and
- (c) to ensure, as far as practicable, that appropriately trained people may act as participants in authorised operations; and

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

7 Relationship to other laws and matters

- (1) This Act does not affect any territory law that authorises, controls or monitors the conduct of operations wholly within the ACT—
 - (a) that are for the purpose of obtaining evidence that may lead to the prosecution of a person for an offence; and
 - (b) that involve, or may involve, conduct for which participants in the operation would otherwise be criminally responsible.

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

- (2) A function conferred in relation to the activities of the Australian Crime Commission under this Act is only conferred for the purpose of the function conferred on the Australian Crime Commission under the *Australian Crime Commission (ACT) Act 2003* relating to suspected serious and organised crime as defined in that Act.
- (3) Subject to subsection (4), this Act does not limit a discretion a court has—
 - (a) to admit or exclude evidence in a proceeding; or
 - (b) to stay a criminal proceeding in the interests of justice.

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

8 Controlled operation taken to be conducted in ACT

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

Part 2 Authorisation of controlled operations

9 Application for authority to conduct controlled operation

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

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

10 Decision on application for authority

- (1) After considering an application for an authority to conduct a controlled operation, and any additional information given under section 9 (5), the chief officer may—
- (a) authorise the operation by granting the authority, either unconditionally or subject to conditions; or
 - (b) refuse the application.
- (2) An authority to conduct a controlled operation may not be granted unless the chief officer is satisfied on reasonable grounds that—
- (a) a relevant offence has been, is being or is likely to be committed; and
 - (b) the controlled operation will be, or is likely to be, conducted in the ACT, in the ACT and 1 or more other jurisdictions or in 1 or more participating jurisdictions; and
 - (c) the nature and extent of the suspected criminal activity justify the conduct of a controlled operation in the ACT, in the ACT and 1 or more other jurisdictions or in 1 or more participating jurisdictions; and
 - (d) any unlawful conduct involved in conducting the operation will be limited to the minimum necessary to conduct an effective controlled operation; and
 - (e) the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of people, other than law enforcement officers, at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation; and

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

11 Form of authority

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

- (3) An authority, whether standard or urgent, must—
- (a) state the name and rank or position of the person granting the authority; and
 - (b) identify the principal law enforcement officer and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant; and
 - (c) state whether the application is a standard application or an urgent application; and
 - (d) identify each person who may engage in controlled conduct for the purposes of the controlled operation; and
 - (e) state the participating jurisdictions in which the controlled conduct is, or is likely, to be engaged in; and
 - (f) identify the nature of the criminal activity (including the suspected relevant offences) in relation to which the controlled conduct is to be engaged in; and
 - (g) identify—
 - (i) in relation to the law enforcement participants—the nature of the controlled conduct that the participants may engage in; and
 - (ii) in relation to the civilian participants—the particular controlled conduct (if any) that each participant may engage in; and
 - (h) identify (to the extent known) any suspect; and
 - (i) state the period (not longer than 3 months for a standard authority or 7 days for an urgent authority) of validity of the authority; and
 - (j) state any conditions to which the conduct of the operation is subject; and
 - (k) state the date and time when the authority is granted; and

- (l) identify (to the extent known)—
 - (i) the nature and quantity of any illicit goods that will be involved in the operation; and
 - (ii) the route through which those goods will pass in the course of the operation.
- (4) A person is sufficiently identified for subsection (3) (d) if the person is identified—
 - (a) by an assumed name under which the person is operating; or
 - (b) by a code name or code number—

so long as the assumed name, code name or code number can be matched to the person's identity.
- (5) The chief officer must ensure that written notes are kept of the details mentioned in subsection (3) for each urgent authority.

12 Duration of authority

Unless sooner cancelled, an authority has effect for the period of validity stated in it in accordance with section 11 (3) (i).

13 Amendment of authority

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

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

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

- (b) as soon as practicable, prepare and give to the applicant a written amendment of authority that complies with section 14.
- (13) The applicant must take all reasonable steps to inform participants in a controlled operation about the grant of a standard amendment of authority no later than 48 hours after the day the standard amendment of authority is granted.

14 Form of amendment of authority

An amendment of an authority must—

- (a) identify the authorised operation for which the authority is in force; and
- (b) state the name, and rank or position, of the person granting the amendment; and
- (c) if the application for amendment is made under section 13 (3)—state the name of the applicant; and
- (d) state whether the application is a standard amendment application or was an urgent amendment application; and
- (e) state the date and time when the amendment of an authority is or was granted; and
- (f) describe the amendment having regard to the purposes mentioned in section 13 (3) in relation to which the application was made.

15 Cancellation of authority

- (1) The chief officer may, by written order given to the principal law enforcement officer for an authorised operation, cancel the authority at any time and for any reason.
- (2) Without limiting subsection (1), the chief officer may cancel an authority for an authorised operation at any time at the request of the principal law enforcement officer for the operation.

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

16 Effect of authority

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

17 Defect in authority

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

Part 3 Conduct of controlled operations

Division 3.1 Controlled conduct engaged in for authorised operation

18 Protection from criminal responsibility for controlled conduct during authorised operation

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

- (a) the conduct is authorised by, and is engaged in in accordance with, the authority for the operation; and
- (b) the conduct does not involve the participant intentionally inducing a person to commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have committed; and
- (c) the conduct does not involve the participant engaging in any conduct that is likely to—
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
- (d) if the participant is a civilian participant—the participant acts in accordance with the instructions of a law enforcement officer.

19 Civil liability not incurred

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

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

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

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

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

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

21 Effect of being unaware of amendment or cancellation of authority

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

22 Protection from criminal responsibility for certain ancillary conduct

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

Examples—ancillary conduct

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

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).

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

Division 3.2 Compensation and notification of third parties

23 Compensation for property loss or serious damage

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

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

24 Notification requirements

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

Division 3.3 Mutual recognition

25 Mutual recognition of corresponding authority

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

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

Part 4 Compliance and monitoring

Division 4.1 Restrictions on disclosure of information

26 Unauthorised disclosure of information

- (1) A person commits an offence if—
- (a) the person is a participant in, or is otherwise authorised to have information about, an authorised operation or a corresponding authorised operation; and
 - (b) the person discloses information; and
 - (c) the information relates to the authorised operation or corresponding authorised operation; and
 - (d) the disclosure is not made—
 - (i) in connection with the administration or execution of this Act or a corresponding law; or
 - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this Act or a corresponding law or of any report of any such proceeding; or
 - (iii) in accordance with any requirement imposed by law.

Maximum penalty: imprisonment for 2 years.

- (2) A person commits an offence if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to endanger the health or safety of any person; or

(b) is reckless about whether the disclosure of the information endangers or will endanger the health or safety of any person.

Maximum penalty: imprisonment for 10 years.

- (3) A person commits an offence if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to prejudice the effective conduct of an authorised operation or a corresponding authorised operation; or
 - (b) is reckless about whether the disclosure of the information prejudices or will prejudice the effective conduct of an authorised operation or a corresponding authorised operation.

Maximum penalty: imprisonment for 2 years.

Division 4.2 Reporting and record-keeping

27 Principal law enforcement officers' reports

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

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

28 Chief officers' annual reports

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

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

- (c) compromise any law enforcement agency's operational activities or methodologies.
- (8) The Minister must exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (7).
- (9) The Minister must present a copy of the report to the Legislative Assembly within 15 sitting days from the day on which the report is received by the Minister.

29 Keeping documents connected with authorised operation

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

- (a) each standard application made by a law enforcement officer of the agency;
- (b) each standard authority granted to a law enforcement officer of the agency;
- (c) each standard amendment application made by a law enforcement officer of the agency;
- (d) each standard amendment of authority granted to a law enforcement officer of the agency;
- (e) each order cancelling an authority granted to a law enforcement officer of the agency;
- (f) each report of a principal law enforcement officer of the agency under section 24 (1) or section 27.

30 General register

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

- (2) The general register is to specify—
- (a) for each application under this Act made by a law enforcement officer of the agency (including an application for amendment of an authority)—
 - (i) the date of the application; and
 - (ii) whether the application was standard or urgent; and
 - (iii) whether the application was made for a controlled operation conducted in the ACT, in the ACT and 1 or more other jurisdictions or in 1 or more participating jurisdictions; and
 - (iv) whether the application was granted, refused or withdrawn; and
 - (v) if the application was refused or withdrawn, the date and time of the refusal or withdrawal; and
 - (vi) if the authority was amended, the date and time of the amendment; and
 - (b) for each authority under this Act granted to a law enforcement officer of the agency—
 - (i) the date and time when the authority was granted; and
 - (ii) whether the authority was standard or urgent; and
 - (iii) whether the application was made for a controlled operation conducted in the ACT, in the ACT and 1 or more other jurisdictions or in 1 or more participating jurisdictions; and
 - (iv) the name, and rank or position, of the person who granted the authority; and
 - (v) each relevant offence in respect of which controlled conduct under the authority was to be engaged in; and

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

Division 4.3 Inspections

31 Inspection of records by ombudsman

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

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

Part 5 Miscellaneous

32 Evidence of authorities

- (1) A document purporting to be an authority granted under section 10—
 - (a) is admissible in any legal proceedings; and
 - (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person who granted the authority was satisfied of the facts of which he or she was required to be satisfied before granting the authority.
- (2) A document purporting to be an authority within the meaning of a corresponding law granted under a provision of the corresponding law that corresponds to section 10—
 - (a) is admissible in any legal proceedings in the ACT; and
 - (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person who granted the authority was satisfied of the facts of which he or she was required to be satisfied under the corresponding law before granting the authority.

33 Delegation

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

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

34 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

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

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

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

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

chief officer means—

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

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

conduct includes an act or omission.

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

controlled operation means an operation that—

- (a) is conducted, or intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and
- (b) involves, or may involve, controlled conduct.

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

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

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

corresponding participant means a person who is authorised by a corresponding authority to participate in a corresponding authorised operation.

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

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

jurisdiction means a State or Territory of the Commonwealth.

law enforcement agency means—

- (a) the Australian Federal Police; or

(b) the Australian Crime Commission.

law enforcement officer—

(a) means—

(i) a police officer; or

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

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

law enforcement participant, in an authorised operation, means a participant in the operation who is a law enforcement officer.

participant, in an authorised operation, means a person who is authorised under this Act to engage in controlled conduct for the purposes of the operation.

participating jurisdiction means a jurisdiction in which a corresponding law is in force.

principal law enforcement officer, for an authorised operation, means the law enforcement officer who is responsible for the conduct of the operation.

relevant offence means—

(a) an offence against an ACT law punishable by imprisonment of 3 years or more; or

(b) an offence against an ACT law that is prescribed by regulation.

standard amendment application—see section 13.

standard amendment of authority—see section 13.

standard application—see section 9.

standard authority—see section 11.

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

urgent amendment application—see section 13.

urgent amendment of authority—see section 13.

urgent application—see section 9.

urgent authority—see section 11.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 3 July 2008.

2 Notification

Notified under the Legislation Act on 18 August 2008.

3 Republications of amended laws

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

I certify that the above is a true copy of the Crimes (Controlled Operations) Bill 2008, which was passed by the Legislative Assembly on 7 August 2008.

Clerk of the Legislative Assembly