

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Assumed Identities) Bill 2009

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Assumed Identities) Bill 2009

A Bill for

An Act to provide for the lawful acquisition and use of assumed identities for law enforcement purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes (Assumed Identities) Act 2009*.

4 **2 Commencement**

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

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

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

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

15 **3 Dictionary**

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

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

20 For example, the signpost definition '*controlled operation*—see the
21 *Crimes (Controlled Operations) Act 2008*, dictionary.' means that the
22 term 'controlled operation' is defined in that dictionary and the
23 definition applies to this Act.

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

1 **4** **Notes**

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

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

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

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

7 *Note 1* *Criminal Code*

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

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

14 *Note 2* *Penalty units*

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

17 **6** **Purpose of Act**

18 (1) The main purpose of this Act is to facilitate, for law enforcement
19 purposes, investigations and intelligence gathering in relation to
20 criminal activity, including investigations extending beyond the
21 ACT.

22 (2) The purpose is to be achieved mainly by—

23 (a) providing for the lawful acquisition and use of assumed
24 identities; and

25 (b) facilitating mutual recognition of things done in relation to
26 assumed identities under corresponding laws.

1 **7 Relationship to other laws**

2 The following Acts do not apply in relation to activities, documents,
3 and records under this Act:

4 (a) the *Freedom of Information Act 1989*;

5 (b) the *Territory Records Act 2002*.

1 **Part 2** **Authority to acquire or use**
2 **assumed identity**

3 **8** **Application for authority**

- 4 (1) A law enforcement officer of a law enforcement agency may apply
5 to the chief officer of the agency for an authority for the law
6 enforcement officer, or someone else, to do either or both of the
7 following:
- 8 (a) acquire an assumed identity;
- 9 (b) use an assumed identity.
- 10 (2) A separate application must be made for each assumed identity to be
11 acquired or used.
- 12 (3) An application must be in writing in the form approved by the chief
13 officer.
- 14 (4) An application must contain—
- 15 (a) the applicant's name; and
- 16 (b) if someone other than the applicant is to be authorised to
17 acquire or use an assumed identity—the person's name; and
- 18 (c) if the person mentioned in paragraph (b) is not a law
19 enforcement officer—the name and rank or position of the law
20 enforcement officer proposed to be appointed as the person's
21 supervisor, and an explanation of why it is necessary for a
22 person who is not a law enforcement officer to acquire or use
23 an assumed identity; and
- 24 (d) details of the proposed assumed identity; and
- 25 (e) reasons for the need to acquire or use an assumed identity; and

- 1 (f) details (to the extent known) of the investigation or
2 intelligence-gathering exercise in which the assumed identity
3 will be used; and
- 4 (g) details of the issuing agencies (if any) and the kinds of
5 evidence to be issued by them; and
- 6 (h) details of any application to be made for an order under
7 section 16 (Making entries in register of births, deaths or
8 marriages) in relation to the assumed identity.
- 9 (5) The chief officer may require the applicant to give the chief officer
10 the additional information the chief officer reasonably needs to
11 decide the application.

12 *Note* The chief officer may delegate a function under this section (see s 42).

13 **9 Decision on application for authority**

- 14 (1) After considering an application for an authority to acquire or use an
15 assumed identity, and any additional information given under
16 section 8 (5), the chief officer of a law enforcement agency may—
- 17 (a) grant an authority to acquire or use the assumed identity, with
18 or without conditions; or
- 19 (b) refuse the application.
- 20 (2) The chief officer must not grant an authority to acquire or use an
21 assumed identity unless satisfied on reasonable grounds that—
- 22 (a) the assumed identity is necessary for the purposes of an
23 investigation or intelligence gathering in relation to criminal
24 activity; and
- 25 (b) the risk of abuse of the assumed identity by the authorised
26 person is minimal; and

- 1 (c) if the application is for authorisation of an assumed identity for
2 a person who is not a law enforcement officer—it would be
3 impossible or impracticable in the circumstances for a law
4 enforcement officer to acquire or use the assumed identity for
5 the purpose sought.
- 6 (3) An authority may also authorise 1 or more of the following:
- 7 (a) an application for an order for an entry in a register of births,
8 deaths or marriages under section 16 (Making entries in
9 register of births, deaths or marriages) or a corresponding law;
- 10 (b) a request under section 19 (Request for evidence of assumed
11 identity) or section 31 (Request to participating jurisdiction for
12 evidence of assumed identity);
- 13 (c) the use of an assumed identity in a participating jurisdiction.
- 14 (4) A separate authority is required for each assumed identity.

15 *Note* The chief officer may delegate a function under this section (see s 42).

16 **10 Authorised civilian's authority not longer than 3 months**

17 The chief officer must not grant an authority for an authorised
18 civilian for longer than 3 months.

19 **11 Authorised civilian's supervisor**

- 20 (1) This section applies if the chief officer of a law enforcement agency
21 grants an authority for an authorised civilian.
- 22 (2) The chief officer must appoint a law enforcement officer of the
23 agency to supervise the acquisition or use of the assumed identity by
24 the authorised civilian.
- 25 (3) The law enforcement officer appointed as supervisor must be—
- 26 (a) for the Australian Federal Police—of or above the rank of
27 sergeant; and

- 1 (b) for the Australian Crime Commission—of or above the rank of
2 senior investigator.

3 **12 Form of authority**

- 4 (1) An authority must be—

- 5 (a) in writing in the form approved by the chief officer; and
6 (b) signed by the person granting it.

- 7 (2) An authority must state the following:

- 8 (a) the name of the person granting the authority;
9 (b) the date on which the authority comes into effect;
10 (c) details of the assumed identity under the authority;
11 (d) details of any evidence of the assumed identity that may be
12 acquired under the authority;
13 (e) the conditions (if any) to which the authority is subject;
14 (f) why the authority is granted;
15 (g) if the authority relates to an authorised officer—the authorised
16 officer's name;
17 (h) if the authority relates to an authorised civilian—
18 (i) the authorised civilian's name; and
19 (ii) the name of the authorised civilian's supervisor under the
20 authority; and
21 (iii) the period the authority is in force.

22 *Note* An authorised civilian's authority must not be for longer than
23 3 months (see s 10).

- 1 (3) The authority must also state the following:
- 2 (a) each issuing agency to which a request may be made under
- 3 section 19 (Request for evidence of assumed identity) or
- 4 section 31 (Request to participating jurisdiction for evidence of
- 5 assumed identity);
- 6 (b) whether it authorises an application for an order for an entry in
- 7 a register of births, deaths or marriages under section 16
- 8 (Making entries in register of births, deaths or marriages) or a
- 9 corresponding law;
- 10 (c) each participating jurisdiction in which an assumed identity
- 11 may be used.

12 *Note* The chief officer may delegate a function under this section (see s 42).

13 **13 Period of authority**

- 14 (1) An authority for an authorised officer is in force until cancelled
- 15 under section 14.
- 16 (2) An authority for an authorised civilian is in force until—
- 17 (a) the end of the period stated in the authority; or
- 18 (b) if the authority is cancelled under section 14—the day the
- 19 authority is cancelled.

20 **14 Amendment or cancellation of authority**

- 21 (1) The chief officer of a law enforcement agency who grants an
- 22 authority—
- 23 (a) may amend or cancel the authority at any time; and
- 24 (b) must cancel the authority if satisfied on reasonable grounds (on
- 25 a review under section 15 or otherwise) that use of the assumed
- 26 identity under the authority is no longer necessary.

- 1 (2) The chief officer must give written notice of the amendment or
2 cancellation to—
- 3 (a) the authorised person to whom the authority relates; and
- 4 (b) if the authorised person is an authorised civilian—the
5 authorised person’s supervisor.
- 6 (3) The notice must state why the authority is amended or cancelled.
- 7 (4) The amendment or cancellation takes effect on—
- 8 (a) the day the written notice is given to the authorised person; or
- 9 (b) if the notice states a later date of effect—the stated date.

10 *Note* The chief officer may delegate a function under this section (see s 42).

11 **15 Review of authority granted to authorised officer**

- 12 (1) The chief officer of a law enforcement agency must review each
13 authority granted to an authorised officer by the chief officer, and in
14 force, under this Act to decide whether use of the assumed identity
15 under the authority is still necessary.

16 *Note* An authority granted by a delegate of a chief officer is taken to have
17 been granted by the chief officer (see Legislation Act, s 239 (4)).

- 18 (2) The review must happen at least once every 12 months.
- 19 (3) If the chief officer is satisfied on reasonable grounds on a review
20 that use of the assumed identity under the authority is no longer
21 necessary, the chief officer must cancel the authority under
22 section 14.
- 23 (4) If the chief officer is satisfied on reasonable grounds on a review
24 that use of the assumed identity under the authority is still
25 necessary, the chief officer must record the chief officer’s opinion,
26 and the reasons for it, in writing.

27 *Note* The chief officer may delegate a function under this section (see s 42).

- 1 **16 Making entries in register of births, deaths or marriages**
- 2 (1) The Supreme Court may order the registrar-general to make an entry
- 3 in the register under the *Births, Deaths and Marriages Registration*
- 4 *Act 1997* in relation to the acquisition of an assumed identity under
- 5 an authority or corresponding authority.
- 6 (2) The court may make the order only—
- 7 (a) on application by—
- 8 (i) the chief officer of a law enforcement agency; or
- 9 (ii) the chief officer of a law enforcement agency under a
- 10 corresponding law; and
- 11 (b) if satisfied that the order is justified having regard to the kind
- 12 of activities undertaken or to be undertaken by the officer or
- 13 person under the authority or corresponding authority.
- 14 (3) The application must be heard in closed court.
- 15 (4) The registrar-general must give effect to an order—
- 16 (a) within the period stated in the order; or
- 17 (b) if no period is stated in the order—within 28 days after the day
- 18 the order is made.
- 19 *Note* The chief officer may delegate a function under this section (see s 42).
- 20 (5) The registrar-general must give the chief officer who applied for the
- 21 order a certificate under the *Births, Deaths and Marriages*
- 22 *Registration Act 1997* in relation to the entry made in the register
- 23 under the order.

- 1 **17 Cancellation of authority affecting entry in register of**
2 **births, deaths or marriages**
- 3 (1) This section applies if—
- 4 (a) the chief officer of a law enforcement agency cancels an
5 authority for an assumed identity; and
- 6 (b) there is an entry in relation to the identity—
- 7 (i) in the register under the *Births, Deaths and Marriages*
8 *Registration Act 1997* because of an order under
9 section 16; or
- 10 (ii) in a register of births, deaths or marriages in a
11 participating jurisdiction because of an order under a
12 corresponding law of the jurisdiction.
- 13 (2) If subsection (1) (b) (i) applies, the chief officer must apply for an
14 order under section 18 within 28 days after the day the authority is
15 cancelled.
- 16 (3) If subsection (1) (b) (ii) applies, the chief officer must apply for an
17 order under the corresponding law to cancel the entry within 28 days
18 after the day the authority is cancelled.
- 19 **18 Cancelling entries in register of births, deaths or**
20 **marriages**
- 21 (1) The Supreme Court may order the registrar-general to cancel an
22 entry that has been made in the register under the *Births, Deaths and*
23 *Marriages Registration Act 1997* because of an order under
24 section 16.
- 25 (2) The court may make the order only on application by the chief
26 officer mentioned in section 17.
- 27 (3) The application must be heard in closed court.
- 28 (4) The registrar-general must give effect to the order within 28 days
29 after the day the order is made.

- 1 (5) The chief officer who applied for the order must return to the
2 registrar-general any certificate relating to the entry in the register
3 that was given by the registrar-general in accordance with
4 section 16 (5).

1 **Part 3 Evidence of assumed identity**

2 **19 Request for evidence of assumed identity**

- 3 (1) This section applies if an authority authorises a request under this
4 section.

5 *Note* **Authority** means an authority granted under s 9 to acquire and use an
6 assumed identity, and includes the authority as amended under s 14 (see
7 dict).

- 8 (2) The chief officer of a law enforcement agency who grants the
9 authority may ask the chief officer of an issuing agency stated in the
10 authority to—

11 (a) produce evidence of an assumed identity in accordance with
12 the authority; and

13 (b) give evidence of the assumed identity to the authorised person
14 stated in the authority.

15 **Example—produce evidence of identity**

16 The assumed identity is Emmy Morgan. An issuing agency creates a driver's
17 licence in the name of Emmy Morgan.

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

- 21 (3) The request must state a reasonable period for compliance with the
22 request.

- 23 (4) A request must not be made under this section for an entry in the
24 register under the *Births, Deaths and Marriages Registration*
25 *Act 1997* or a certificate under that Act in relation to the entry.

26 *Note* Section 16 deals with entries in the register and related certificates.

1 (5) In this section:

2 *evidence* means evidence of identity similar to that ordinarily
3 produced or given by the issuing agency.

4 *Note 1 Evidence* of identity—see the dictionary.

5 *Note 2* The chief officer may delegate a function under this section (see s 42).

6 **20 Government issuing agency to comply with request**

7 The chief officer of a government issuing agency who receives a
8 request under section 19 must comply with the request within the
9 reasonable period stated in the request.

10 **21 Non-government issuing agency may comply with
11 request**

12 The chief officer of a non-government issuing agency who receives
13 a request under section 19 may comply with the request.

14 **22 Cancellation of evidence of assumed identity**

15 (1) This section applies if the chief officer of an issuing agency
16 produces evidence of an assumed identity under this part.

17 (2) The chief officer of the issuing agency must cancel the evidence if
18 given a written direction to do so by the chief officer of a law
19 enforcement agency who asked for the evidence.

20 (3) In this section:

21 *cancel* includes delete or alter an entry in a record of information.

22 **23 Protection from criminal responsibility—officers of
23 issuing agencies**

24 (1) This section applies if the chief officer or an officer of an issuing
25 agency engages in conduct that would, apart from this section, be an
26 offence.

27 *Note* An issuing agency may be government or non-government (see dict).

- 1 (2) The chief officer or officer is not criminally responsible for the
2 offence if the conduct is engaged in to comply with a request under
3 section 19 or a direction under section 22.

4 **24 Protection from criminal responsibility for certain**
5 **ancillary conduct**

- 6 (1) This section applies to conduct (*ancillary conduct*) for which a
7 person may be criminally responsible because it involves conduct
8 engaged in by someone else for which the other person would (apart
9 from section 23) be criminally responsible (the *related conduct*).

10 **Examples—ancillary conduct**

- 11 1 aiding and abetting (see Criminal Code, s 45)
12 2 conspiracy (see Criminal Code, s 48)

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

- 16 (2) Despite any other territory law, a person who engages in ancillary
17 conduct that is an offence (whether or not the person is an
18 authorised person or officer of an issuing agency) is not criminally
19 responsible for the offence if, at the time the person engaged in the
20 ancillary conduct, the person believed the related conduct was being
21 engaged in, or would be engaged in, by the chief officer or an
22 officer of an issuing agency.

23 *Note* An issuing agency may be government or non-government (see dict).

24 **25 Protection from civil liability—issuing agencies and**
25 **officers**

- 26 (1) This section applies if the chief officer of a law enforcement agency
27 makes a request under section 19 (Request for evidence of assumed
28 identity) of, or gives a direction under section 22 (Cancellation of
29 evidence of assumed identity) to, the chief officer of an issuing
30 agency.

31 *Note* An issuing agency may be government or non-government (see dict).

- 1 (2) The issuing agency, or an officer of the issuing agency, is not civilly
2 liable for conduct engaged in honestly and without recklessness if—
- 3 (a) the conduct is engaged in by the agency or officer—
- 4 (i) to comply with the request or direction in the course of
5 duty; or
- 6 (ii) in the reasonable belief that the conduct was engaged in
7 to comply with the request or direction in the course of
8 duty; and
- 9 (b) the requirements (if any) prescribed by regulation have been
10 met.
- 11 (3) Any civil liability (including reasonable costs) that would, apart
12 from this section, attach to the issuing agency or officer attaches
13 instead to the law enforcement agency.

1 **Part 4 Effect of authority**

2 **26 Assumed identity may be acquired and used**

3 (1) An authorised officer may acquire an assumed identity if the
4 acquisition is—

5 (a) in accordance with an authority; and

6 (b) in the course of duty.

7 (2) An authorised officer may use an assumed identity if the use is—

8 (a) in accordance with an authority or for a controlled operation;
9 and

10 (b) in the course of duty.

11 (3) An authorised civilian may acquire an assumed identity if the
12 acquisition is in accordance with—

13 (a) an authority; and

14 (b) any direction by the civilian's supervisor under the authority.

15 (4) An authorised civilian may use an assumed identity if the use is in
16 accordance with—

17 (a) an authority or for a controlled operation; and

18 (b) any direction by the civilian's supervisor under the authority.

19 **27 Protection from criminal responsibility—authorised**
20 **people**

21 (1) This section applies if an authorised person engages in conduct (in
22 the ACT or elsewhere) that would, apart from this section, be an
23 offence.

- 1 (2) Despite any other territory law, the person is not criminally
2 responsible for the offence if—
- 3 (a) the conduct is engaged in in the course of—
- 4 (i) acquiring an assumed identity in accordance with an
5 authority; or
- 6 (ii) using an assumed identity in accordance with an authority
7 or for a controlled operation; and
- 8 (b) the conduct is engaged in—
- 9 (i) for an authorised officer—in the course of the officer's
10 duty; or
- 11 (ii) for an authorised civilian—in accordance with any
12 direction by the civilian's supervisor under the authority;
13 and
- 14 (c) engaging in the conduct would not be an offence if the
15 assumed identity were the person's real identity.

16 **28 Protection from civil liability—authorised people**

- 17 (1) This section applies if the chief officer of a law enforcement agency
18 grants an authority in relation to an authorised person.
- 19 (2) The authorised person is not civilly liable for conduct (in the ACT
20 or elsewhere) engaged in honestly and without recklessness if—
- 21 (a) the conduct is engaged in in the course of—
- 22 (i) acquiring an assumed identity in accordance with an
23 authority; or
- 24 (ii) using an assumed identity in accordance with an authority
25 or for a controlled operation; and

- 1 (b) the conduct is engaged in—
- 2 (i) for an authorised officer—in the course of the officer’s
- 3 duty; or
- 4 (ii) for an authorised civilian—in accordance with any
- 5 direction by the civilian’s supervisor under the authority;
- 6 and
- 7 (c) the requirements (if any) prescribed by regulation have been
- 8 met.
- 9 (3) Any civil liability (including reasonable costs) that would, apart
- 10 from this section, attach to the authorised person attaches instead to
- 11 the law enforcement agency.

12 **29 Particular qualifications**

- 13 (1) Section 27 and section 28 do not apply to conduct engaged in by an
- 14 authorised person if—
- 15 (a) a particular qualification is needed to engage in the conduct;
- 16 and
- 17 (b) the person does not have the qualification.
- 18 (2) Subsection (1) applies whether or not the person has acquired, as
- 19 evidence of an assumed identity, a document indicating that the
- 20 person has the qualification.

21 **30 Effect of being unaware of amendment or cancellation of**

22 **authority**

- 23 (1) If an authority is amended in a way that limits its scope, this part
- 24 continues to apply to the authorised person to whom the authority
- 25 relates as if it had not been amended in that way, for so long as the
- 26 person—
- 27 (a) is unaware of the amendment; and
- 28 (b) is not reckless about the existence of the amendment.

- 1 (2) If an authority is cancelled, this part continues to apply to the
2 authorised person to whom the authority related as if it had not been
3 cancelled, for so long as the person—
- 4 (a) is unaware of the cancellation; and
- 5 (b) is not reckless about the existence of the cancellation.
- 6 (3) For this section, a person is *reckless* about the existence of the
7 amendment or cancellation of an authority if—
- 8 (a) the person is aware of a substantial risk that the authority has
9 been amended or cancelled; and
- 10 (b) having regard to the circumstances known to the person, it is
11 unjustifiable to take the risk.

1 (c) the request states a reasonable period for compliance with the
2 request.

3 (2) The chief officer of a government issuing agency who receives the
4 request must comply with the request within the reasonable period
5 stated in the request.

6 (3) The chief officer of a non-government issuing agency who receives
7 the request may comply with the request.

8 **33 Direction from participating jurisdiction to cancel**
9 **evidence of assumed identity**

10 (1) This section applies if the chief officer of an issuing agency
11 produces evidence of an assumed identity because of a request
12 mentioned in section 32.

13 (2) The chief officer of the issuing agency must cancel the evidence if
14 given a written direction to do so by the chief officer of a law
15 enforcement agency who made the request.

16 (3) In this section:
17 *cancel* includes delete or alter an entry in a record of information.

18 **34 Protection from civil liability—issuing agencies and**
19 **officers of participating jurisdictions**

20 (1) This section applies if the chief officer of a law enforcement agency
21 makes a request under section 31 of, or gives a direction under
22 section 33 to, the chief officer of an issuing agency of a participating
23 jurisdiction.

24 (2) The issuing agency, or an officer of the issuing agency, is not civilly
25 liable for conduct engaged in honestly and without recklessness if—

26 (a) the conduct is engaged in (in the ACT or elsewhere) by the
27 agency or officer—

28 (i) to comply with the request in the course of duty; or

- 1 (ii) in the reasonable belief that the conduct was engaged in
2 to comply with the request in the course of duty; and
- 3 (b) the requirements (if any) prescribed by regulation have been
4 met.
- 5 (3) Any civil liability (including reasonable costs) that would, apart
6 from this section, attach to the issuing agency or officer attaches
7 instead to the law enforcement agency.

8 **35 Application of Act to corresponding authorities**

9 The following provisions apply, with any necessary changes, to
10 anything done in the ACT in relation to a corresponding authority as
11 if it were an authority granted under section 9:

- 12 (a) section 23 (Protection from criminal responsibility—officers of
13 issuing agencies);
- 14 (b) section 26 (Assumed identity may be acquired and used);
- 15 (c) section 27 (Protection from criminal responsibility—authorised
16 people);
- 17 (d) section 29 (Particular qualifications);
- 18 (e) section 30 (Effect of being unaware of amendment or
19 cancellation of authority);
- 20 (f) section 36 (Misuse of assumed identity);
- 21 (g) section 37 (Unauthorised disclosure of information about
22 assumed identity).

1 **Part 6** **Compliance and monitoring**

2 **Division 6.1** **Misuse of assumed identity and**
3 **information**

4 **36** **Misuse of assumed identity**

- 5 (1) An authorised officer commits an offence if—
6 (a) the officer acquires evidence of an assumed identity; and
7 (b) the acquisition is not—
8 (i) in accordance with the officer's authority; or
9 (ii) in the course of duty; and
10 (c) the officer is reckless about whether the acquisition is not—
11 (i) in accordance with the authority; or
12 (ii) in the course of duty.

13 **Maximum penalty:** imprisonment for 2 years.

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

- 16 (2) An authorised officer commits an offence if—
17 (a) the officer uses an assumed identity; and
18 (b) the use is not—
19 (i) in accordance with the officer's authority or for a
20 controlled operation; or
21 (ii) in the course of duty; and

- 1 (c) the officer is reckless about whether the use is not—
2 (i) in accordance with the authority or for a controlled
3 operation; or
4 (ii) in the course of duty.

5 Maximum penalty: imprisonment for 2 years.

- 6 (3) An authorised civilian commits an offence if—
7 (a) the civilian acquires evidence of an assumed identity; and
8 (b) the acquisition is not—
9 (i) in accordance with the civilian's authority; or
10 (ii) in accordance with a direction of the civilian's supervisor
11 under the authority; and
12 (c) the civilian is reckless about whether the acquisition is not—
13 (i) in accordance with the authority; or
14 (ii) in accordance with a direction of the civilian's supervisor
15 under the authority.

16 Maximum penalty: imprisonment for 2 years.

- 17 (4) An authorised civilian commits an offence if—
18 (a) the civilian uses an assumed identity; and
19 (b) the use is not—
20 (i) in accordance with the civilian's authority or for a
21 controlled operation; or
22 (ii) in accordance with a direction of the civilian's supervisor
23 under the authority; and
24 (c) the civilian is reckless about whether the use is not—
25 (i) in accordance with the authority or for a controlled
26 operation; or

1 (ii) in accordance with a direction of the civilian's supervisor
2 under the authority.

3 Maximum penalty: imprisonment for 2 years.

4 **37 Unauthorised disclosure of information about assumed**
5 **identity**

6 (1) A person commits an offence if—

7 (a) the person discloses information; and

8 (b) the information reveals, or is likely to reveal, that an assumed
9 identity acquired or used by someone else is not the other
10 person's real identity; and

11 (c) the person knows that the information reveals, or is likely to
12 reveal, that an assumed identity acquired or used by someone
13 else is not the other person's real identity; and

14 (d) the disclosure is not made—

15 (i) in connection with the administration or execution of this
16 Act or a corresponding law; or

17 (ii) for the purposes of any legal proceeding arising out of or
18 otherwise related to this Act or a corresponding law or of
19 any report of any such proceeding; or

20 (iii) in accordance with any requirement imposed by law; and

21 (e) the person is reckless about whether the disclosure is not made
22 as mentioned in paragraph (d).

23 Maximum penalty: imprisonment for 2 years.

24 (2) A person commits an offence if—

25 (a) the person discloses information; and

- 1 (b) the information reveals, or is likely to reveal, that an assumed
2 identity acquired or used by someone else is not the other
3 person's real identity; and
- 4 (c) the person is reckless about whether the information reveals, or
5 is likely to reveal, that an assumed identity acquired or used by
6 someone else is not the other person's real identity; and
- 7 (d) the disclosure is not made—
- 8 (i) in connection with the administration or execution of this
9 Act or a corresponding law; or
- 10 (ii) for the purposes of any legal proceeding arising out of or
11 otherwise related to this Act or a corresponding law or of
12 any report of any such proceeding; or
- 13 (iii) in accordance with any requirement imposed by law; and
- 14 (e) the person is reckless about whether the disclosure is not made
15 as mentioned in paragraph (d).

16 Maximum penalty: imprisonment for 2 years.

- 17 (3) A person commits an offence if the person commits an offence
18 against subsection (1) or (2) in circumstances in which the person—
- 19 (a) intends to endanger the health or safety of anyone; or
- 20 (b) is reckless about whether the disclosure of the information
21 endangers or will endanger the health or safety of anyone.

22 Maximum penalty: imprisonment for 10 years.

- 23 (4) A person commits an offence if the person commits an offence
24 against subsection (1) or (2) in circumstances in which the person—
- 25 (a) intends to prejudice the effective conduct of an investigation or
26 intelligence-gathering in relation to criminal activity; or

1 (b) is reckless about whether the disclosure of the information
2 prejudices or will prejudice the effective conduct of
3 investigation or intelligence-gathering in relation to criminal
4 activity.

5 Maximum penalty: imprisonment for 10 years.

6 **Division 6.2 Reporting and record-keeping**

7 **38 Report about authorities for assumed identities etc**

8 (1) As soon as practicable after the end of each financial year, the chief
9 officer of a law enforcement agency must give a written report to
10 the Minister that includes the following information for the year:

11 (a) the number of authorities granted during the year;

12 (b) a general description of the activities undertaken by authorised
13 people when using assumed identities under this Act during the
14 year;

15 (c) the number of applications for authorities that were refused
16 during the year;

17 (d) a statement whether or not any fraud or other unlawful activity
18 was identified by an audit under section 40 during the year;

19 (e) any other information relating to authorities, assumed identities
20 or the administration of this Act that the Minister considers
21 appropriate.

22 (2) The chief officer must advise the Minister of any information in the
23 report that, in the chief officer's opinion, should be excluded from
24 the report before the report is presented to the Legislative Assembly
25 because the information, if made public, could reasonably be
26 expected to—

27 (a) endanger a person's safety; or

28 (b) prejudice an investigation or prosecution; or

1 (c) compromise any law enforcement agency's operational
2 activities or methodologies.

3 (3) The Minister must exclude information from the report if satisfied
4 on the advice of the chief officer of any of the grounds set out in
5 subsection (2).

6 (4) The Minister must present a copy of the report to the Legislative
7 Assembly within 15 sitting days after the day the Minister receives
8 the report.

9 **39 Record-keeping**

10 (1) The chief officer of a law enforcement agency must cause
11 appropriate records to be kept about this Act's operation in relation
12 to the agency.

13 (2) The records must include the following in relation to each authority
14 granted, amended or cancelled under this Act in relation to the
15 agency:

16 (a) the date the authority was granted, amended or cancelled and
17 the name of the person who granted, amended or cancelled it;

18 (b) the name of the authorised person under the authority, together
19 with details of the assumed identity to which the authority
20 applies;

21 (c) details of any request made to an issuing agency under
22 section 19 (Request for evidence of assumed identity) in
23 relation to the authority;

24 (d) the general nature of the duties undertaken by the authorised
25 person under the assumed identity;

26 (e) general details of relevant financial transactions entered into
27 using the assumed identity;

- 1 (f) for an authority granted to an authorised officer—details of
2 reviews of the authority under section 15 (Review of authority
3 granted to authorised officer).

4 **40 Audit of records**

- 5 (1) The chief officer of a law enforcement agency must have the records
6 kept under section 39 for each authority in relation to the agency
7 audited—
8 (a) at least once every 6 months while the authority is in force; and
9 (b) at least once in the 6 months after the authority ends or is
10 cancelled.
11 (2) The chief officer must appoint a person to conduct the audit.
12 (3) The person appointed to conduct the audit—
13 (a) may, but need not, be an officer of the law enforcement
14 agency; and
15 (b) must not be a person—
16 (i) who granted, amended or cancelled any of the authorities
17 to which the records under section 39 relate; or
18 (ii) who is or was an authorised person under any of the
19 authorities to which the records relate.
20 (4) A person who conducts an audit under this section for a law
21 enforcement agency must give the chief officer of the agency a
22 written report of the results of the audit.

23 **Division 6.3 Inspection**

24 **41 Inspection of records by ombudsman**

- 25 (1) The ombudsman may inspect the records of a law enforcement
26 agency to determine the extent of compliance with this Act by the
27 agency and law enforcement officers of the agency.

- 1 (2) For the purpose of an inspection under this section, the
2 ombudsman—
- 3 (a) after notifying the chief officer of the law enforcement agency,
4 may enter at any reasonable time premises occupied by the
5 agency; and
- 6 (b) is entitled to have full and free access at all reasonable times to
7 all records of the agency that are relevant to the inspection; and
- 8 (c) may require a member of staff of the agency to give the
9 ombudsman any information that the ombudsman considers
10 necessary, being information that is in the member's
11 possession, or to which the member has access, and that is
12 relevant to the inspection.
- 13 (3) The chief officer must ensure that members of staff of the agency
14 give the ombudsman any assistance the ombudsman reasonably
15 requires to enable the ombudsman to exercise functions under this
16 section.
- 17 (4) The ombudsman must give a written report prepared under the
18 *Annual Reports (Government Agencies) Act 2004*, on the results of
19 each inspection under this section in the preceding financial year.
- 20 (5) The report must include a report on the comprehensiveness and
21 adequacy of the records of the agency and the cooperation given by
22 the agency in facilitating the inspection by the ombudsman of those
23 records.
- 24 (6) The report must not include any information that, if made public,
25 could reasonably be expected to—
- 26 (a) endanger a person's safety; or
- 27 (b) prejudice an investigation or prosecution; or
- 28 (c) compromise any law enforcement agency's operational
29 activities or methodologies.

1 Dictionary

2 (see s 3)

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

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

- 6 • ACT
- 7 • chief police officer
- 8 • Commonwealth
- 9 • entity
- 10 • exercise, a function
- 11 • financial year
- 12 • function
- 13 • in relation to
- 14 • Legislative Assembly
- 15 • Minister (see s 162)
- 16 • police officer
- 17 • position
- 18 • registrar-general
- 19 • territory law.

20 ***acquire*** an assumed identity, means acquire evidence of the identity,
21 and includes taking steps towards acquiring evidence of the identity.

22 ***agency*** means—

23 (a) an issuing agency; or

24 (b) a law enforcement agency.

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

1 **authorised civilian** means a person (other than a law enforcement
2 officer) who is authorised under an authority to acquire or use an
3 assumed identity.

4 **authorised officer** means a law enforcement officer who is
5 authorised under an authority to acquire or use an assumed identity.

6 **authorised person** means—

7 (a) an authorised civilian; or

8 (b) an authorised officer.

9 **authority** means an authority granted under section 9 to acquire and
10 use an assumed identity, and includes the authority as amended
11 under section 14.

12 **chief officer**—

13 (a) of a law enforcement agency, means—

14 (i) in relation to the Australian Federal Police—the chief
15 police officer; and

16 (ii) in relation to the Australian Crime Commission—the
17 chief executive officer of the Australian Crime
18 Commission; and

19 (b) of an issuing agency—means the chief executive officer
20 (however described) of the agency.

21 **conduct** means an act or omission to do an act.

22 **controlled operation**—see the *Crimes (Controlled Operations)*
23 *Act 2008*, dictionary.

24 **corresponding authority** means an authority under a corresponding
25 law—

26 (a) to acquire or use an assumed identity in the ACT; or

27 (b) to request the production of evidence of an assumed identity.

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

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

6 **doing** a thing, includes failing to do the thing.

7 **evidence** of identity, means a document or other thing (for example,
8 a driver's licence, birth certificate, credit card or identity card) that
9 evidences or indicates, or can be used to evidence or indicate, a
10 person's identity or any aspect of a person's identity.

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

14 **government issuing agency**, in relation to an authority, means any
15 of the following stated in the authority that issues evidence of
16 identity:

17 (a) an entity that exercises a function of the government of the
18 ACT;

19 (b) an entity prescribed by regulation.

20 **issuing agency** means—

21 (a) a government issuing agency; or

22 (b) a non-government issuing agency.

23 **jurisdiction** means the Commonwealth or a State or Territory of the
24 Commonwealth.

25 **law enforcement agency** means—

26 (a) the Australian Federal Police; or

27 (b) the Australian Crime Commission.

- 1 **law enforcement officer**—
- 2 (a) means—
- 3 (i) a police officer; or
- 4 (ii) a member of staff of the Australian Crime Commission;
- 5 and
- 6 (b) includes a person who is seconded to a law enforcement
- 7 agency, including (but not limited to) a member of the police
- 8 force or police service, and a police officer (however
- 9 described), of another jurisdiction.
- 10 **non-government issuing agency**, in relation to an authority, means
- 11 an entity (other than a government issuing agency) stated in the
- 12 authority that issues evidence of identity.
- 13 **officer** of an agency, includes a person employed or engaged in the
- 14 agency.
- 15 **participating jurisdiction** means a jurisdiction in which a
- 16 corresponding law is in force.
- 17 **supervisor** of an authorised civilian, means the law enforcement
- 18 officer who supervises or is to supervise the acquisition or use of an
- 19 assumed identity by the authorised civilian.
- 20 **use** an assumed identity, includes representing (whether expressly or
- 21 impliedly, or by saying or doing something) the identity to be real
- 22 when it is not.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

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

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