



AFP
AUSTRALIAN FEDERAL POLICE

ACT Policing

Surveillance Devices

Annual Report 2010–2011





**Chief Police Officer for the ACT
Roman Quaedvlieg**

GPO Box 401, Canberra City ACT 2601
Telephone +61 2 6264 9510 Facsimile +61 2 6264 9510
www.afp.gov.au
ABN 17 864 933 343

15 September 2011

Mr Simon Corbell MLA
Minister for Police and Emergency Services
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Mr Corbell

I am pleased to submit ACT Policing's Surveillance Devices Annual Report for financial year 1 July 2010 to 30 June 2011.

The report has been prepared in accordance with Division 5.2, s. 38 of the *Crimes (Surveillance Devices) Act 2010* (ACT).

I hereby certify that the attached Annual Report is an honest and accurate account, and that all operations regarding surveillance devices undertaken in the ACT for the period 1 July 2010 to 30 June 2011 have been included.

In line with Division 5.2, s. 38, ss. (h), Part 4 of the *Crimes (Surveillance Devices) Act 2010* (ACT), I understand that a copy of this report will be laid before the Legislative Assembly within 15 sitting days from the day this report is received by you.

Yours sincerely

A handwritten signature in blue ink, consisting of a series of horizontal strokes followed by a long diagonal stroke that curves downwards and to the right.

Roman Quaedvlieg



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CONTACT OFFICER FOR THIS REPORT

General inquiries about this report should be directed to:

Coordinator — Media and Marketing
ACT Policing
GPO Box 401
Canberra ACT 2601
Telephone: (02) 6264 9460
Facsimile: (02) 6264 9466

Email: act-police-marketing@afp.gov.au

GENERAL CONTACT DETAILS

By post

Written requests for information can be sent to:

Coordinator — Media and Marketing
ACT Policing
GPO Box 401
Canberra City ACT 2601

By telephone

For general information about the AFP, telephone National Headquarters on (02) 6223 3000.
The hearing impaired can contact the AFP through a telephone typewriter facility on (02) 6256 7700.

For general inquiries regarding the content of this annual report please contact (02) 6264 9740.
For Freedom of Information requests please contact (02) 6131 6131.

By Internet

Information about ACT Policing can be found at the ACT Policing website, police.act.gov.au, where an electronic version of this report can also be found.

GUIDE TO THIS REPORT

THE LEGISLATION

In June 2010 the ACT Legislative Assembly passed the *Crimes (Surveillance Devices) Act 2010 (ACT)*.

The objectives of the Act are to establish procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices in criminal investigations.

The ACT also allows for warrants and emergency authorisations issued in other jurisdictions to be recognised in the Territory and to restrict the use, communications and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations.

The use of surveillance devices can be undertaken with respect to any relevant Commonwealth offence or serious State or Territory offences. The kinds of warrants that may be issued under the legislation are:

- a. a surveillance device warrant
- b. a retrieval warrant.

A relevant offence, as defined by the Act means an offence against an ACT law punishable by imprisonment of three years or more; or an offence against an ACT law prescribed by regulation.

APPLICATION OF A SURVEILLANCE DEVICE WARRANT

A law enforcement officer (or another person on the officer's behalf) may apply for the issue of a surveillance device warrant if the law enforcement officer suspects or believes on reasonable grounds that:

- a. a relevant offence has been, is being, is about to be or is likely to be committed
- b. an investigation into that offence is being, will be or is likely to be conducted in the ACT, in the ACT and in one or more participating jurisdictions or in one or more participating jurisdictions
- c. the use of a surveillance device in the ACT, in the ACT and in one or more participating jurisdictions or in one or more participating jurisdictions is or will be

necessary in the course of that investigation for the purpose of enabling evidence or information to be obtained of the commission of the relevant offence or the identity or location of the offender.

The application for a surveillance device warrant must be made before a judge.

In relation to a surveillance device warrant that authorises the use of a tracking device, or a retrieval warrant in relation to a tracking device, authorised under a warrant by a judge, a Magistrate may issue the warrant.

If the law enforcement officer submits an application, the application must state the name of the applicant, and the nature and duration of the warrant sought, including the type of surveillance device sought to be authorised.

The application must be supported by an affidavit setting out the grounds on which the warrant is sought.

If a law enforcement officer believes that it is impracticable for an application for a surveillance device warrant to be made in person, the application may be made under s. 11 of the Act, by telephone, fax, email or any other means of communication.

If transmission by fax is available and an affidavit has been prepared, the person applying must send a copy of the affidavit, whether sworn or unsworn, to the judge or Magistrate who is to decide the application.

APPLICATION OF A RETRIEVAL WARRANT

A law enforcement officer (or another person on the officer's behalf) may apply for the issue of a retrieval warrant in relation to a surveillance device that was lawfully installed on a premise, or in/on an object, while under a surveillance device warrant, and the law enforcement officer suspects or believes on reasonable grounds that the surveillance device is still on those premises, or in/on that object, or on other premises or in/on another object.

The application may be made to a judge or, for an application for a retrieval warrant authorising the retrieval of a tracking device only, a Magistrate.

A law enforcement officer may also make a remote application via telephone, fax, email or any other means of communication if it is impracticable for the law enforcement officer to make the application in person.

WHAT MUST A SURVEILLANCE DEVICE WARRANT CONTAIN?

A surveillance device warrant must state that the authorising judge or Magistrate is satisfied that s. 13 of the Act was complied with; and must state the following:

- a. the name of the applicant
- b. the alleged offence in relation to which the warrant is issued
- c. the date the warrant is issued
- d. the kind of surveillance device authorised to be used
- e. if the warrant authorises the use of a surveillance device on premises, the premises where the use of the surveillance device is authorised
- f. if the warrant authorises the use of surveillance device in or on an object or class of object, the object or class of object in or on which the use of the surveillance device is authorised
- g. if the warrant authorises the use of a surveillance device in relation to the conversations, activities or geographical location of a person, the name of the person (if known)
- h. the period (not more than 90 days) during which the warrant is in force
- i. the name of the law enforcement officer primarily responsible for executing the warrant
- j. any conditions subject to which premises may be entered, or a surveillance device may be used, under the warrant.

For a warrant where the identification of the person is unknown, the warrant must state the fact.

The warrant must be signed by the person authorising the warrant, and include the authorising person's name.

If the judge or Magistrate issues a warrant on a remote application, the judge or Magistrate must tell the applicant:

- a. the terms of the warrant
- b. the date and time the warrant was issued
- c. enter the terms and date mentioned in a register kept by the judge or Magistrate for the purpose
- d. give the applicant a copy of the warrant as soon as practicable.

WHAT MUST A SURVEILLANCE DEVICE RETRIEVAL WARRANT CONTAIN?

A surveillance device warrant must state that the authorising judge or Magistrate is satisfied that s. 21 of the Act was complied with; and must state the following:

- a. the name of the applicant
- b. the alleged offence in relation to which the warrant is issued
- c. the date the warrant is issued
- d. the kind of surveillance device authorised to be used
- e. if the warrant authorises the use of a surveillance device on premises, the premises where the use of the surveillance device is authorised
- f. if the warrant authorises the use of surveillance device in or on an object or class of object, the object or class of object in or on which the use of the surveillance device is authorised
- g. if the warrant authorises the use of a surveillance device in relation to the conversations, activities or geographical location of a person, the name of the person (if known)
- h. the period (not more than 90 days) during which the warrant is in force
- i. the name of the law enforcement officer primarily responsible for executing the warrant
- j. any conditions subject to which premises may be entered, or a surveillance device may be used, under the warrant.

For a warrant where the identification of the person is unknown, the warrant must state the fact.

The warrant must be signed by the person authorising the warrant, and include the authorising person's name.

If the judge or Magistrate issues a warrant on a remote application, the judge or Magistrate must tell the applicant:

- a. the terms of the warrant
- b. the date and time the warrant was issued
- c. enter the terms and date mentioned in a register kept by the judge or Magistrate for the purpose
- d. give the applicant a copy of the warrant as soon as practicable.

WHAT CAN A SURVEILLANCE DEVICE WARRANT AUTHORISE?

A surveillance device warrant may authorise, as stated in the warrant, one or more of the following:

- a. the use of a surveillance device on stated premises
- b. the use of a surveillance device in or on a stated object or class of objects
- c. the use of a surveillance device in relation to the conversations, activities or geographical location of a stated person or a person whose identity is unknown.

A surveillance device warrant authorises:

- a. the installation, use and maintenance of a surveillance device of the kind stated in the warrant on the stated premises in or on the stated object or an object of the stated class
- b. the entry, by force if necessary, onto the premises, or other stated premises adjoining or providing access to the premises or an object of the class, is believed on reasonable grounds to be or is likely to be, or other premises adjoining or providing access to those premises.

Each surveillance device warrant also authorises the following:

- a. the retrieval of the surveillance device
- b. the installation, use, maintenance and retrieval of any enhancement equipment in relation to the surveillance device
- c. the temporary removal of an object or vehicle from premises for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment and the return of the object or vehicle to the premises
- d. the breaking open of anything for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment
- e. the connection of the surveillance device or enhancement equipment to an electricity supply system and the use of electricity from that system to operate the surveillance device or enhancement equipment
- f. the connection of the surveillance device or enhancement equipment to any object or system that may be used to transmit information in any form

and the use of that object or system in connection with the operation of the surveillance device or enhancement equipment

- g. the provision of assistance or technical expertise to the law enforcement officer primarily responsible for executing the warrant in the installation, use, maintenance or retrieval of the surveillance device or enhancement equipment.

A surveillance device warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the installation, use, maintenance or retrieval of a surveillance device or enhancement equipment under the warrant.

A law enforcement officer may use a surveillance device under a warrant only if the officer is acting in the performance of the officer's duty.

WHAT MUST A SURVEILLANCE DEVICE RETRIEVAL WARRANT AUTHORISE?

A retrieval warrant authorises the following:

- a. the retrieval of the surveillance device stated in the warrant and any enhancement equipment in relation to the device
- b. the entry, by force if necessary, onto the premises where the surveillance device is believed on reasonable grounds to be, or other premises adjoining or providing access to those premises, for the purpose of retrieving the device and equipment
- c. the breaking open of anything for the purpose of retrieving the device and equipment
- d. if the device or equipment is installed on or in an object, the temporary removal of the object from any premises where it is located for the purpose of retrieving the device and equipment and the return of the object to those premises
- e. the provision of assistance or technical expertise to the law enforcement officer primarily responsible for executing the warrant in the retrieval of the device or equipment.

If the retrieval warrant authorises the retrieval of a tracking device, the warrant also authorises the use of the tracking device and any enhancement equipment in relation to the device solely for the purposes of the location and retrieval of the device or equipment.

A retrieval warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the retrieval of a surveillance device or enhancement equipment under the warrant.

REVOCAION OF SURVEILLANCE DEVICE WARRANT

A surveillance device warrant may be revoked at any time before the end of the period of validity stated in it by a judge, if a judge issued the warrant; or a Magistrate, if a Magistrate issued the warrant.

A judge or Magistrate may revoke a surveillance device warrant on application by or on behalf of a law enforcement officer.

A judge or Magistrate who revokes a warrant must give notice of the revocation to the chief officer of the law enforcement agency of which the law enforcement officer to whom the warrant was issued is a member.

REVOCAION OF A RETRIEVAL WARRANT

A retrieval warrant may be revoked at any time before the end of the period of validity stated in it by a judge, if a judge issued the warrant; or a Magistrate, if a Magistrate issued the warrant.

A judge or Magistrate may revoke a retrieval warrant on application by or on behalf of a law enforcement officer.

A judge or Magistrate who revokes a warrant must give notice of the revocation to the chief officer of the law enforcement agency of which the law enforcement officer to whom the warrant was issued is a member.

If the judge or Magistrate revokes the warrant on the application of a law enforcement officer, the judge or Magistrate is taken to have notified the chief.

If the chief officer of a law enforcement agency is satisfied that the grounds for issue of a retrieval warrant to a law enforcement officer of the agency no longer exist, the chief officer must ensure an application is made for the revocation of the warrant under this section.

If the law enforcement officer to whom a retrieval warrant has been issued, or who is primarily responsible for executing a retrieval warrant, believes that the grounds for issue of the warrant no longer exist, the officer must

tell the chief officer of the law enforcement agency immediately.

DISCONTINUANCE OF THE USE OF A SURVEILLANCE DEVICE UNDER WARRANT

If the chief officer of the law enforcement agency is satisfied that the use of a surveillance device under the warrant is no longer necessary for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender, the chief officer must:

- a. take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued as soon as practicable
- b. ensure an application is made for the revocation of the warrant under s. 17 of the Act.

If the chief officer is notified that the warrant has been revoked under s. 17, the chief officer must take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued immediately.

If the law enforcement officer to whom the warrant is issued, or who is primarily responsible for executing the warrant, believes that use of a surveillance device under the warrant is no longer necessary for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender, the officer must tell the chief officer of the law enforcement agency immediately.

EMERGENCY AUTHORISATION OF A SURVEILLANCE DEVICE WARRANT

A law enforcement officer of a law enforcement agency may apply to the chief officer of the agency for an emergency authorisation for the use of a surveillance device if, in the course of an investigation, the law enforcement officer suspects or believes on reasonable grounds that:

- a. an imminent threat of serious violence to a person or substantial damage to property exists
- b. the use of a surveillance device is immediately necessary for the purpose of dealing with that threat

- c. the circumstances are so serious and the matter is of such urgency that the use of a surveillance device is warranted
- d. it is not practicable in the circumstances to apply for a surveillance device warrant.

An application may be made orally, in writing or by telephone, fax, email or any other means of communication.

The chief officer may give an emergency authorisation for the use of a surveillance device on an application if satisfied that there are reasonable grounds for the suspicion or belief founding the application.

An emergency authorisation given under this section may authorise the law enforcement officer to whom it is given to do anything that a surveillance device warrant may authorise the officer to do.

Within two working days after giving an emergency authorisation, the chief officer (or another person on the officer's behalf) must apply to a judge for approval of the exercise of powers under the emergency authorisation.

An application must state the name of the applicant; and the kind of surveillance device sought to be approved and, if a warrant is sought, the nature and duration of the warrant. It must be supported by an affidavit setting out the grounds on which the approval (and warrant, if any) is sought.

The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

An application must not be heard in open court.

MONITORING BY THE OMBUDSMAN

The Ombudsman may 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.

For the purpose of an inspection the Ombudsman must after notifying the chief officer of the law enforcement agency, may enter at any reasonable time premises occupied by the agency; and is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection.

The Ombudsman 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.

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. 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.

OVERVIEW OF SURVEILLANCE DEVICE WARRANTS EXECUTED BY ACT POLICING 2010-11

Surveillance Device Operation Number	Type of Warrant	Date Warrant Issued	Authorising Officer	Offence Investigated	Expiry Date	Outcome of Warrant
A/SD 1	Surveillance device (listening and optical device)	4 February 2011	Justice Malcolm Gray, a resident judge of the Australian Capital Territory Supreme Court.	Trafficking in controlled drug, against s. 603, ss. 3 of the <i>Criminal Code 2002</i> (ACT)	4 May 2011	The target of the warrant was arrested as a result of the surveillance device warrant.
A/SD 2	Surveillance device (listening and optical device)	10 February 2011	Justice Malcolm Gray, a resident judge of the Australian Capital Territory Supreme Court.	Trafficking in controlled drug, against s. 603, ss. 3 of the <i>Criminal Code 2002</i> (ACT)	10 May 2011	Two people were arrested as a result of the surveillance device warrant.
A/SD 3	Surveillance device (listening device)	21 April 2011	Justice Malcolm Gray, a resident judge of the Australian Capital Territory Supreme Court.	Aggravated robbery, against s. 310 of the <i>Criminal Code 2002</i> (ACT) and money laundering, against s. 114, ss. (B) of the <i>Crimes Act 1900</i>	19 July 2011. On 21 June 2011, Justice Malcolm Gray revoked the warrant.	Two people were arrested as a result of the surveillance device warrant.

SURVEILLANCE DEVICE WARRANTS CONDUCTED BY ACT POLICING

Surveillance Device Operation Number: A/SD 1	
Type of warrant:	Surveillance device
Type of surveillance device:	Listening and optical device
Application authorised:	Yes
Nature of application:	This application was made pursuant to Part 2, s. 11 of the <i>Crimes (Surveillance Devices) Act 2010</i> (ACT).
Authorising officer:	On Friday, 4 February 2011, Justice Malcolm Gray, a resident judge of the Australian Capital Territory Supreme Court issued a surveillance device warrant as per Part 2, Division 2.1, s. 10 of the <i>Crimes (Surveillance Devices) Act 2010</i> (ACT).
Date of warrant issued:	Friday, 4 February 2011
Expiry date:	Wednesday, 4 May 2011
Warrant executed:	Yes

Grounds for issue of surveillance device warrant:	The person(s) targeted by the surveillance device warrant have committed or are likely to commit an offence of trafficking in controlled drug, against s. 603, ss. 3 of the <i>Criminal Code 2002</i> (ACT). The offence of trafficking in controlled drug against s. 603, ss. 3 of the <i>Criminal Code 2002</i> (ACT) is a serious Australian Capital Territory offence and attracts a maximum penalty of 2,500 penalty units, imprisonment for 25 years, or both.
Variation of warrant:	None
Review:	None
Outcome of warrant:	The target was arrested as a result of the surveillance device warrant.

Surveillance Device Operation Number: A/SD 2

Type of warrant:	Surveillance device
Type of surveillance device:	Listening and optical device
Application authorised:	Yes
Nature of application:	This application was made pursuant to Part 2, s. 11 of the <i>Crimes (Surveillance Devices) Act 2010</i> (ACT).
Authorising officer:	On Thursday, 10 February 2011, Justice Malcolm Gray, a resident judge of the Australian Capital Territory Supreme Court issued a surveillance device warrant as per Part 2, Division 2.1, s. 10 of the <i>Crimes (Surveillance Devices) Act 2010</i> (ACT).
Date of warrant issued:	Thursday, 10 February 2011
Expiry date:	Tuesday, 10 May 2011
Warrant executed:	Yes
Grounds for issue of surveillance device warrant:	The person(s) targeted by the surveillance device warrant have committed or are likely to commit an offence of trafficking in controlled drug, against s. 603, ss. 3 of the <i>Criminal Code 2002</i> (ACT). The offence of trafficking in controlled drug against s. 603, ss. 3 of the <i>Criminal Code 2002</i> (ACT) is a serious Australian Capital Territory offence and attracts a maximum penalty of 2,500 penalty units, imprisonment for 25 years, or both.
Variation of warrant:	None
Review:	None
Outcome of warrant:	Two people were arrested as a result of the surveillance device warrant, charged with trafficking in controlled drug.

Surveillance Device Operation Number: A/SD 3

Type of warrant:	Surveillance device
Type of surveillance device:	Listening device
Application authorised:	Yes
Nature of application:	This application was made pursuant to Part 2, s. 11 of the <i>Crimes (Surveillance Devices) Act 2010</i> (ACT).
Authorising officer:	On Thursday 21 April 2011, Justice Malcolm Gray, a resident judge of the Australian Capital Territory Supreme Court issued a surveillance device warrant as per Part 2, Division 2.1, s. 10 of the <i>Crimes (Surveillance Devices) Act 2010</i> (ACT).
Date of warrant issued:	Thursday, 21 April 2011

Expiry date:	Tuesday, 19 July 2011. On Tuesday, 21 June 2011, the warrant was revoked by Justice Malcolm Gray.
Warrant executed:	Yes
Grounds for issue of surveillance device warrant:	<p>The person or persons targeted by the surveillance device warrant have committed or are likely to commit an offence of aggravated robbery, against s. 310 of the <i>Criminal Code 2002 (ACT)</i> and money laundering, against s. 114, ss. B of the <i>Crimes Act 1900</i>.</p> <p>The offence of aggravated robbery against s. 310 of the <i>Criminal Code 2002 (ACT)</i> is a serious Australian Capital Territory offence and attracts a maximum penalty of 2,500 penalty units, imprisonment for 25 years, or both.</p> <p>The offence of money laundering s. 114, ss. B of the <i>Crimes Act 1900</i> is a serious Australian Capital Territory offence and attracts a maximum penalty of 1,000 penalty units, imprisonment for 10 years, or both.</p>
Variation of warrant:	None
Review:	None
Outcome of warrant:	<p>As a result of the investigation into the targets of the surveillance device warrant, ACT Policing arrested two people. One target was charged with two counts of aggravated robbery, as per s. 310 of the <i>Criminal Code 2002 (ACT)</i> and one count of money laundering, as per s. 114, ss. B of the <i>Crimes Act 1900</i>.</p> <p>The other target was charged with one count of aggravated robbery, against s. 310 of the <i>Criminal Code 2002 (ACT)</i> and one count of money laundering, as per s. 114, ss. B of the <i>Crimes Act 1900</i>.</p>

