



AFP

AUSTRALIAN FEDERAL POLICE

ACT POLICING SPECIAL PROJECTS ANNUAL REPORT 2019-20

MINISTER FOR POLICE AND
EMERGENCY SERVICES

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17 September 2020

Minister for Police and Emergency Services
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Minister

I am pleased to submit ACT Policing's Special Projects Annual Report for the financial year 1 July 2019 to 30 June 2020.

Included in this Special Projects Annual Report are reports in accordance with section 28 of the Crimes (Controlled Operations) Act 2008 and section 38 of the Crimes (Surveillance Devices) Act 2010.

I hereby certify that the attached Annual Report is an honest and accurate account, and that all controlled operations and all operations regarding surveillance devices undertaken in the ACT for the period 1 July 2019 to 30 June 2020 have been included.

I understand a copy of this report will be laid before the ACT Legislative Assembly within 15 sitting days from the day you receive this report.

Yours sincerely

Deputy Commissioner Neil Gaughan APM
Chief Police Officer for the ACT

Contents

1 Controlled Operations	1
The legislation	2
Immunity from criminal liability	3
Protection from criminal responsibility for certain ancillary conduct	4
Situations giving rise to the issue of controlled operation authorities	5
Authorisation of controlled operations and controlled operation authorities	6
Cancellation of authority	7
Mutual recognition	7
Reporting requirements	8
Monitoring by the Ombudsman	9
Material excluded from reporting	9
Overview of ACT Policing Controlled Operations records 2019–20	10
Authorities issued by authorising officers of ACT Policing 2019–20	11
Authorities issued by authorising officers of ACT Policing, 2018–19, for which operations concluded in the current reporting period	18

2 Surveillance Devices	21
The Legislation	22
What can a surveillance device warrant authorise?	23
Types of surveillance devices	25
Applications for surveillance device warrants	26
Deciding the applications	28
What must a surveillance device warrant contain?	29
Revocation of surveillance device warrant	30
Emergency authorisation of a surveillance device warrant	32
Restrictions on use, communication and publication of information obtained from a surveillance device	33
Reporting requirements	34
Monitoring by the Ombudsman	35
Overview of ACT Policing surveillance device records 2019–20	36
Overview of ACT Policing surveillance device records 2018–19	38

Controlled Operations

1

Surveillance Devices

2



1 Controlled Operations



Controlled Operations

1

The legislation	2
Immunity from criminal liability	3
Protection from criminal responsibility for certain ancillary conduct	4
Situations giving rise to the issue of controlled operation authorities	5
Authorisation of controlled operations and controlled operation authorities	6
Cancellation of authority	7
Mutual recognition	7
Reporting requirements	8
Monitoring by the Ombudsman	9
Material excluded from reporting	9
Overview of ACT Policing Controlled Operations records 2019–20	10
Authorities issued by authorising officers of ACT Policing 2019–20	11
Authorities issued by authorising officers of ACT Policing, 2018–19, for which operations concluded in the current reporting period	18

The legislation

In August 2008 the ACT Legislative Assembly passed the *Crimes (Controlled Operations) Act 2008* (ACT). The objectives of the Act are to provide for the authorisation, carrying out and monitoring of controlled operations. A controlled operation is defined as one that:

- a. involves the participation of law enforcement officers; and
- b. is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence.

A controlled operation can be undertaken with respect to any relevant offence. A relevant offence, as defined by the Act means:

- a. an offence against an ACT law punishable by imprisonment of three years or more; or
- b. an offence against an ACT law prescribed by regulation.



Immunity from criminal liability

The Act provides immunity from criminal liability and indemnity from civil liability for law enforcement officers and certain other persons who take an active part in a controlled operation.

This criminal liability is only removed when:

- a. the conduct is authorised by, and is engaged in accordance with, the authority for the operation;
- 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;
- 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. the participant, if he/she is a civilian participant, acts in accordance with the instructions of a law enforcement officer.

In circumstances similar to these, immunity from criminal liability is also provided for a person other than a law enforcement officer. A law enforcement officer means any of the following:

- a. a police officer;
- b. a member of staff of the Australian Criminal Intelligence Commission; and
- c. a person who is seconded to a law enforcement agency, including, but not limited to, a member of the police service/police officer (however described), of another jurisdiction.

Protection from criminal responsibility for certain ancillary conduct

The Act also provides protections to police and other people who are authorised to assist with controlled operations, but are not assigned as participants. Those people who are authorised are not liable for ancillary conduct, such as conspiracy. Examples include: scientific officers who provide technical assistance on storage or preparation of a sample drug but do not actively participate in the controlled operation.



Situations giving rise to the issue of controlled operation authorities

An authority to conduct a controlled operation may not be granted unless the authorising officer, the Chief Police Officer or a delegate, is satisfied on reasonable grounds that:

- a. a relevant offence has been, is being or is likely to be committed;
- b. the controlled operation will be, or is likely to be, conducted in the ACT, in the ACT and one or more other jurisdictions, or in one or more participating jurisdictions;
- c. the nature and extent of the suspected criminal activity justifies the conduct of a controlled operation in the ACT, in the ACT and one or more other jurisdictions, or in one or more participating jurisdictions;
- d. any unlawful conduct involved in conducting the operation will be limited to the minimum necessary to conduct an effective controlled operation;
- 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;
- f. the proposed controlled conduct will be accounted for in a way that will enable the reporting requirements of part 4 of the Act to be complied with;
- g. the operation will not be conducted in a way that induces a person to commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have committed;
- h. any conduct involved in the operation will:
 - i. not endanger the health or safety of any person;
 - ii. not cause the death of, or injury to, any person;
 - iii. not involve the commission of a sexual offence against any person; or
 - iv. not 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.

Authorisation of controlled operations and controlled operation authorities

An authority to conduct a controlled operation may be granted in writing, signed by the Chief Police Officer or a delegate, or in the matter of an urgent application, if the Chief Police Officer is satisfied that the delay caused by granting a standard authority may affect the success of the operation, the authorisation can be given orally in person or by telephone, fax, email or any other means of communication.

An authority, whether standard or urgent, must:

- a. state the name and rank or position of the person granting the authority;
- 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;
- c. state whether the application is a standard application or an urgent application;
- d. identify each person who may engage in controlled conduct for the purposes of the controlled operation;
- e. state the participating jurisdictions in which the controlled conduct is, or is likely, to be engaged in;
- 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;
- g. identify:
 - i. (in relation to the law enforcement participants) the nature of the controlled conduct that the participants may engage in; or
 - ii. (in relation to the civilian participants) the particular controlled conduct (if any) that each participant may engage in;
- h. identify (to the extent known) any suspect/s;
- i. state the period (not longer than three months for a standard authority or seven days for an urgent authority) of validity of the authority;
- j. state any conditions to which the conduct of the operation is subject;
- 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.

The Chief Police Officer may delegate to a senior officer of the law enforcement agency any of the functions under the Act relating to the authorisation of controlled operations (including the amendment and cancellation of controlled operations and notifications). As defined by the legislation, a 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.
- b. in relation to the Australian Criminal Intelligence Commission, any of the following:
 - i. the Director National Operations
 - ii. a Director
 - iii. an officer of the Australian Criminal Intelligence Commission that is prescribed by regulation.

Cancellation of authority

The Chief Police Officer or their delegate 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.

The Chief Police Officer or their delegate may cancel an authority for an authorised operation at any time at the request of the principal law enforcement officer for the operation.

Cancellation of an authority for a controlled operation takes effect when the order is made, or if the order states a later time of effect, at the later time.

Mutual recognition

The Act allows for the recognition of controlled operation authorities issued under a corresponding law.

These provisions enable a controlled operation that is authorised by a corresponding law to operate in the ACT as if the operation was authorised by ACT law.

Reporting requirements

The Chief Police Officer, as soon as practicable after 30 June each year, must give the Minister a report setting out the details in relation to controlled operations conducted on behalf of the agency during the previous financial year.

The report must include the following details:

- a. the number of standard authorities that were granted or amended, and the number of standard applications for the granting or amendment of authorities that were refused, during the period to which the report relates;
- b. the number of urgent authorities or urgent amendments of authorities that were granted, and the number of urgent applications for authorities or urgent amendments of authorities that were refused, 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 operation;
- g. the number of authorities cancelled or that expired during the period to which the report relates; and
- h. any seizures, arrests and prosecutions arising from the authorised operations.

The report must not disclose any information that identifies any suspect or a participant in an authorised operation or which is likely to lead to a suspect or participant being identified.

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.

Monitoring by the Ombudsman

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.

For the purpose of an inspection the Ombudsman may, after notifying the Chief Police Officer, 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 him or her any information that he or she 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.

Material excluded from reporting

Section 28(5) of the Act states that the report must not disclose any information that identifies any suspect or a participant in an authorised operation, or which is likely to lead to a suspect or participant being identified.

Overview of ACT Policing Controlled Operations records 2019–20

Number of standard authorities granted	6
Number of applications for standard authorities refused	0
Number of amendments to standard authorities granted	0
Number of applications for amendments to standard authorities refused	0
Number of urgent authorities granted	0
Number of applications for urgent authorities refused	0
Number of urgent amendments to authorities granted	0
Number of applications for urgent amendments to authorities refused	0
Number of controlled operations conducted in the ACT	0
Number of controlled operations conducted in the ACT and one or more other jurisdictions	4
Number of controlled operations conducted in one or more participating jurisdictions	0

Authorities issued by authorising officers of ACT Policing 2019–20

Standard Controlled Operation Number: 2019–20/01

Application authorised or refused	On 17 September 2019, Commander Michael Chew, Deputy Chief Police Officer of the ACT, an authorised officer within the meaning of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a Controlled Operation to be undertaken.
Nature of the criminal activities or corrupt conduct against which the authorised operation was directed	<p>Demands accompanied by threats to kill/inflict grievous bodily harm, pursuant to section 32 of the <i>Crimes Act 1900</i> (ACT), an offence punishable, on conviction, by imprisonment for 20 years;</p> <p>Trafficking in a controlled drug other than cannabis, namely methylamphetamine, pursuant to section 603(7) of the <i>Criminal Code 2002</i> (ACT), an offence punishable, on conviction, by 1000 penalty units, imprisonment for 10 years or both; and</p> <p>Manufacturing a controlled drug, pursuant to section 609 of the <i>Criminal Code 2002</i> (ACT), an offence punishable, on conviction, by 1000 penalty units, imprisonment for 10 years or both.</p>
Amendment of controlled operation authority	Nil
Revocation or expiry date of controlled operation authority	The Controlled Operation was revoked on 20 September 2019.
Period the authority was in force	4 days
Nature of controlled conduct engaged in for the purposes of the authorised operations	The authority authorised the purchase of controlled drugs within the ACT and one or more other jurisdictions.

Involvement of illicit goods	Type (weight or quantity)	Nil
	Route through which illicit goods passed in the course of the operation	N/A
Involvement of other jurisdictions	Nil	
Damage or injuries occurred	Nil	
Outcome	No conduct was undertaken under the Controlled Operation authority.	
Arrests/Prosecutions	Nil	

Standard Controlled Operation Number: 2019–20/02

Application authorised or refused	On 20 September 2019, Commander Michael Chew, Deputy Chief Police Officer of the ACT, an authorised officer within the meaning of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a Controlled Operation to be undertaken.	
Nature of the criminal activities or corrupt conduct against which the authorised operation was directed	<p>Demands accompanied by threats to kill/inflict grievous bodily harm, pursuant to section 32 of the <i>Crimes Act 1900</i> (ACT), an offence punishable, on conviction, by imprisonment for 20 years;</p> <p>Trafficking in a controlled drug other than cannabis, namely methylamphetamine, pursuant to section 603(7) of the <i>Criminal Code 2002</i> (ACT), an offence punishable, on conviction, by 1000 penalty units, imprisonment for 10 years or both; and</p> <p>Manufacturing a controlled drug, pursuant to section 609 of the <i>Criminal Code 2002</i> (ACT), an offence punishable, on conviction, by 1000 penalty units, imprisonment for 10 years or both.</p>	
Amendment of controlled operation authority	Nil	
Revocation or expiry date of controlled operation authority	The Controlled Operation was revoked on 7 November 2019.	
Period the authority was in force	49 days	
Nature of controlled conduct engaged in for the purposes of the authorised operations	The authority authorised the purchase of controlled drugs within the ACT and one or more other jurisdictions.	
Involvement of illicit goods	Type (weight or quantity)	Nil
	Route through which illicit goods passed in the course of the operation	N/A
Involvement of other jurisdictions	Nil	
Damage or injuries occurred	Nil	
Outcome	All attempts to engage with subject failed.	
Arrests/Prosecutions	Nil	

Standard Controlled Operation Number: 2019–20/03

Application authorised or refused	On 25 October 2019, Commander Michael Chew, Deputy Chief Police Officer of the ACT, an authorised officer within the meaning of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a Controlled Operation to be undertaken.	
Nature of the criminal activities or corrupt conduct against which the authorised operation was directed	Trafficking in a controlled drug other than cannabis, pursuant to section 603(07) of the <i>Criminal Code 2002</i> (ACT) punishable by imprisonment for 10 years, or 1000 penalty units, or both.	
Amendment of controlled operation authority	Nil	
Revocation or expiry date of controlled operation authority	The Controlled Operation was revoked on 16 January 2020.	
Period the authority was in force	84 days	
Nature of controlled conduct engaged in for the purposes of the authorised operations	The authority authorised the purchase of controlled drugs within the ACT and one or more other jurisdictions.	
Involvement of illicit goods	Type (weight or quantity)	Trafficable quantities of controlled drugs, namely heroin.
	Route through which illicit goods passed in the course of the operation	Excluded from publication pursuant to section 28(5) of the <i>Crimes (Controlled Operations) Act 2008</i> .
Involvement of other jurisdictions	Nil	
Damage or injuries occurred	Nil	
Outcome	Controlled drugs were purchased.	
Arrests/Prosecutions	Nil	

Standard Controlled Operation Number: 2019–20/04

Application authorised or refused	On 20 December 2019, Commander Michael Chew, Deputy Chief Police Officer of the ACT, an authorised officer within the meaning of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a Controlled Operation to be undertaken.	
Nature of the criminal activities or corrupt conduct against which the authorised operation was directed	<p>Acts endangering life – intentionally and unlawfully discharging any loaded arms at another person or so as to cause another person reasonable apprehension for his or her safety contrary to section 27(3)(d) of the <i>Crimes Act 1900</i> (ACT), punishable by imprisonment for 10 years;</p> <p>Arson contrary to section 404(1) of the <i>Criminal Code 2002</i> (ACT), punishable by imprisonment for 15 years, 1500 penalty units, or both; and</p> <p>Aggravated burglary contrary to section 312 of the <i>Criminal Code 2002</i> (ACT), punishable by imprisonment for 20 years, 2000 penalty units, or both.</p>	
Amendment of controlled operation authority	Nil	
Revocation or expiry date of controlled operation authority	The Controlled Operation was revoked on 12 March 2020.	
Period the authority was in force	84 days	
Nature of controlled conduct engaged in for the purposes of the authorised operations	The authority authorised a participant to maintain a line of communication with the target relating to the commission of criminal offences. The authority also authorised the purchase of controlled drugs within the ACT and one or more other jurisdictions.	
Involvement of illicit goods	Type (weight or quantity)	Nil
	Route through which illicit goods passed in the course of the operation	N/A
Involvement of other jurisdictions	Nil	
Damage or injuries occurred	Nil	
Outcome	Minimal engagement was maintained between the participant and the target.	
Arrests/Prosecutions	Nil	

Standard Controlled Operation Number: 2019–20/05

Application authorised or refused	On 16 January 2020, Acting Commander Efthimios Calatzis, Acting Deputy Chief Police Officer of the ACT, an authorised officer within the meaning of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a Controlled Operation to be undertaken.	
Nature of the criminal activities or corrupt conduct against which the authorised operation was directed	Trafficking in a controlled drug other than cannabis, pursuant to section 603(07) of the <i>Criminal Code 2002</i> (ACT) punishable by imprisonment for 10 years, or 1000 penalty units, or both.	
Amendment of controlled operation authority	Nil	
Revocation or expiry date of controlled operation authority	The Controlled Operation was revoked on 2 March 2020.	
Period the authority was in force	47 days	
Nature of controlled conduct engaged in for the purposes of the authorised operations	The authority authorised the purchase of controlled drugs within the ACT and one or more other jurisdictions.	
Involvement of illicit goods	Type (weight or quantity)	Trafficable quantities of controlled drugs, namely heroin.
	Route through which illicit goods passed in the course of the operation	Excluded from publication pursuant to section 28(5) of the <i>Crimes (Controlled Operations) Act 2008</i> .
Involvement of other jurisdictions	Nil	
Damage or injuries occurred	Nil	
Outcome	Controlled drugs were purchased.	
Arrests/Prosecutions	One person was arrested and charged with five counts of trafficking heroin.	

Standard Controlled Operation Number: 2019–20/06

Application authorised or refused	On 7 May 2020, Commander Michael Chew, performing the duties of Chief Police Officer of ACT Policing, an authorised officer within the meaning of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a Controlled Operation to be undertaken.	
Nature of the criminal activities or corrupt conduct against which the authorised operation was directed	<p>Unauthorised possession or use of firearms, other than prohibited firearms, pursuant to section 43(1)(a)(ii) of the <i>Firearms Act 1996</i> (ACT) punishable by imprisonment for 7 years;</p> <p>Unauthorised possession or use of prohibited firearms, pursuant to section 42(1)(a)(ii) of the <i>Firearms Act 1996</i> (ACT) punishable for imprisonment for 14 years; and</p> <p>Possessing ammunition generally, pursuant to section 249 of the <i>Firearms Act 1996</i> (ACT) punishable by a maximum of 10 penalty units.</p>	
Amendment of controlled operation authority	Nil	
Revocation or expiry date of controlled operation authority	The Controlled Operation expired on 13 May 2020.	
Period the authority was in force	7 days	
Nature of controlled conduct engaged in for the purposes of the authorised operations	The authority authorised the collection of prohibited firearms and ammunition within the ACT and one or more other jurisdictions.	
Involvement of illicit goods	Type (weight or quantity)	Nil
	Route through which illicit goods passed in the course of the operation	N/A
Involvement of other jurisdictions	Nil	
Damage or injuries occurred	Nil	
Outcome	No controlled conduct occurred.	
Arrests/Prosecutions	Nil	

Authorities issued by authorising officers of ACT Policing, 2018–19, for which operations concluded in the current reporting period

Standard Controlled Operations Number: 2018–19/06

Application authorised or refused	On 9 May 2019, Commander Michael Chew, performing the duties of Chief Police Officer of ACT Policing, an authorised officer within the meaning of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a Controlled Operation to be undertaken.
Nature of the criminal activities or corrupt conduct against which the authorised operation was directed	<p>Supplying a controlled drug other than cannabis to a child, contrary to section 625(1)(a) of the <i>Criminal Code 2002</i> (ACT), punishable by imprisonment for 20 years, 2000 penalty units or both;</p> <p>Supplying cannabis to a child, contrary to section 625(4)(a) of the <i>Criminal Code 2002</i> (ACT) punishable by imprisonment for 5 years, 500 penalty units or both; and</p> <p>Grooming and depraving young people, contrary to section 66(1)(a) of the <i>Crimes Act 1900</i> (ACT) punishable by a maximum penalty of up to 10 years.</p>
Amendment of controlled operation authority	Nil
Revocation or expiry date of controlled operation authority	The Controlled Operation was revoked on 5 July 2019.
Period the authority was in force	58 days
Nature of controlled conduct engaged in for the purposes of the authorised operations	Members attempted to engage through social media with the person/s responsible for facilitating the supply of illicit drugs in exchange for acts of a sexual nature.

Involvement of illicit goods	Type (weight or quantity)	Nil
	Route through which illicit goods passed in the course of the operation	N/A
Involvement of other jurisdictions	Nil	
Damage or injuries occurred	Nil	
Outcome	All attempts to engage with subject failed.	
Arrests/ Prosecutions	Nil	



2 Surveillance Devices



Surveillance Devices

2

The Legislation	22
What can a surveillance device warrant authorise?	23
Types of surveillance devices	25
Applications for surveillance device warrants	26
Deciding the applications	28
What must a surveillance device warrant contain?	29
Revocation of surveillance device warrant	30
Emergency authorisation of a surveillance device warrant	32
Restrictions on use, communication and publication of information obtained from a surveillance device	33
Reporting requirements	34
Monitoring by the Ombudsman	35
Overview of ACT Policing surveillance device records 2019–20	36
Overview of ACT Policing surveillance device records 2018–19	38

The Legislation

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

The objectives of the Act are to:

- a. 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, including investigations extending beyond the ACT;
- b. allow for warrants and emergency authorisations issued in other jurisdictions to be recognised in the Territory;
- c. restrict the use, communication and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations; and
- d. impose requirements for the secure storage and destruction of records, and the making of reports to the Legislative Assembly, in connection with surveillance device operations.

The use of surveillance devices can be undertaken with respect to any relevant offence. A relevant offence, as defined by the Act means:

- a. an offence against an ACT law punishable by imprisonment of three years or more; or
- b. an offence against an ACT law prescribed by regulation.

The kinds of warrants that may be issued under the legislation are:

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

A warrant may be issued in relation to one or more kinds of surveillance devices.

The powers provided by this legislation are available for use by a law enforcement agency, meaning:

- a. the Australian Federal Police (AFP); and
- b. the Australian Criminal Intelligence Commission (ACIC).

This report contains only information relating to the use of this legislation by the AFP.

What can a surveillance device warrant authorise?

In simple terms, a surveillance device warrant provides lawful authority for a law enforcement officer to use one or more categories of surveillance devices to covertly monitor and/or record the conversations or actions of a suspect or group of suspects. This monitoring and/or recording can be of the suspect/s within both private and public premises.

A surveillance device warrant may authorise 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; or
- 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; or stated object or object of the stated class; or on a premises where the person is believed on reasonable ground to be or likely to be; and
- b. the entry, by force if necessary, onto the premises, or any premises where the object or class of objects is believed to be, or other stated premises adjoining or providing access to these premises.

Each surveillance device warrant also authorises:

- a. retrieval of the surveillance device;
- b. installation, use, maintenance and retrieval of any enhancement equipment in relation to the surveillance device;
- c. 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. breaking open of anything for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment;
- e. 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. 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; and
- 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 also 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.



Types of surveillance devices

Under the Act the term ‘surveillance device’ means:

- a. a data surveillance device, a listening device, an optical surveillance device or a tracking device;
- b. a device that is a combination of any two or more of the devices mentioned in paragraph (a); or
- c. a device of a kind prescribed by regulation.

The warrant scheme contained in this Act covers four categories of surveillance devices:

1. Data surveillance devices — those devices, equipment or programs that are capable of being used to record or monitor data entered into or received by a computer.
2. Listening devices — those devices capable of being used to overhear, record, monitor or listen to a conversation or words spoken to or by any person in conversation.
3. Optical surveillance devices — those devices capable of being used to record visually or observe an activity.
4. Tracking devices — those electronic devices that are capable of being used to work out or monitor the location of a person or an object or the status of an object.

Applications for surveillance device warrants

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; and
- 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 may be made to:

- a. a Justice; or
- b. for an application for a surveillance device warrant authorising the use of a tracking device only, a Magistrate.

The application must:

- a. state the name of the applicant;
- b. state the nature and duration of the warrant sought, including the type of surveillance device sought to be authorised; and
- c. be supported by an affidavit setting out the grounds on which the warrant is sought.

The application may be made before an affidavit is prepared or sworn if:

- a. the immediate use of the surveillance device is necessary for a purpose mentioned above; or
- b. it is impracticable for an affidavit to be prepared or sworn before the application for a warrant is made.

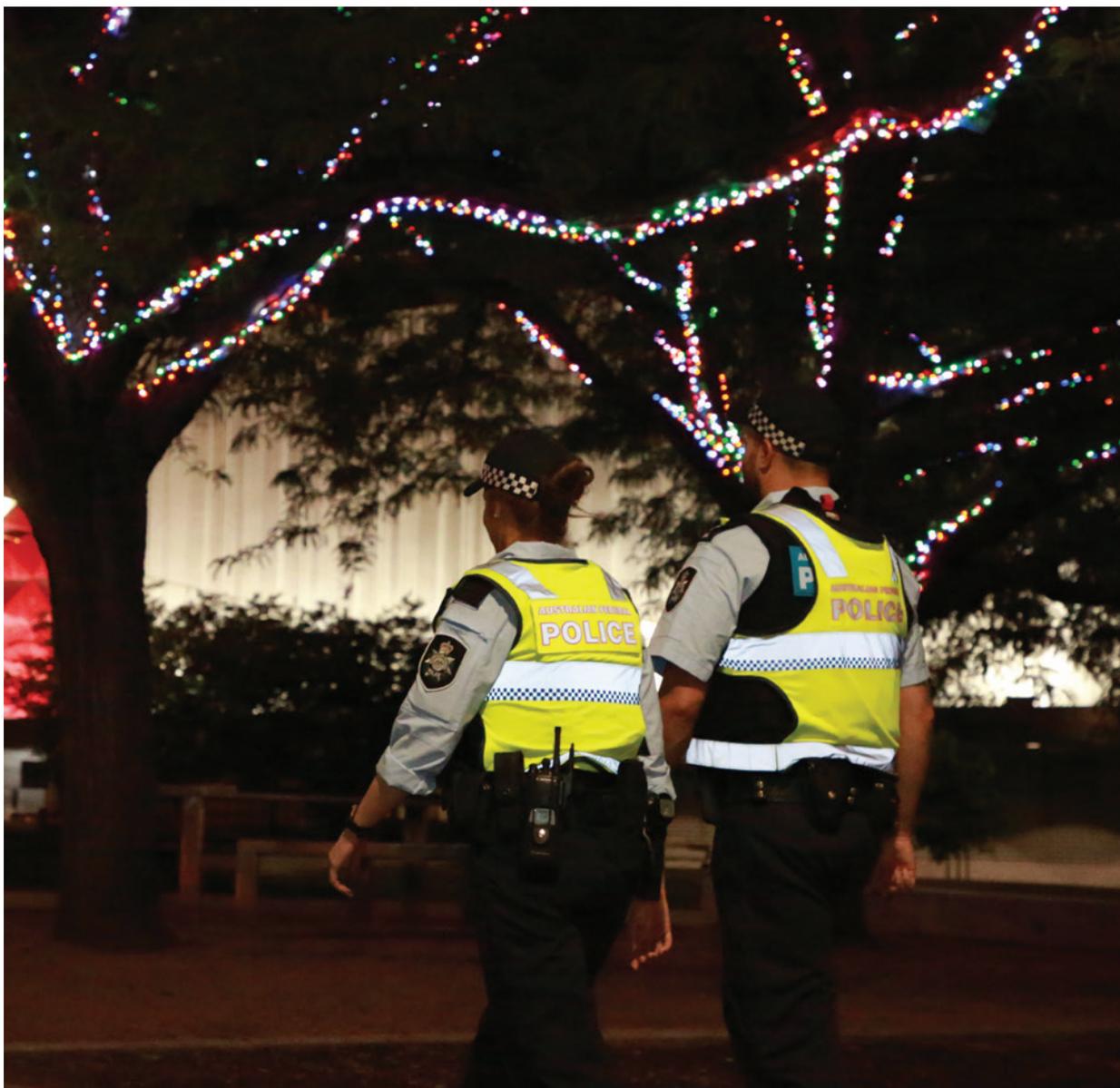
If the application is made without the support of an affidavit, the applicant must:

- a. give as much information as the Justice or Magistrate considers reasonably practicable in the circumstances; and
- b. send a sworn affidavit, no later than 72 hours after making the application, to the Justice or Magistrate, whether or not the warrant has been issued.

An application for a surveillance device warrant may be made by telephone, fax, email or any other means of communication, if an application in person is not practicable.

A separate retrieval warrant may be necessary where the surveillance device warrant has expired before a law enforcement officer was able to remove the device, or where the device was installed on an object which has been relocated to different premises from those to which the initial warrant authorised access.

The application process for a retrieval warrant mirrors the process for a surveillance device warrant.



Deciding the applications

In deciding an application for the issue of a surveillance device warrant, a Justice or Magistrate may issue a surveillance device warrant if satisfied that:

- a. there are reasonable grounds for the suspicion or belief founding the application for the warrant;
- b. for an unsworn application — it would have been impracticable for an affidavit to have been prepared or sworn before the application was made; and
- c. for a remote application — it would have been impracticable for the application to have been made in person.

In deciding whether a surveillance device warrant should be issued, the Justice or Magistrate must have regard to the following:

- a. the nature and gravity of the alleged offence in relation to which the warrant is sought;
- b. the extent to which the privacy of any person is likely to be affected;
- c. the existence of any alternative means of obtaining the evidence or information sought to be obtained, and the extent to which those means may assist or prejudice the investigation;
- d. the evidentiary or intelligence value of any information sought to be obtained; and
- e. any previous warrant sought or issued under this division or a corresponding law (if known) in connection with the same offence.

What must a surveillance device warrant contain?

A surveillance device warrant must state that the authorising Justice or Magistrate is satisfied that section 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 a 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; and
- j. any conditions subject to which the 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 that fact.

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

If the Justice or Magistrate issues a warrant on a remote application, the Justice or Magistrate must:

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

The information required in a retrieval warrant is consistent with what is required in a surveillance device warrant.

Revocation of surveillance device warrant

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

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

A Justice 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 Justice or Magistrate revokes the warrant on the application of a law enforcement officer, the Justice or Magistrate is taken to have notified the chief officer under ss. 3 when the Justice or Magistrate revokes the warrant.

A retrieval warrant can be revoked in the same way as a surveillance device warrant under Clause 17.



Discontinuance of use of surveillance device under warrant

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 immediately tell the chief officer of the law enforcement agency.

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; and
- b. ensure an application is made for the revocation of the warrant under section 17 of the Act.

If the chief officer is notified that the warrant has been revoked under section 17, the chief officer must take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued 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; and
- 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 Justice for approval of the exercise of powers under the emergency authorisation.

An application must state the name of the applicant, 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 Justice may refuse to consider the application until the applicant gives the Justice all the information the Justice requires about the application in the way the Justice requires.

Restrictions on use, communication and publication of information obtained from a surveillance device

Under the Act ‘protected information’ means:

- a. any information obtained from the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; and
- b. any information relating to:
 - i. an application for, issue of, existence of, or expiry of, a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation;
 - ii. an application for approval of powers exercised under an emergency authorisation; and
 - iii. an application under a corresponding law for approval of powers exercised under a corresponding emergency authorisation.

The Act strictly regulates who may have access to information obtained from surveillance devices and for what purposes such information may be used.

The Act provides a range of offences punishable by imprisonment from two to 10 years for any intentional or reckless improper use, communication or publication of protected information.

The Act also provides for the safe storage and destruction requirements for records of information and reports obtained using surveillance devices.

Reporting requirements

The chief officer of a law enforcement agency must give a written report to the Minister that includes the following information in relation to each financial year:

- a. the number of applications for warrants by and the number of warrants issued to law enforcement officers of the agency during the year;
- b. the number of applications for emergency authorisations by and the number of emergency authorisations given to law enforcement officers of the agency during the year;
- c. the number of remote applications for warrants by law enforcement officers of the agency during the year;
- d. the number of applications for warrants or emergency authorisations by law enforcement officers of the agency that were refused during the year, and the reasons for refusal;
- e. the number of applications for extensions of warrants by law enforcement officers of the agency during the year, the number of extensions granted or refused and the reasons why the extensions were granted or refused;
- f. the number of arrests made by law enforcement officers of the agency during the year on the basis (wholly or partly) of information obtained by the use of a surveillance device under a warrant or emergency authorisation;
- g. the number of prosecutions that were commenced in the ACT during the year in which information obtained by the use of a surveillance device under a warrant or emergency authorisation was given in evidence and the number of those prosecutions in which a person was found guilty; and
- h. any other information relating to the use of surveillance devices and the administration of this Act that the Minister considers appropriate.

The information mentioned in a. and b. above, must be presented in a way that identifies the number of warrants issued and emergency authorisations given in relation to each different kind of surveillance device.

The report must be given to the Minister as soon as practicable after the end of each financial year, and in any event within three months after the end of the financial year.

The Minister must present a copy of the report to the Legislative Assembly within 15 sitting days after the day the Minister receives it.

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 may, after notifying the chief officer of the law enforcement agency, 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 him or her any information that he or she 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 ACT Policing surveillance device records 2019–20

Number of surveillance device applications for Data Surveillance Devices	5
Number of surveillance device warrants issued for Data Surveillance Devices	5
Number of surveillance device emergency authorisation applications for Data Surveillance Devices	0
Number of surveillance device emergency authorisations issued for Data Surveillance Devices	0
Number of surveillance device applications for Listening Devices	10
Number of surveillance device warrants issued for Listening Devices	10
Number of surveillance device emergency authorisation applications for Listening Devices	0
Number of surveillance device emergency authorisations issued for Listening Devices	0
Number of surveillance device applications for Optical Surveillance Devices	7
Number of surveillance device warrants issued for Optical Surveillance Devices	7
Number of surveillance device emergency authorisation applications for Optical Surveillance Devices	0
Number of surveillance device emergency authorisations issued for Optical Surveillance Devices	0

Number of surveillance device applications for Tracking Devices	13
Number of surveillance device warrants issued for Tracking Devices	13
Number of surveillance device emergency authorisation applications for Tracking Devices	0
Number of surveillance device emergency authorisations issued for Tracking Devices	0
Number of surveillance device applications for Retrieval Warrants	0
Number of surveillance device Retrieval Warrants issued	0
Total number of surveillance device remote applications	0
Total number of surveillance device applications refused	0
Total number of emergency authorisation applications refused	0
Total number of surveillance device extension applications	6
Total number of surveillance device extensions granted	6
Total number of surveillance device extension applications refused	0
Total number of arrests on the basis of surveillance device information	4
Total number of prosecutions commenced using surveillance device information	1

This figure does not include guilty verdicts delivered during this reporting period for prosecutions commenced in previous reporting periods. Additionally, prosecutions commenced during this reporting period may still be before court.

Overview of ACT Policing surveillance device records 2018–19

These applications were not reported on within the ACT Policing Special Purposes Annual Report 2018–19 — Minister for Police and Emergency Services, due to the format of that report.

Number of surveillance device applications for Data Surveillance Devices	8
Number of surveillance device warrants issued for Data Surveillance Devices	8
Number of surveillance device emergency authorisation applications for Data Surveillance Devices	0
Number of surveillance device emergency authorisations issued for Data Surveillance Devices	0
Number of surveillance device applications for Listening Devices	8
Number of surveillance device warrants issued for Listening Devices	8
Number of surveillance device emergency authorisation applications for Listening Devices	0
Number of surveillance device emergency authorisations issued for Listening Devices	0
Number of surveillance device applications for Optical Surveillance Devices	8
Number of surveillance device warrants issued for Optical Surveillance Devices	8
Number of surveillance device emergency authorisation applications for Optical Surveillance Devices	0
Number of surveillance device emergency authorisations issued for Optical Surveillance Devices	0

Number of surveillance device applications for Tracking Devices	7
Number of surveillance device warrants issued for Tracking Devices	7
Number of surveillance device emergency authorisation applications for Tracking Devices	0
Number of surveillance device emergency authorisations issued for Tracking Devices	0
Number of surveillance device applications for Retrieval Warrants	0
Number of surveillance device Retrieval Warrants issued	0
Total number of surveillance device remote applications	0
Total number of surveillance device applications refused	0
Total number of emergency authorisation applications refused	0
Total number of surveillance device extension applications	2
Total number of surveillance device extensions granted	2
Total number of surveillance device extension applications refused	0
Total number of arrests on the basis of surveillance device information	0
Total number of prosecutions commenced using surveillance device information	0

This figure does not include guilty verdicts delivered during this reporting period for prosecutions commenced in previous reporting periods. Additionally, prosecutions commenced during this reporting period may still be before court.







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