

2002-2003-2004

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Surveillance Devices Bill 2004

No. , 2004

(Attorney-General)

**A Bill for an Act to set out the powers of
Commonwealth law enforcement agencies with
respect to surveillance devices, and for related
purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Purposes	2
4 Relationship to other laws and matters	2
5 Schedule(s)	3
6 Definitions	3
7 State offence that has a federal aspect	10
8 External Territories	12
9 Binding the Crown	12
Part 2—Warrants	13
Division 1—Introduction	13
10 Types of warrant	13
11 Who may issue warrants?	13
12 Eligible Judges	13
13 Nominated AAT members	14
Division 2—Surveillance device warrants	15
14 Application for surveillance device warrant	15
15 Remote application	16
16 Determining the application	16
17 What must a surveillance device warrant contain?	17
18 What a surveillance device warrant authorises	19
19 Extension and variation of surveillance device warrant	21
20 Revocation of surveillance device warrant	22
21 Discontinuance of use of surveillance device under warrant	22
Division 3—Retrieval warrants	25
22 Application for retrieval warrant	25
23 Remote application	26
24 Determining the application	26
25 What must a retrieval warrant contain?	26
26 What a retrieval warrant authorises	27
27 Revocation of retrieval warrant	28
Part 3—Emergency authorisations	30
28 Emergency authorisation—serious risks to person or property	30
29 Emergency authorisation—urgent circumstances relating to recovery order	30

30	Emergency authorisation—risk of loss of evidence	31
31	Record of emergency authorisations to be made	32
32	Attributes of emergency authorisations	32
33	Application for approval of emergency authorisation	33
34	Consideration of application	33
35	Judge or nominated AAT member may approve giving of emergency authorisations	35
36	Admissibility of evidence	37
Part 4—Use of certain surveillance devices without warrant		38
37	Use of optical surveillance devices without warrant	38
38	Use of surveillance devices without warrant for listening to or recording words in limited circumstances	39
39	Use and retrieval of tracking devices without warrant in certain circumstances	40
40	Record of tracking device authorisations to be kept	42
Part 5—Extraterritorial operation of warrants		43
41	Definitions	43
42	Extraterritorial operation of warrants	43
43	Evidence obtained from extraterritorial surveillance not to be tendered in evidence unless court satisfied properly obtained	46
Part 6—Compliance and monitoring		47
Division 1—Restrictions on use, communication and publication of information		47
44	What is protected information?	47
45	Prohibition on use, recording, communication or publication of protected information or its admission in evidence	48
46	Dealing with records obtained by use of surveillance devices	52
47	Protection of surveillance device technologies and methods	53
48	Protected information in the custody of a court, tribunal or Royal Commission	54
Division 2—Reporting and record-keeping		55
49	Report on each warrant or authorisation	55
50	Annual reports	56
51	Keeping documents connected with warrants, emergency authorisations and tracking device authorisations	58
52	Other records to be kept	59
53	Register of warrants, emergency authorisations and tracking device authorisations	60

Division 3—Inspections	62
54 Appointment of inspecting officers	62
55 Inspection of records.....	62
56 Power to obtain relevant information	63
57 Ombudsman to be given information and access despite other laws.....	64
58 Exchange of information between Ombudsman and State inspecting authorities	65
59 Delegation by Ombudsman	65
60 Ombudsman not to be sued.....	66
61 Report on inspection.....	66
Division 4—General	67
62 Evidentiary certificates	67
Part 7—Miscellaneous	69
63 Delegation by chief officer of law enforcement agency	69
64 Regulations	69
Schedule 1—Amendment of other legislation and transitional and saving provisions	70
<i>Australian Federal Police Act 1979</i>	70
<i>Criminal Code Act 1995</i>	71
<i>Customs Act 1901</i>	71
<i>Mutual Assistance in Criminal Matters Act 1987</i>	72

1 **A Bill for an Act to set out the powers of**
2 **Commonwealth law enforcement agencies with**
3 **respect to surveillance devices, and for related**
4 **purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

9 This Act may be cited as the *Surveillance Devices Act 2004*.

Section 2

1 **2 Commencement**

2 This Act commences on the day on which it receives the Royal
3 Assent.

4 **3 Purposes**

5 The main purposes of this Bill are:

- 6 (a) to establish procedures for law enforcement officers to obtain
7 warrants, emergency authorisations and tracking device
8 authorisations for the installation and use of surveillance
9 devices in relation to criminal investigations and the location
10 and safe recovery of children to whom recovery orders relate;
11 and
12 (b) to restrict the use, communication and publication of
13 information that is obtained through the use of surveillance
14 devices or that is otherwise connected with surveillance
15 device operations; and
16 (c) to impose requirements for the secure storage and destruction
17 of records, and the making of reports, in connection with
18 surveillance device operations.

19 **4 Relationship to other laws and matters**

- 20 (1) Except where there is express provision to the contrary, this Act is
21 not intended to affect any other law of the Commonwealth, any law
22 of a State, or any law of a self-governing Territory, that prohibits
23 or regulates the use of surveillance devices.
- 24 (2) For the avoidance of doubt, except where express provision is
25 made to the contrary, nothing in this Act applies to any body,
26 organisation or agency, however described, that is involved in the
27 collection of information or intelligence.
- 28 (3) This Act is not intended to limit a discretion that a court has:
29 (a) to admit or exclude evidence in any proceeding; or
30 (b) to stay criminal proceedings in the interests of justice.
- 31 (4) For the avoidance of doubt, it is intended that a warrant may be
32 issued, or an emergency authorisation or tracking device

1 authorisation given, under this Act for the installation, use,
2 maintenance or retrieval of a surveillance device in relation to a
3 relevant offence or a recovery order.

4 **5 Schedule(s)**

5 Each Act that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 according to its terms.

9 **6 Definitions**

10 (1) In this Act:

11 *AFP employee* has the same meaning as in the *Australian Federal*
12 *Police Act 1979*.

13 *applicant* for a warrant means the law enforcement officer who
14 applies, or on whose behalf an application is made, for the warrant.

15 *appropriate authorising officer*, in relation to a law enforcement
16 officer, means a person for the time being holding office or acting
17 as:

18 (a) if the law enforcement officer is a law enforcement officer
19 belonging to or seconded to the Australian Federal Police:

20 (i) the Commissioner of Police; or

21 (ii) a Deputy Commissioner of Police; or

22 (iii) a senior executive AFP employee who is authorised in
23 writing by the Commissioner for the purposes of this
24 subparagraph; and

25 (b) if the law enforcement officer is a law enforcement officer
26 belonging to or seconded to the Australian Crime
27 Commission:

28 (i) the Chief Executive Officer of the Commission; or

29 (ii) a member of the staff of the Commission who is an SES
30 employee and who is authorised in writing by the Chief
31 Executive Officer of the Commission for the purposes
32 of this subparagraph; and

Section 6

- 1 (c) if the law enforcement officer is a law enforcement officer
2 belonging to or seconded to the police force of a State or
3 Territory:
4 (i) the Commissioner or the person holding equivalent
5 rank; or
6 (ii) an Assistant Commissioner or a person holding
7 equivalent rank; or
8 (iii) a Superintendent or a person holding equivalent rank;
9 of the police force of that State or Territory.

10 **Australian Crime Commission** means the Australian Crime
11 Commission established by the *Australian Crime Commission Act*
12 *2002*.

13 **business day** means a day other than a Saturday, a Sunday or a
14 public holiday in the particular State or Territory in which an
15 appropriate authorising officer applies for approval of the exercise
16 of powers under an emergency authorisation.

17 **chief officer** means the person for the time being holding office or
18 acting as:

- 19 (a) in relation to the Australian Federal Police—the
20 Commissioner of Police; and
21 (b) in relation to the Australian Crime Commission—the Chief
22 Executive Officer of the Australian Crime Commission; and
23 (c) in relation to the police force of a State or Territory—the
24 Commissioner of Police in that police force or the person
25 holding equivalent rank.

26 **computer** means any electronic device for storing or processing
27 information.

28 **data surveillance device** means any device or program capable of
29 being used to record or monitor the input of information into, or
30 the output of information from, a computer, but does not include an
31 optical surveillance device.

32 **device** includes instrument, apparatus and equipment.

33 **disciplinary proceeding** means a proceeding of a disciplinary
34 nature under a law of the Commonwealth or of a State or Territory.

1 **eligible Judge** means an eligible Judge within the meaning of
2 section 12.

3 **emergency authorisation** means an emergency authorisation given
4 under Part 3.

5 **enhancement equipment**, in relation to a surveillance device,
6 means equipment capable of enhancing a signal, image or other
7 information obtained by the use of the surveillance device.

8 **federal law enforcement officer** means a law enforcement officer
9 referred to in paragraph (a) or (b) of the definition of **law**
10 **enforcement officer**.

11 **inspecting officer** means a person appointed by the Ombudsman
12 under section 54 to be an inspecting officer.

13 **install** includes attach.

14 **law enforcement agency** means the following agencies:

- 15 (a) the Australian Federal Police;
16 (b) the Australian Crime Commission;
17 (c) the police force of each State or Territory.

18 **law enforcement officer** means:

- 19 (a) in relation to the Australian Federal Police—the
20 Commissioner of Police, a Deputy Commissioner of Police,
21 any AFP employee, any special member or any person who is
22 seconded to the Australian Federal Police; or
23 (b) in relation to the Australian Crime Commission—the Chief
24 Executive Officer of the Australian Crime Commission or
25 any other person who is covered by a paragraph of the
26 definition of **member of the staff of the ACC** in section 4 of
27 the *Australian Crime Commission Act 2002*; or
28 (c) an officer (however described) of the police force of a State
29 or Territory or any person who is seconded to that police
30 force.

31 **listening device** means any device capable of being used to
32 overhear, record, monitor or listen to a conversation or words
33 spoken to or by any person in conversation, but does not include a

Section 6

1 hearing aid or similar device used by a person with impaired
2 hearing to overcome the impairment and permit that person to hear
3 only sounds ordinarily audible to the human ear.

4 ***maintain***, in relation to a surveillance device, includes:

- 5 (a) adjust, relocate, repair or service the device; and
6 (b) replace a faulty device.

7 ***nominated AAT member*** means a person in respect of whom a
8 nomination under section 13 is in force.

9 ***Ombudsman*** means the person holding office as the
10 Commonwealth Ombudsman under the *Ombudsman Act 1976*.

11 ***optical surveillance device*** means any device capable of being
12 used to record visually or observe an activity, but does not include
13 spectacles, contact lenses or a similar device used by a person with
14 impaired sight to overcome that impairment.

15 ***premises*** includes:

- 16 (a) land; and
17 (b) a building or vehicle; and
18 (c) a part of a building or vehicle; and
19 (d) any place, whether built on or not;
20 whether within or beyond Australia.

21 ***prosecution***, in relation to a criminal offence, includes all stages in
22 the prosecution of that offence, including a committal hearing.

23 ***protected information*** has the meaning given in section 44.

24 ***public officer*** means a person employed by, or holding an office
25 established by or under a law of, the Commonwealth, a State or a
26 Territory or a person employed by a public authority of the
27 Commonwealth, a State or a Territory.

28 ***record*** includes:

- 29 (a) an audio, visual or audio-visual record; and
30 (b) a record in digital form; and
31 (c) a documentary record prepared from a record referred to in
32 paragraph (a) or (b).

1 **recovery order** means an order made by the Family Court of
2 Australia under section 67U of the *Family Law Act 1975*.

3 **relevant offence** means:

- 4 (a) an offence against the law of the Commonwealth that is
5 punishable by a maximum term of imprisonment of 3 years
6 or more or for life; or
7 (b) an offence against a law of a State that has a federal aspect
8 and that is punishable by a maximum term of imprisonment
9 of 3 years or more or for life; or
10 (c) an offence against section 15 or 18 of the *Financial*
11 *Transaction Reports Act 1988*; or
12 (d) an offence against section 100, 100A, 101, or 101A of the
13 *Fisheries Management Act 1991*; or
14 (e) an offence that is prescribed by the regulations.

15 **relevant proceeding** means:

- 16 (a) the prosecution of a relevant offence; or
17 (b) a proceeding for the confiscation, forfeiture or restraint of
18 property, or for the imposition of a pecuniary penalty, in
19 connection with a relevant offence, and any related
20 proceeding; or
21 (c) a proceeding for the protection of a child or intellectually
22 impaired person; or
23 (d) a proceeding concerning the validity of a warrant, an
24 emergency authorisation or a tracking device authorisation;
25 or
26 (e) a disciplinary proceeding against a public officer; or
27 (f) a coronial inquest or inquiry if, in the opinion of the coroner,
28 the event that is the subject of the inquest or inquiry may
29 have resulted from the commission of a relevant offence; or
30 (g) a proceeding under subsection 13(2) of the *Mutual Assistance*
31 *in Criminal Matters Act 1987* in relation to a criminal matter
32 that concerns an offence against the laws of the foreign
33 country that made the request resulting in the proceeding,
34 being an offence punishable by a maximum term of
35 imprisonment of 3 years or more, by imprisonment for life or
36 by the death penalty; or

Section 6

- 1 (h) the authorisation, under section 13A of the *Mutual Assistance*
2 *in Criminal Matters Act 1987*, of material to be made
3 available to a foreign country for use in the investigation into,
4 or proceedings in relation to, an offence against the laws of
5 that country; or
6 (i) proceedings for an order under section 67X of the *Family*
7 *Law Act 1975*; or
8 (j) a proceeding for the taking of evidence under section 43 of
9 the *Extradition Act 1988*, in so far as the proceeding relates
10 to a relevant offence; or
11 (k) a proceeding under Division 1 of Part 4 of the *International*
12 *War Crimes Tribunals Act 1995*; or
13 (l) a proceeding of the International Criminal Court; or
14 (m) a proceeding by way of a bail application that relates to a
15 prosecution for a relevant offence; or
16 (n) a proceeding for review of a decision to refuse such a bail
17 application; or
18 (o) a proceeding for review of a decision to grant such a bail
19 application.

20 ***remote application*** for a warrant means an application referred to
21 in section 15 or 23.

22 ***report*** of a conversation or activity includes a report of the
23 substance, meaning or purport of the conversation or activity.

24 ***retrieval warrant*** means a warrant issued under Division 3 of
25 Part 2.

26 ***State offence that has a federal aspect*** has the meaning given by
27 section 7.

28 ***State or Territory law enforcement officer*** means a law
29 enforcement officer referred to in paragraph (c) of the definition of
30 ***law enforcement officer***.

31 ***surveillance device*** means:

- 32 (a) a data surveillance device, a listening device, an optical
33 surveillance device or a tracking device; or

Section 6

1 (b) a device that is a combination of any 2 or more of the devices
2 referred to in paragraph (a); or

3 (c) a device of a kind prescribed by the regulations.

4 **surveillance device warrant** means a warrant issued under
5 Division 2 of Part 2 or under subsection 35(4) or (5).

6 **sworn** includes affirmed.

7 **tracking device** means any electronic device capable of being used
8 to determine or monitor the location of a person or an object or the
9 status of an object.

10 **tracking device authorisation** means a permission given under
11 section 39 by an appropriate authorising officer for a law
12 enforcement officer to use or retrieve a tracking device without a
13 warrant.

14 **unsworn application** for a warrant means an application referred to
15 in subsections 14(6) and (7) or 22(4) and (5).

16 **use** of a surveillance device includes use of the device to record a
17 conversation or other activity.

18 **vehicle** includes aircraft and vessel.

19 **warrant** means surveillance device warrant or retrieval warrant.

20 (2) In this Act, a reference to the law enforcement officer primarily
21 responsible for executing a warrant, emergency authorisation or
22 tracking device authorisation is a reference to:

23 (a) the person named in the warrant or authorisation as such a
24 person; or

25 (b) if there is no such person named—the person nominated as
26 such a person by the chief officer of the agency concerned;
27 whether or not that person is physically present for any step in the
28 execution of the warrant or authorisation.

29 (3) In this Act:

30 (a) a reference to a person who belongs or is seconded to a law
31 enforcement agency, in the case of the Australian Crime
32 Commission, is a reference to any person who is covered by

Section 7

- 1 a paragraph of the definition of *member of the staff of the*
2 *ACC* in section 4 of the *Australian Crime Commission Act*
3 *2002*; and
4 (b) a reference to a person who belongs or is seconded to the
5 Australian Crime Commission is to be similarly construed.

6 **7 State offence that has a federal aspect**

- 7 (1) In this Act, a State offence has a federal aspect if, and only if:
8 (a) both:
9 (i) the State offence is not an ancillary offence; and
10 (ii) assuming that the provision creating the State offence
11 had been enacted by the Parliament of the
12 Commonwealth instead of by the Parliament of the
13 State—the provision would have been a valid law of the
14 Commonwealth; or
15 (b) both:
16 (i) the State offence is an ancillary offence that relates to a
17 particular primary offence; and
18 (ii) assuming that the provision creating the primary offence
19 had been enacted by the Parliament of the
20 Commonwealth instead of by the Parliament of the
21 State—the provision would have been a valid law of the
22 Commonwealth; or
23 (c) assuming that the Parliament of the Commonwealth had
24 enacted a provision that created an offence penalising the
25 specific acts or omissions involved in committing the State
26 offence—that provision would have been a valid law of the
27 Commonwealth; or
28 (d) both:
29 (i) the Australian Federal Police or the Australian Crime
30 Commission (the *relevant agency*) is investigating a
31 matter relating to a relevant criminal activity that relates
32 to an offence against a law of the Commonwealth or a
33 Territory; and
34 (ii) if the relevant agency is investigating, or were to
35 investigate, a matter relating to a relevant criminal
36 activity that relates to the State offence—that

-
- 1 investigation is, or would be, incidental to the
2 investigation mentioned in subparagraph (i).
- 3 (2) For the purposes of paragraph (1)(c), the specificity of the acts or
4 omissions involved in committing a State offence is to be
5 determined having regard to the circumstances in which the
6 offence was committed (whether or not those circumstances are
7 expressed to be elements of the offence).
- 8 (3) A State offence is taken to be covered by paragraph (1)(c) if:
9 (a) the State offence affects the interests of:
10 (i) the Commonwealth; or
11 (ii) an authority of the Commonwealth; or
12 (iii) a constitutional corporation; or
13 (b) the State offence was committed by a constitutional
14 corporation; or
15 (c) the State offence was committed in a Commonwealth place;
16 or
17 (d) the State offence involved the use of a postal service or other
18 like service; or
19 (e) the State offence involved an electronic communication; or
20 (f) the State offence involved trade or commerce:
21 (i) between Australia and places outside Australia; or
22 (ii) among the States; or
23 (iii) within a Territory, between a State and a Territory or
24 between 2 Territories; or
25 (g) the State offence involved:
26 (i) banking (other than State banking not extending beyond
27 the limits of the State concerned); or
28 (ii) insurance (other than State insurance not extending
29 beyond the limits of the State concerned); or
30 (h) the State offence relates to a matter outside Australia.
- 31 (4) Subsection (3) does not limit paragraph (1)(c).
- 32 (5) In this section:
33 ***ancillary offence***, in relation to an offence (the ***primary offence***),
34 means:
-

Section 8

- 1 (a) an offence of conspiring to commit the primary offence;
2 or
3 (b) an offence of aiding, abetting, counselling or procuring,
4 or being in any way knowingly concerned in, the
5 commission of the primary offence; or
6 (c) an offence of attempting to commit the primary offence.

7 **authority of the Commonwealth** has the same meaning as in
8 section 3AA of the *Crimes Act 1914*.

9 **Commonwealth place** has the same meaning as in the
10 *Commonwealth Places (Application of Laws) Act 1970*.

11 **constitutional corporation** means a corporation to which
12 paragraph 51(xx) of the Constitution applies.

13 **electronic communication** means a communication of information:

- 14 (a) whether in the form of text; or
15 (b) whether in the form of data; or
16 (c) whether in the form of speech, music or other sounds; or
17 (d) whether in the form of visual images (animated or
18 otherwise); or
19 (e) whether in any other form; or
20 (f) whether in any combination of forms;

21 by means of guided and/or unguided electromagnetic energy.

22 **State offence** means an offence against a law of a State.

23 **8 External Territories**

24 This Act extends to every external Territory.

25 **9 Binding the Crown**

26 (1) This Act binds the Crown in each of its capacities.

27 (2) This Act does not make the Crown liable to be prosecuted for an
28 offence.

1

2 **Part 2—Warrants**

3 **Division 1—Introduction**

4 **10 Types of warrant**

5 (1) The following types of warrant may be issued under this Part:

6 (a) a surveillance device warrant;

7 (b) a retrieval warrant.

8 (2) A warrant may be issued:

9 (a) in respect of more than one kind of surveillance device; and

10 (b) in respect of more than one surveillance device of any
11 particular kind.

12 **11 Who may issue warrants?**

13 Any warrant under this Part may be issued by an eligible Judge or
14 by a nominated AAT member.

15 **12 Eligible Judges**

16 (1) In this section, unless the contrary intention appears:

17 *eligible Judge* means a person in relation to whom a consent under
18 subsection (2) and a declaration under subsection (3) are in force.

19 *Judge* means a person who is a Judge of a court created by the
20 Parliament.

21 (2) A Judge may, by writing, consent to be declared an eligible Judge
22 by the Minister under subsection (3).

23 (3) The Minister may, by writing, declare Judges in relation to whom
24 consents are in force under subsection (2) to be eligible Judges for
25 the purposes of this Act.

Section 13

- 1 (4) Any function or power conferred on the Judge under this Act is so
2 conferred only in a personal capacity and not as a court or a
3 member of a court.
- 4 (5) An eligible Judge has, in relation to the performance or exercise of
5 a function or power conferred on an eligible Judge by this Act, the
6 same protection and immunity as a Justice of the High Court has in
7 relation to proceedings in the High Court.

8 **13 Nominated AAT members**

- 9 (1) The Minister may, by writing, nominate a person who holds one of
10 the following appointments to the Administrative Appeals Tribunal
11 to issue warrants under this Part:
12 (a) Deputy President;
13 (b) full-time senior member;
14 (c) part-time senior member;
15 (d) member.
- 16 (2) Despite subsection (1), the Minister must not nominate a person
17 who holds an appointment as a part-time senior member or a
18 member of the Tribunal unless the person:
19 (a) is enrolled as a legal practitioner of the High Court, of
20 another federal court or of the Supreme Court of a State or of
21 the Australian Capital Territory; and
22 (b) has been so enrolled for not less than 5 years.
- 23 (3) A nomination ceases to have effect if:
24 (a) the nominated AAT member ceases to hold an appointment
25 described in subsection (1); or
26 (b) the Minister, by writing, withdraws the nomination.
- 27 (4) A nominated AAT member has, in relation to the performance or
28 exercise of a function or power conferred on a nominated AAT
29 member by this Act, the same protection and immunity as a Justice
30 of the High Court has in relation to proceedings in the High Court.

1

2 **Division 2—Surveillance device warrants**

3 **14 Application for surveillance device warrant**

- 4 (1) A law enforcement officer (or another person on his or her behalf)
5 may apply for the issue of a surveillance device warrant if the law
6 enforcement officer suspects on reasonable grounds that:
- 7 (a) one or more relevant offences have been, are being, are about
8 to be, or are likely to be, committed; and
 - 9 (b) an investigation into those offences is being, will be, or is
10 likely to be, conducted; and
 - 11 (c) the use of a surveillance device is necessary in the course of
12 that investigation for the purpose of enabling evidence to be
13 obtained of the commission of the relevant offences or the
14 identity or location of the offenders.
- 15 (2) If the application is being made by or on behalf of a State or
16 Territory law enforcement officer, the reference in subsection (1)
17 to a relevant offence does not include a reference to a State offence
18 that has a federal aspect.
- 19 (3) A law enforcement officer (or another person on his or her behalf)
20 may apply for the issue of a surveillance device warrant if:
- 21 (a) a recovery order is in force; and
 - 22 (b) the law enforcement officer suspects on reasonable grounds
23 that the use of a surveillance device may assist in the location
24 and safe recovery of the child to whom the recovery order
25 relates.
- 26 (4) The application under subsection (1) or (3) may be made to an
27 eligible Judge or to a nominated AAT member.
- 28 (5) An application:
- 29 (a) must specify:
 - 30 (i) the name of the applicant; and
 - 31 (ii) the nature and duration of the warrant sought, including
32 the kind of surveillance device or devices sought to be
33 authorised; and
-

Section 15

- 1 (b) subject to this section, must be supported by an affidavit
2 setting out the grounds on which the warrant is sought.
- 3 (6) If a law enforcement officer believes that:
4 (a) the immediate use of a surveillance device is necessary for a
5 purpose referred to in paragraph (1)(c) or may assist as
6 described in paragraph (3)(b); and
7 (b) it is impracticable for an affidavit to be prepared or sworn
8 before an application for a warrant is made;
9 an application for a warrant may be made before an affidavit is
10 prepared or sworn.
- 11 (7) If subsection (6) applies, the applicant must:
12 (a) provide as much information as the eligible Judge or
13 nominated AAT member considers is reasonably practicable
14 in the circumstances; and
15 (b) not later than 72 hours after the making of the application,
16 send a duly sworn affidavit to the Judge or member, whether
17 or not a warrant has been issued.

15 Remote application

- 18
19 (1) If a law enforcement officer believes that it is impracticable for an
20 application for a surveillance device warrant to be made in person,
21 the application may be made under section 14 by telephone, fax,
22 e-mail or any other means of communication.
- 23 (2) If transmission by fax is available and an affidavit has been
24 prepared, the person applying must transmit a copy of the affidavit,
25 whether sworn or unsworn, to the eligible Judge or to the
26 nominated AAT member who is to determine the application.

16 Determining the application

- 27
28 (1) An eligible Judge or a nominated AAT member may issue a
29 surveillance device warrant if satisfied:
30 (a) in the case of a warrant sought in relation to a relevant
31 offence—that there are reasonable grounds for the suspicion
32 founding the application for the warrant; and

- 1 (b) in the case of a warrant sought in relation to a recovery
2 order—that such an order is in force and that there are
3 reasonable grounds for the suspicion founding the application
4 for the warrant; and
- 5 (c) in the case of an unsworn application—that it would have
6 been impracticable for an affidavit to have been sworn or
7 prepared before the application was made; and
- 8 (d) in the case of a remote application—that it would have been
9 impracticable for the application to have been made in
10 person.
- 11 (2) In determining whether a surveillance device warrant should be
12 issued, the eligible Judge or nominated AAT member must have
13 regard to:
- 14 (a) in the case of a warrant sought in relation to a relevant
15 offence—the nature and gravity of the alleged offence; and
- 16 (b) in the case of a warrant sought to assist in the location and
17 safe recovery of a child to whom a recovery order relates—
18 the circumstances that gave rise to the making of the order;
19 and
- 20 (c) the extent to which the privacy of any person is likely to be
21 affected; and
- 22 (d) the existence of any alternative means of obtaining the
23 evidence or information sought to be obtained; and
- 24 (e) the likely evidentiary or intelligence value of any evidence or
25 information sought to be obtained; and
- 26 (f) any previous warrant sought or issued under this Division in
27 connection with the same alleged offence or the same
28 recovery order.

29 **17 What must a surveillance device warrant contain?**

- 30 (1) A surveillance device warrant must:
- 31 (a) state that the eligible Judge or nominated AAT member
32 issuing the warrant is satisfied of the matters referred to in
33 subsection 16(1) and has had regard to the matters referred to
34 in subsection 16(2); and
- 35 (b) specify:

Part 2 Warrants

Division 2 Surveillance device warrants

Section 17

- 1 (i) the name of the applicant; and
2 (ii) if the warrant relates to one or more alleged relevant
3 offences—the alleged offences in respect of which the
4 warrant is issued; and
5 (iii) if the warrant relates to a recovery order—the date the
6 order was made and the name of the child to whom the
7 order relates; and
8 (iv) the date the warrant is issued; and
9 (v) the surveillance device or devices authorised to be used;
10 and
11 (vi) if the warrant authorises the use of a surveillance device
12 on premises—the premises on which the use of the
13 surveillance device is authorised; and
14 (vii) if the warrant authorises the use of a surveillance device
15 in or on an object or class of object—the object or class
16 of object in or on which the use of the surveillance
17 device is authorised; and
18 (viii) if the warrant authorises the use of a surveillance device
19 in respect of the conversations, activities or location of a
20 person—the name of the person (if known) or the fact
21 that the person’s identity is unknown; and
22 (ix) the period during which the warrant is in force, being a
23 period not exceeding 90 days; and
24 (x) the name of the law enforcement officer primarily
25 responsible for executing the warrant; and
26 (xi) any conditions subject to which premises may be
27 entered, or a surveillance device may be used, under the
28 warrant.
- 29 (2) In the case of a warrant authorising the use of a surveillance device
30 on premises that are vehicles, the warrant need only specify the
31 class of vehicle in relation to which the use of the surveillance
32 device is authorised.
- 33 (3) A warrant must be signed by the person issuing it and include his
34 or her name.
- 35 (4) As soon as practicable after completing and signing a warrant
36 issued on a remote application, the person issuing it must:

- 1 (a) inform the applicant of:
2 (i) the terms of the warrant; and
3 (ii) the date on which and the time at which the warrant was
4 issued; and
5 (b) give the warrant to the applicant while retaining a copy of the
6 warrant for the person's own record.

7 **18 What a surveillance device warrant authorises**

- 8 (1) A surveillance device warrant (subject to any conditions specified
9 in it) may authorise one or more of the following:
10 (a) the use of a surveillance device on specified premises;
11 (b) the use of a surveillance device in or on a specified object or
12 class of object;
13 (c) the use of a surveillance device in respect of the
14 conversations, activities or location of a specified person or a
15 person whose identity is unknown.
- 16 (2) A surveillance device warrant authorises:
17 (a) for a warrant of a kind referred to in paragraph (1)(a):
18 (i) the installation, use and maintenance of a surveillance
19 device of the kind specified in the warrant on the
20 specified premises; and
21 (ii) the entry, by force if necessary, onto the premises, and
22 onto other specified premises adjoining or providing
23 access to the premises, for any of the purposes referred
24 to in subparagraph (i) or subsection (3); and
25 (b) for a warrant of a kind referred to in paragraph (1)(b):
26 (i) the installation, use and maintenance of a surveillance
27 device of the kind specified in the warrant in or on the
28 specified object or an object of the specified class; and
29 (ii) the entry, by force if necessary, onto any premises
30 where the object, or an object of the class, is reasonably
31 believed to be or is likely to be, and onto other premises
32 adjoining or providing access to those premises, for any
33 of the purposes referred to in subparagraph (i) or
34 subsection (3); and
35 (c) for a warrant of a kind referred to in paragraph (1)(c):
-

Part 2 Warrants

Division 2 Surveillance device warrants

Section 18

- 1 (i) the installation, use and maintenance of a surveillance
2 device of the kind specified in the warrant, on premises
3 where the person is reasonably believed to be or likely
4 to be; and
- 5 (ii) the entry, by force if necessary, onto the premises, or
6 other premises adjoining or providing access to those
7 premises, for any of the purposes referred to in
8 subparagraph (i) or subsection (3).
- 9 (3) Each surveillance device warrant also authorises:
- 10 (a) the retrieval of the surveillance device; and
- 11 (b) the installation, use, maintenance and retrieval of
12 enhancement equipment in relation to the surveillance
13 device; and
- 14 (c) the temporary removal of an object or vehicle from premises
15 for the installation, maintenance or retrieval of the
16 surveillance device or enhancement equipment and the return
17 of the object or vehicle to the premises; and
- 18 (d) the breaking open of anything for the installation,
19 maintenance or retrieval of the surveillance device or
20 enhancement equipment; and
- 21 (e) the connection of the surveillance device or enhancement
22 equipment to any source of electricity and the use of
23 electricity from that source to operate the device or
24 equipment; and
- 25 (f) the connection of the surveillance device or enhancement
26 equipment to any object or system that may be used to
27 transmit information in any form and the use of that object or
28 system in connection with the operation of the device or
29 equipment; and
- 30 (g) the provision of assistance or technical expertise to the law
31 enforcement officer named in the warrant in the installation,
32 use, maintenance or retrieval of the surveillance device or
33 enhancement equipment.
- 34 (4) A surveillance device warrant may authorise the doing of anything
35 reasonably necessary to conceal the fact that anything has been
36 done in relation to the installation, use, maintenance or retrieval of
37 a surveillance device or enhancement equipment under the warrant.

- 1 (5) A surveillance device warrant may authorise the interference with
2 property of a person who is not the subject of the investigation in
3 respect of which the warrant was issued but, if the interference
4 would be on premises not specified in the warrant, only if the
5 person issuing the warrant is satisfied that it is necessary to do so
6 in order to give effect to the warrant.
- 7 (6) A law enforcement officer may use a surveillance device under a
8 warrant only in the performance of his or her duty.
- 9 (7) Nothing in this section authorises the doing of anything for which a
10 warrant would be required under the *Telecommunications*
11 *(Interception) Act 1979*.

12 **19 Extension and variation of surveillance device warrant**

- 13 (1) A law enforcement officer to whom a surveillance device warrant
14 has been issued (or another person on his or her behalf) may apply,
15 at any time before the expiry of the warrant:
16 (a) for an extension of the warrant for a period not exceeding 90
17 days from the day on which it would otherwise expire; or
18 (b) for a variation of any of the other terms of the warrant.
- 19 (2) The application is to be made to an eligible Judge or to a
20 nominated AAT member and must be accompanied by the original
21 warrant.
- 22 (3) Sections 14 and 15 apply, with any necessary changes, to an
23 application under this section as if it were an application for the
24 warrant.
- 25 (4) The Judge or member may grant an application if satisfied that the
26 matters referred to in subsection 16(1) still exist, having regard to
27 the matters in subsection 16(2).
- 28 (5) If the Judge or member grants the application, the Judge or
29 member must endorse the new expiry date or the other varied term
30 on the original warrant.
- 31 (6) An application may be made under this section more than once.

Section 20

1 **20 Revocation of surveillance device warrant**

2 (1) A surveillance device warrant may, by instrument in writing, be
3 revoked by an eligible Judge or nominated AAT member on his or
4 her own initiative at any time before the expiration of the period of
5 validity specified in the warrant.

6 (2) If the circumstances set out in paragraphs 21(2)(a) and (b) or
7 21(3)(a) and (b) apply in relation to a surveillance device
8 warrant—the chief officer of the law enforcement agency to which
9 the law enforcement officer to whom the warrant was issued
10 belongs or is seconded must, by instrument in writing, revoke the
11 warrant.

12 (3) The instrument revoking a warrant must be signed by the eligible
13 Judge, the nominated AAT member or the chief officer of the law
14 enforcement agency, as the case requires.

15 (4) If an eligible Judge or nominated AAT member revokes a warrant,
16 he or she must give a copy of the instrument of revocation to the
17 chief officer of the law enforcement agency to which the law
18 enforcement officer to whom the warrant was issued belongs or is
19 seconded.

20 (5) If:
21 (a) an eligible Judge or nominated AAT member revokes a
22 warrant; and
23 (b) at the time of the revocation, a law enforcement officer is
24 executing the warrant;
25 the law enforcement officer is not subject to any civil or criminal
26 liability for any act done in the proper execution of that warrant
27 before the officer is made aware of the revocation.

28 **21 Discontinuance of use of surveillance device under warrant**

29 (1) This section applies if a surveillance device warrant is issued to a
30 law enforcement officer.

31 (2) If:

Section 21

- 1 (a) the surveillance device warrant has been sought by or on
2 behalf of a law enforcement officer in relation to a relevant
3 offence; and
- 4 (b) the chief officer of the law enforcement agency to which the
5 law enforcement officer belongs or is seconded is satisfied
6 that the use of a surveillance device under the warrant sought
7 is no longer necessary for the purpose of enabling evidence
8 to be obtained of the commission of the relevant offence or
9 the identity or location of the offender;
- 10 the chief officer must, in addition to revoking the warrant under
11 section 20, take the steps necessary to ensure that use of the
12 surveillance device authorised by the warrant is discontinued.
- 13 (3) If:
- 14 (a) a surveillance device warrant has been sought by or on behalf
15 of a law enforcement officer in relation to a recovery order;
16 and
- 17 (b) the chief officer of the law enforcement agency to which the
18 law enforcement officer belongs or is seconded is satisfied
19 that the use of a surveillance device is no longer required for
20 the purpose of locating and safely recovering the child to
21 whom the recovery order relates;
- 22 the chief officer must, in addition to revoking the warrant under
23 section 20, take the steps necessary to ensure that use of the
24 surveillance device authorised by the warrant is discontinued.
- 25 (4) If the chief officer of a law enforcement agency is notified that a
26 warrant has been revoked by an eligible Judge or a nominated
27 AAT member under section 20, he or she must take the steps
28 necessary to ensure that use of the surveillance device authorised
29 by the warrant is discontinued as soon as practicable.
- 30 (5) If the law enforcement officer to whom the warrant is issued, or
31 who is primarily responsible for executing the warrant, believes
32 that use of a surveillance device under the warrant is no longer
33 necessary for the purpose:
- 34 (a) if the warrant was issued in relation to a relevant offence—of
35 enabling evidence to be obtained of the commission of the
36 relevant offence or the identity or location of the offender; or

Part 2 Warrants

Division 2 Surveillance device warrants

Section 21

1 (b) if the warrant was issued in relation to a recovery order—of
2 enabling the location and safe recovery of the child to whom
3 the order relates;
4 he or she must immediately inform the chief officer of the law
5 enforcement agency to which he or she belongs or is seconded.

1

2 **Division 3—Retrieval warrants**

3 **22 Application for retrieval warrant**

4 (1) A law enforcement officer (or another person on his or her behalf)
5 may apply for the issue of a retrieval warrant in respect of a
6 surveillance device that was lawfully installed on premises, or in or
7 on an object, under a surveillance device warrant and that the law
8 enforcement officer suspects on reasonable grounds is still on those
9 premises or in or on that object, or on other premises or in or on
10 another object.

11 (2) The application may be made to an eligible Judge or to a
12 nominated AAT member.

13 (3) Subject to this section, the application must be supported by an
14 affidavit setting out the grounds on which the retrieval warrant is
15 sought.

16 (4) If a law enforcement officer believes that:
17 (a) the immediate retrieval of a surveillance device is necessary;
18 and
19 (b) it is impracticable for an affidavit to be prepared or sworn
20 before the application for a retrieval warrant is made;
21 the application may be made before an affidavit is prepared or
22 sworn.

23 (5) If subsection (4) applies, the applicant must:
24 (a) provide as much information as the eligible Judge or
25 nominated AAT member considers is reasonably practicable
26 in the circumstances; and
27 (b) not later than 72 hours following the making of the
28 application, send a duly sworn affidavit to the eligible Judge
29 or nominated AAT member who determined the application,
30 whether or not a warrant has been issued.

Section 23

1 **23 Remote application**

- 2 (1) If a law enforcement officer believes that it is impracticable for an
3 application for a retrieval warrant to be made in person, the
4 application may be made under section 22 by telephone, fax,
5 e-mail or any other means of communication.
- 6 (2) If transmission by fax is available and an affidavit has been
7 prepared, the person applying must transmit a copy of the affidavit,
8 whether sworn or unsworn, to the eligible Judge or nominated
9 AAT member who is to determine the application.

10 **24 Determining the application**

- 11 (1) An eligible Judge or nominated AAT member may issue a retrieval
12 warrant if the Judge or member is satisfied:
- 13 (a) that there are reasonable grounds for the suspicion founding
14 the application for the warrant; and
- 15 (b) in the case of an unsworn application—that it would have
16 been impracticable for an affidavit to have been sworn or
17 prepared before the application was made; and
- 18 (c) in the case of a remote application—that it would have been
19 impracticable for the application to have been made in
20 person.
- 21 (2) In determining whether a retrieval warrant should be issued, the
22 eligible Judge or nominated AAT member must have regard to:
- 23 (a) the extent to which the privacy of any person is likely to be
24 affected; and
- 25 (b) the public interest in retrieving the device sought to be
26 retrieved.

27 **25 What must a retrieval warrant contain?**

- 28 (1) A retrieval warrant must:
- 29 (a) state that the eligible Judge or nominated AAT member is
30 satisfied of the matters referred to in subsection 24(1) and has
31 had regard to the matters referred to in subsection 24(2); and
- 32 (b) specify:
- 33 (i) the name of the applicant; and

- 1 (ii) the date the warrant is issued; and
2 (iii) the kind of surveillance device authorised to be
3 retrieved; and
4 (iv) the premises or object from which the surveillance
5 device is to be retrieved; and
6 (v) the period (not exceeding 90 days) during which the
7 warrant is in force; and
8 (vi) the name of the law enforcement officer primarily
9 responsible for executing the warrant; and
10 (vii) any conditions subject to which premises may be
11 entered under the warrant.
- 12 (2) A warrant must be signed by the person issuing it and include his
13 or her name.
- 14 (3) As soon as practicable after completing and signing a warrant
15 issued on a remote application, the person issuing it must:
16 (a) inform the applicant of:
17 (i) the terms of the warrant; and
18 (ii) the date on which and the time at which the warrant was
19 issued; and
20 (b) give the warrant to the applicant while retaining a copy of the
21 warrant for the person's own record.

22 **26 What a retrieval warrant authorises**

- 23 (1) A retrieval warrant (subject to any conditions specified in it)
24 authorises:
25 (a) the retrieval of the surveillance device specified in the
26 warrant and any enhancement equipment in relation to the
27 device; and
28 (b) the entry, by force if necessary, onto the premises where the
29 surveillance device is reasonably believed to be, and onto
30 other premises adjoining or providing access to those
31 premises, for the purpose of retrieving the device and
32 equipment; and
33 (c) the breaking open of any thing for the purpose of retrieving
34 the device and equipment; and

Section 27

- 1 (d) if the device or equipment is installed on or in an object or
2 vehicle—the temporary removal of the object or vehicle from
3 any place where it is situated for the purpose of retrieving the
4 device and equipment and returning the object or vehicle to
5 that place; and
6 (e) the provision of assistance or technical expertise to the law
7 enforcement officer named in the warrant in the retrieval of
8 the device or equipment.
- 9 (2) If the retrieval warrant authorises the retrieval of a tracking device,
10 the warrant also authorises the use of the tracking device and any
11 enhancement equipment in relation to the device solely for the
12 purposes of the location and retrieval of the device or equipment.
- 13 (3) A retrieval warrant may authorise the doing of anything reasonably
14 necessary to conceal the fact that anything has been done in
15 relation to the retrieval of a surveillance device or enhancement
16 equipment under the warrant but cannot authorise the use, for any
17 purpose, of the surveillance device specified in the warrant.

18 **27 Revocation of retrieval warrant**

- 19 (1) A retrieval warrant may, by instrument in writing, be revoked by
20 an eligible Judge or a nominated AAT member on his or her own
21 initiative at any time before the expiration of the period of validity
22 specified in the warrant.
- 23 (2) If the chief officer of the law enforcement agency to which the law
24 enforcement officer to whom a retrieval warrant was issued
25 belongs or is seconded is satisfied that the grounds for issue of the
26 retrieval warrant no longer exist—the chief officer must, by
27 instrument in writing, revoke the warrant.
- 28 (3) The instrument revoking a warrant must be signed by the eligible
29 Judge, the nominated AAT member or the chief officer of the law
30 enforcement agency, as the case requires.
- 31 (4) If an eligible Judge or nominated AAT member revokes a warrant,
32 he or she must give a copy of the instrument of revocation to the
33 chief officer of the law enforcement agency to which the law

Section 27

1 enforcement officer to whom the warrant was issued belongs or is
2 seconded.

3 (5) If the law enforcement officer to whom a retrieval warrant has been
4 issued, or who is primarily responsible for executing a retrieval
5 warrant, believes that the grounds for issue of the warrant no
6 longer exist, he or she must inform the chief officer of the law
7 enforcement agency immediately.

1

2

Part 3—Emergency authorisations

3

4

28 Emergency authorisation—serious risks to person or property

5

(1) A law enforcement officer may apply to an appropriate authorising officer for an emergency authorisation for the use of a surveillance device if, in the course of an investigation of a relevant offence, the law enforcement officer reasonably suspects that:

6

7

8

9

(a) an imminent risk of serious violence to a person or substantial damage to property exists; and

10

11

12

(b) the use of a surveillance device is immediately necessary for the purpose of dealing with that risk; and

13

14

15

(c) the circumstances are so serious and the matter is of such urgency that the use of a surveillance device is warranted; and

16

17

(d) it is not practicable in the circumstances to apply for a surveillance device warrant.

18

19

20

21

(2) If the application is being made by or on behalf of a State or Territory law enforcement officer, the reference in that subsection to a relevant offence does not include a reference to a State offence that has a federal aspect.

22

23

(3) The application may be made orally, in writing or by telephone, fax, e-mail or any other means of communication.

24

25

26

(4) The appropriate authorising officer may give the emergency authorisation if satisfied that there are reasonable grounds for the suspicion founding the application.

27

29 Emergency authorisation—urgent circumstances relating to recovery order

28

29

30

31

32

(1) A law enforcement officer may apply to an appropriate authorising officer for an emergency authorisation for the use of a surveillance device if:

(a) a recovery order is in force; and

- 1 (b) the law enforcement officer reasonably suspects that:
2 (i) the circumstances are so urgent as to warrant the
3 immediate use of a surveillance device; and
4 (ii) it is not practicable in the circumstances to apply for a
5 surveillance device warrant.
- 6 (2) The application may be made orally, in writing or by telephone,
7 fax, e-mail or any other means of communication.
- 8 (3) The appropriate authorising officer may give the emergency
9 authorisation if satisfied that the recovery order is in force and that
10 there are reasonable grounds for the suspicion founding the
11 application.

12 **30 Emergency authorisation—risk of loss of evidence**

- 13 (1) If:
14 (a) a law enforcement officer is conducting an investigation into:
15 (i) an offence against section 233B of the *Customs Act*
16 *1901*; or
17 (ii) an offence against section 233BAA of the *Customs Act*
18 *1901* (with respect to goods listed in Schedule 4 to the
19 *Customs (Prohibited Imports) Regulations 1956* or in
20 Schedule 8 or 9 to the *Customs (Prohibited Exports)*
21 *Regulations 1958*); or
22 (iii) an offence under the *Crimes (Traffic in Narcotic Drugs*
23 *and Psychotropic Substances) Act 1990*; or
24 (iv) an offence under Division 72 of the *Criminal Code*; or
25 (v) an offence against section 73.2, 80.1 or 91.1 of the
26 *Criminal Code*; or
27 (vi) an offence under Division 101, 102 or 103 of the
28 *Criminal Code*; or
29 (vii) an offence under Division 270 of the *Criminal Code*;
30 or more than one offence; and
31 (b) the law enforcement officer reasonably suspects that:
32 (i) the use of the surveillance device is immediately
33 necessary to prevent the loss of any evidence relevant to
34 that investigation; and

Section 31

- 1 (ii) the circumstances are so serious and the matter is of
2 such urgency that the use of the surveillance device is
3 warranted; and
4 (iii) it is not practicable in the circumstances to apply for a
5 surveillance device warrant;
6 the law enforcement officer may apply to an appropriate
7 authorising officer for an emergency authorisation for the use of a
8 surveillance device.
- 9 (2) The application may be made orally, in writing or by telephone,
10 fax, e-mail or any other means of communication.
- 11 (3) The appropriate authorising officer may give the emergency
12 authorisation if satisfied that:
13 (a) an investigation is being conducted into an offence referred
14 to in paragraph (1)(a); and
15 (b) there are reasonable grounds for the suspicion referred to in
16 paragraph (1)(b).

17 **31 Record of emergency authorisations to be made**

- 18 As soon as practicable after an appropriate authorising officer gives
19 an emergency authorisation, the officer must make a written record
20 of the giving of that authorisation, including in the record:
21 (a) the name of the applicant for the authorisation; and
22 (b) the date and time the authorisation was given; and
23 (c) the nature of the authorisation given.

24 **32 Attributes of emergency authorisations**

- 25 (1) An emergency authorisation may authorise the law enforcement
26 officer to whom it is given:
27 (a) to use more than one kind of surveillance device; and
28 (b) to use more than one surveillance device of any particular
29 kind.
- 30 (2) An emergency authorisation may authorise anything that a
31 surveillance device warrant may authorise.

- 1 (3) A law enforcement officer may use a surveillance device under an
2 emergency authorisation only if he or she is acting in the
3 performance of his or her duty.
- 4 (4) Nothing in this Part authorises the doing of anything for which a
5 warrant would be required under the *Telecommunications*
6 (*Interception*) Act 1979.

7 **33 Application for approval of emergency authorisation**

- 8 (1) Within 2 business days after giving an emergency authorisation to
9 a law enforcement officer, the appropriate authorising officer who
10 gave the authorisation (or another person on that appropriate
11 authorising officer's behalf) must apply to an eligible Judge or to a
12 nominated AAT member for approval of the giving of the
13 emergency authorisation.
- 14 (2) The application:
15 (a) must specify:
16 (i) the name of the applicant for the approval; and
17 (ii) the kind or kinds of surveillance device to which the
18 emergency authorisation relates and, if a warrant is
19 sought, the nature and duration of the warrant; and
20 (b) must be supported by an affidavit setting out the grounds on
21 which the approval (and warrant, if any) is sought; and
22 (c) must be accompanied by a copy of the written record made
23 under section 31 in relation to the emergency authorisation.
- 24 (3) The eligible Judge or nominated AAT member may refuse to
25 consider the application until the applicant gives the Judge or
26 member all the information the Judge or member requires about the
27 application in the way the Judge or member requires.

28 **34 Consideration of application**

- 29 (1) Before deciding an application for approval of the giving of an
30 emergency authorisation given under section 28, the eligible Judge
31 or nominated AAT member considering the application must, in
32 particular, and being mindful of the intrusive nature of using a
33 surveillance device, consider the following:

Section 34

- 1 (a) the nature of the risk of serious violence to a person or
2 substantial damage to property;
- 3 (b) the extent to which issuing a surveillance device warrant
4 would have helped reduce or avoid the risk;
- 5 (c) the extent to which law enforcement officers could have used
6 alternative methods of investigation to help reduce or avoid
7 the risk;
- 8 (d) how much the use of alternative methods of investigation
9 could have helped reduce or avoid the risk;
- 10 (e) how much the use of alternative methods of investigation
11 would have prejudiced the safety of the person or property
12 because of delay or for another reason;
- 13 (f) whether or not it was practicable in the circumstances to
14 apply for a surveillance device warrant.
- 15 (2) Before deciding an application for approval of the giving of an
16 emergency authorisation given under section 29, the eligible Judge
17 or nominated AAT member considering the application must, in
18 particular, and being mindful of the intrusive nature of using a
19 surveillance device, consider the following:
- 20 (a) the urgency of enforcing the recovery order;
- 21 (b) the extent to which use of a surveillance device would assist
22 in the location and safe recovery of the child to whom the
23 recovery order relates;
- 24 (c) the extent to which law enforcement officers could have used
25 alternative methods to assist in the location and safe recovery
26 of the child;
- 27 (d) how much the use of alternative methods to assist in the
28 location and safe recovery of the child might have prejudiced
29 the effective enforcement of the recovery order;
- 30 (e) whether or not it was practicable in the circumstances to
31 apply for a surveillance device warrant.
- 32 (3) Before deciding an application for approval of the giving of an
33 emergency authorisation given under section 30, the eligible Judge
34 or nominated AAT member must, in particular, and being mindful
35 of the intrusive nature of using a surveillance device, consider the
36 following:
- 37 (a) the nature of the risk of the loss of evidence;

- 1 (b) the extent to which issuing a surveillance device warrant
2 would have helped reduce or avoid the risk;
- 3 (c) the extent to which law enforcement officers could have used
4 alternative methods of investigation to help reduce or avoid
5 the risk;
- 6 (d) how much the use of alternative methods of investigation
7 could have helped reduce or avoid the risk;
- 8 (e) whether or not it was practicable in the circumstances to
9 apply for a surveillance device warrant.

10 **35 Judge or nominated AAT member may approve giving of**
11 **emergency authorisations**

- 12 (1) After considering an application for approval of the giving of an
13 emergency authorisation under section 28, the eligible Judge or
14 nominated AAT member may approve the application if satisfied
15 that there were reasonable grounds to suspect that:
- 16 (a) there was a risk of serious violence to a person or substantial
17 damage to property; and
- 18 (b) using a surveillance device may have helped reduce the risk;
19 and
- 20 (c) it was not practicable in the circumstances to apply for a
21 surveillance device warrant.
- 22 (2) After considering an application for approval of the giving of an
23 emergency authorisation under section 29 in relation to a recovery
24 order, the eligible Judge or nominated AAT member may approve
25 the application if satisfied that:
- 26 (a) the recovery order was in force at the time the emergency
27 authorisation was given; and
- 28 (b) there were reasonable grounds to suspect that:
- 29 (i) the enforcement of the recovery order was urgent; and
30 (ii) using a surveillance device may have assisted in the
31 prompt location and safe recovery of the child to whom
32 the order relates; and
- 33 (iii) it was not practicable in the circumstances to apply for a
34 surveillance device warrant.

Section 35

- 1 (3) After considering an application for approval of the giving of an
2 emergency authorisation under section 30, the eligible Judge or
3 nominated AAT member may approve the application if satisfied
4 that:
- 5 (a) there were reasonable grounds to suspect that:
6 (i) there was a risk of loss of evidence; and
7 (ii) using the surveillance device may have helped reduce
8 the risk; and
9 (b) it was not practicable in the circumstances to apply for a
10 surveillance device warrant.
- 11 (4) If, under subsection (1), (2) or (3), the eligible Judge or nominated
12 AAT member approves the giving of an emergency authorisation,
13 the Judge or member may:
- 14 (a) unless paragraph (b) applies—issue a surveillance device
15 warrant for the continued use of the surveillance device as if
16 the application for the approval were an application for a
17 surveillance device warrant under Division 2 of Part 2; or
18 (b) if the Judge or member is satisfied that since the application
19 for the emergency authorisation the activity that required
20 surveillance has ceased—order that the use of the
21 surveillance device cease.
- 22 (5) If, under subsection (1), (2) or (3), the eligible Judge or nominated
23 AAT member does not approve the giving of an emergency
24 authorisation, the Judge or member may:
- 25 (a) order that the use of the surveillance device cease; or
26 (b) if the Judge or member is of the view that although the
27 situation did not warrant the emergency authorisation at the
28 time that authorisation was given, the use of a surveillance
29 device warrant under Division 2 of Part 2 is currently
30 justified—issue a surveillance device warrant for the
31 subsequent use of such a device as if the application for the
32 approval were an application for a surveillance device
33 warrant under Division 2 of Part 2.
- 34 (6) In any case, the eligible Judge or nominated AAT member may
35 order that any information obtained from or relating to the exercise
36 of powers under the emergency authorisation, or any record of that

1 information, be dealt with in a manner specified in the order, not
2 being a manner that involves the destruction of that information.

3 **36 Admissibility of evidence**

4 If the giving of an emergency authorisation is approved under
5 section 35, any evidence obtained because of the exercise of
6 powers under that authorisation is not inadmissible in any
7 proceeding only because the evidence was obtained before the
8 approval.

Section 37

1

2

**Part 4—Use of certain surveillance devices without
warrant**

3

4

5

37 Use of optical surveillance devices without warrant

6

(1) A federal law enforcement officer acting in the course of his or her duties may, without warrant, use an optical surveillance device for any purpose:

7

8

9

(a) if the officer belongs or is seconded to the Australian Federal Police—that is within the functions of the Australian Federal Police set out in section 8 of the *Australian Federal Police Act 1979*; or

10

11

12

13

(b) if the officer belongs or is seconded to the Australian Crime Commission—that is within the functions of the Commission set out in section 7A of the *Australian Crime Commission Act 1979*;

14

15

16

if the use of that device does not involve:

17

18

(c) entry onto premises without permission; or

19

(d) interference without permission with any vehicle or thing.

20

(2) A State or Territory law enforcement officer acting in the course of his or her duties may, without warrant, use an optical surveillance device in the investigation of a relevant offence (other than a State offence that has a federal aspect) if the use of that device does not involve:

21

22

23

24

(a) entry onto premises without permission; or

25

26

(b) interference without permission with any vehicle or thing.

27

(3) A State or Territory law enforcement officer acting in the course of his or her duties may, without warrant, use an optical surveillance device in the location and safe recovery of a child to whom a recovery order relates if the use of that device does not involve:

28

29

30

(a) a trespass on premises; or

31

32

(b) interference without permission with any vehicle or thing.

38 Use of surveillance devices without warrant for listening to or recording words in limited circumstances

1
2
3 (1) A federal law enforcement officer acting in the course of his or her
4 duties may, without warrant, use a surveillance device for any
5 purpose involving listening to, or recording, words spoken by a
6 person:

7 (a) if the officer belongs or is seconded to the Australian Federal
8 Police—that is within the functions of the Australian Federal
9 Police set out in section 8 of the *Australian Federal Police*
10 *Act 1979*; or

11 (b) if the officer belongs or is seconded to the Australian Crime
12 Commission—that is within the functions of the Commission
13 set out in section 7A of the *Australian Crime Commission*
14 *Act 1979*;

15 if the use of that device for that listening or recording purpose is
16 confined to circumstances where:

17 (c) the law enforcement officer is the speaker of the words or is a
18 person, or is included in a class or group of persons, by
19 whom the speaker of the words intends, or should reasonably
20 expect, the words to be heard; or

21 (d) the law enforcement officer listens to or records the words
22 with the consent, express or implied, of a person who is
23 permitted by paragraph (c) to listen to or record the words.

24 (2) A State or Territory law enforcement officer acting in the course of
25 his or her duties and in the investigation of a relevant offence
26 (other than a State offence that has a federal aspect) may, without
27 warrant, use a surveillance device for any purpose involving
28 listening to, or recording, words spoken by a person if the use of
29 that device for that listening or recording purpose is confined to
30 circumstances where:

31 (a) the State or Territory law enforcement officer is the speaker
32 of the words or is a person, or is included in a class or group
33 of persons, by whom the speaker of the words intends, or
34 should reasonably expect, the words to be heard; or

35 (b) the State or Territory law enforcement officer listens to or
36 records the words with the consent, express or implied, of a

Section 39

- 1 person who is permitted by paragraph (a) to listen to or
2 record the words.
- 3 (3) A State or Territory law enforcement officer acting in the course of
4 his or her duties and in relation to the location and safe recovery of
5 a child to whom a recovery order relates may, without warrant, use
6 a surveillance device for any purpose involving listening to, or
7 recording, words spoken by a person if the use of that device for
8 that listening or recording purpose is confined to circumstances
9 where:
- 10 (a) the State or Territory law enforcement officer is the speaker
11 of the words or is a person, or is included in a class or group
12 of persons, by whom the speaker of the words intends, or
13 should reasonably expect, the words to be heard; or
- 14 (b) the State or Territory law enforcement officer listens to or
15 records the words with the consent, express or implied, of a
16 person who is permitted by paragraph (a) to listen to or
17 record the words

18 **39 Use and retrieval of tracking devices without warrant in certain**
19 **circumstances**

- 20 (1) A law enforcement officer may, with the written permission of an
21 appropriate authorising officer, use a tracking device without a
22 warrant in the investigation of a relevant offence.
- 23 (2) If the law enforcement officer referred to in subsection (1) is a
24 State or Territory law enforcement officer, the reference in
25 subsection (1) to a relevant offence does not include a reference to
26 a State offence that has a federal aspect.
- 27 (3) A law enforcement officer may, with the written permission of an
28 appropriate authorising officer, use a tracking device without a
29 warrant in the location and safe recovery of a child to whom a
30 recovery order relates.
- 31 (4) Subsections (1) and (3) have effect despite any other law of the
32 Commonwealth or of a State or self-governing Territory (including
33 any principle of the common law) forbidding the use of such a
34 device without a warrant.

-
- 1 (5) A tracking device authorisation given under subsection (1) or (3)
2 may authorise the law enforcement officer to use more than one
3 tracking device.
- 4 (6) If an appropriate authorising officer gives a tracking device
5 authorisation under this section, an appropriate authorising officer
6 may also authorise the retrieval, without a warrant, of a tracking
7 device to which the tracking device authorisation relates.
- 8 (7) An appropriate authorising officer must not give permission under
9 this section for the use, installation or retrieval of a tracking device
10 if the installation of the device, or its retrieval, involves entry onto
11 premises without permission or an interference with the interior of
12 a vehicle without permission.
- 13 (8) For the purposes of obtaining the permission of an appropriate
14 authorising officer, the law enforcement officer wishing to use that
15 device:
- 16 (a) must apply, orally or in writing, to the appropriate
17 authorising officer; and
- 18 (b) must address, in that application, the matters that would be
19 required to be addressed if the law enforcement officer were
20 making an application for a surveillance device warrant or a
21 retrieval warrant, as the case requires.
- 22 (9) Paragraph 18(1)(b), subparagraph 18(2)(b)(i), paragraphs 18(3)(a),
23 (b) and (g) and subsections 18(4), (6) and (7) apply in relation to a
24 tracking device authorisation authorising the use of a tracking
25 device as if:
- 26 (a) references in those provisions to a surveillance device
27 warrant were references to a tracking device authorisation
28 authorising the use of a tracking device; and
- 29 (b) references in those provisions to a surveillance device were
30 references to a tracking device.
- 31 (10) Paragraphs 26(1)(a), (c), (d) and (e) and subsections 26(2) and (3)
32 apply in relation to a tracking device authorisation authorising the
33 retrieval of a tracking device as if:
- 34 (a) references in those provisions to a retrieval warrant were
35 references to a tracking device authorisation authorising the
36 retrieval of a tracking device; and
-

Section 40

1 (b) references in those provisions to a surveillance device were
2 references to a tracking device.

3 (11) A law enforcement officer may use a tracking device authorisation
4 only if he or she is acting in the performance of his or her duty.

5 **40 Record of tracking device authorisations to be kept**

6 As soon as practicable after an appropriate authorising officer gives
7 a tracking device authorisation, the officer must make a written
8 record of the giving of that authorisation, including in the record:

- 9 (a) the name of the applicant for the authorisation; and
10 (b) the date and time the authorisation was given; and
11 (c) if the authorisation authorises the use of a tracking device in
12 relation to the investigation of an alleged relevant offence or
13 offences—the alleged offence or offences in respect of which
14 the authorisation is given; and
15 (d) if the authorisation authorises the use of a tracking device in
16 relation to a recovery order—the date the order was made
17 and the name of the child to whom the order relates; and
18 (e) if the authorisation authorises the use of a tracking device in
19 or on an object or class of object—the object or class of
20 object in or on which the use of the tracking device is
21 authorised; and
22 (f) if the authorisation authorises the use of a tracking device on
23 a vehicle or class of vehicle—the vehicle or class of vehicle
24 on which the use of the tracking device is authorised; and
25 (g) if the authorisation authorises the use of a tracking device in
26 respect of the conversations, activities or geographical
27 location of a person—the name of the person (if known); and
28 (h) if the authorisation authorises the retrieval of a tracking
29 device—the premises or object from which the tracking
30 device is to be retrieved; and
31 (i) the name of the law enforcement officer primarily
32 responsible for executing the authorisation; and
33 (j) any conditions subject to which a tracking device may be
34 used, under the authorisation.

Part 5—Extraterritorial operation of warrants

41 Definitions

(1) In this Part:

appropriate consenting official, in relation to a foreign country, means an official of that country having authority in that country to give consent to the extraterritorial use of surveillance devices in that country or on a vessel or aircraft registered under the laws of that country.

Australian fishing zone means the Australian fishing zone within the meaning of the *Fisheries Management Act 1991*.

contiguous zone, in relation to Australia, has the same meaning as in the *Seas and Submerged Lands Act 1973*.

territorial sea, in relation to Australia, has the same meaning as in the *Seas and Submerged Lands Act 1973*.

42 Extraterritorial operation of warrants

(1) If, before the issue of a warrant in relation to the investigation of a relevant offence on an application made by or on behalf of a federal law enforcement officer, it becomes apparent to the applicant that there will be a need for surveillance:

(a) in a foreign country; or

(b) on a vessel or aircraft that is registered under the law of a foreign country and is in or above waters beyond the outer limits of the territorial sea of Australia;

to assist in that investigation, the eligible Judge or nominated AAT member considering the application for the warrant must not permit the warrant to authorise that surveillance unless the Judge or member is satisfied that the surveillance has been agreed to by an appropriate consenting official of the foreign country.

(2) If:

Section 42

- 1 (a) application is made under section 33 by an appropriate
2 authorising officer who is a federal law enforcement officer
3 for approval of the giving of an emergency authorisation
4 relating to the investigation of a relevant offence; and
5 (b) before the completion of consideration of that application, it
6 becomes apparent to the applicant that there will be a need
7 for surveillance:
8 (i) in a foreign country; or
9 (ii) on a vessel or aircraft that is registered under the law of
10 a foreign country and is in or above waters beyond the
11 outer limits of the territorial sea of Australia;
12 to assist in the investigation to which the emergency
13 authorisation related;
14 the eligible Judge or nominated AAT member to whom the
15 application was made must not permit any warrant issued on
16 consideration of that application to authorise that surveillance
17 unless the Judge or member is satisfied that the surveillance has
18 been agreed to by an appropriate consenting official of the foreign
19 country.
- 20 (3) If:
21 (a) a warrant has been issued in relation to the investigation of a
22 relevant offence on an application by or on behalf of a federal
23 law enforcement officer; and
24 (b) after the issue of the warrant it becomes apparent to the law
25 enforcement officer primarily responsible for executing the
26 warrant that there will be a need for surveillance:
27 (i) in a foreign country; or
28 (ii) on a vessel or aircraft that is registered under the law of
29 a foreign country and is in or above waters beyond the
30 outer limits of the territorial sea of Australia;
31 to assist in that investigation;
32 the warrant is taken to permit that surveillance if, and only if, the
33 surveillance has been agreed to by an appropriate consenting
34 official of the foreign country.
- 35 (4) Despite subsections (1), (2) and (3), if:
36 (a) a vessel that is registered under the law of a foreign country
37 is in waters beyond the outer limits of the territorial sea of

- 1 Australia but not beyond the outer limits of the contiguous
2 zone of Australia; and
- 3 (b) the relevant offence in respect of which it becomes apparent
4 that surveillance on the vessel will be required is an offence
5 relating to the customs, fiscal, immigration or sanitary laws
6 of Australia;
- 7 there is no requirement for the agreement of an appropriate
8 consenting official of the foreign country concerned in relation to
9 that surveillance while the vessel is in such waters.
- 10 (5) Despite subsections (1), (2) and (3), if:
- 11 (a) a vessel that is registered under the law of a foreign country
12 is in waters beyond the outer limits of the territorial sea of
13 Australia but not beyond the outer limits of the Australian
14 fishing zone; and
- 15 (b) the relevant offence in respect of which it becomes apparent
16 that surveillance on the vessel will be required is an offence
17 against section 100, 100A, 101 or 101A of the *Fisheries*
18 *Management Act 1991*;
- 19 there is no requirement for the agreement of an appropriate
20 consenting official of the foreign country concerned in relation to
21 that surveillance while the vessel is in those waters.
- 22 (6) As soon as practicable after the commencement of surveillance
23 under the authority of a warrant:
- 24 (a) in a foreign country; or
- 25 (b) in circumstances where consent to that surveillance is
26 required—on a vessel or aircraft that is registered under the
27 law of a foreign country;
- 28 the chief officer of the law enforcement agency to which the law
29 enforcement officer who applied for the warrant belongs or is
30 seconded must give the Minister evidence in writing that the
31 surveillance has been agreed to by an appropriate consenting
32 official of the foreign country.
- 33 (7) If a vessel or aircraft that is registered under the laws of a foreign
34 country is in or above the territorial sea of another foreign country,
35 subsections (1), (2) and (3) have effect as if the reference to an
36 appropriate consenting official of the foreign country were a

Section 43

1 reference to an appropriate consenting official of each foreign
2 country concerned.

3 (8) For the avoidance of doubt, there is no requirement for the
4 agreement of an appropriate consenting official of the foreign
5 country to the surveillance under the authority of a warrant of a
6 vessel or aircraft of a foreign country that is in Australia or in or
7 above waters within the outer limits of the territorial sea of
8 Australia.

9 **43 Evidence obtained from extraterritorial surveillance not to be**
10 **tendered in evidence unless court satisfied properly**
11 **obtained**

12 Evidence obtained from surveillance undertaken in a foreign
13 country in accordance with subsection 42(1), (2) or (3) in relation
14 to a relevant offence cannot be tendered in evidence to a court in
15 any proceedings relating to the relevant offence unless the court is
16 satisfied that the surveillance was agreed to by an appropriate
17 consenting official of the foreign country.

1

2 **Part 6—Compliance and monitoring**

3 **Division 1—Restrictions on use, communication and**
4 **publication of information**

5 **44 What is protected information?**

6 (1) In this Act:

7 *protected information* means:

- 8 (a) any information obtained from the use of a surveillance
9 device under a warrant, an emergency authorisation or a
10 tracking device authorisation; or
11 (b) any information relating to:
12 (i) an application for, the issue of, the existence of, or the
13 expiration of, a warrant, an emergency authorisation or
14 a tracking device authorisation; or
15 (ii) an application for approval of powers exercised under
16 an emergency authorisation; or
17 (c) any information that is likely to enable the identification of a
18 person, object or premises specified in a warrant, an
19 emergency authorisation or a tracking device authorisation;
20 or
21 (d) any other information obtained by a law enforcement officer:
22 (i) without the authority of a warrant or a tracking device
23 authorisation; or
24 (ii) without the authority of an emergency authorisation that
25 was subsequently approved; or
26 (iii) in a case where the information was obtained through
27 the use of a surveillance device in a foreign country, or
28 on a vessel or aircraft that is registered under the law of
29 a foreign country and that is in or above waters beyond
30 the outer limit of Australia's territorial sea (within the
31 meaning of section 41)—without the agreement of the
32 appropriate consenting official of that foreign country,

- 1 (4) Subsections (1), (2) and (3) do not apply to:
- 2 (a) the use, recording, communication or publication of any
- 3 information that has been disclosed in proceedings in open
- 4 court lawfully; or
- 5 (b) the use or communication of protected information by a
- 6 person who believes on reasonable grounds that the use or
- 7 communication is necessary to help prevent or reduce the risk
- 8 of serious violence to a person or substantial damage to
- 9 property; or
- 10 (c) the communication to the Director-General (within the
- 11 meaning of the *Australian Security Intelligence Organisation*
- 12 *Act 1979*) of protected information that relates or appears to
- 13 relate to any matter within the functions of that organisation;
- 14 or
- 15 (d) the communication to the agency head (within the meaning
- 16 of the *Intelligence Services Act 2001*) of an agency (within
- 17 the meaning of that Act) of protected information that relates
- 18 or appears to relate to any matter within the functions of that
- 19 agency; or
- 20 (e) the use, recording or communication of:
- 21 (i) protected information referred to in paragraph (c)—by
- 22 an officer or employee of the Australian Security
- 23 Intelligence Organisation; or
- 24 (ii) protected information referred to in paragraph (d)—by a
- 25 staff member (within the meaning of the *Intelligence*
- 26 *Services Act 2001*) of an agency (within the meaning of
- 27 that Act);
- 28 in the performance of his or her official functions; or
- 29 (f) the communication of information to a foreign country or an
- 30 appropriate authority of a foreign country, or the use of
- 31 information so communicated, in accordance with the *Mutual*
- 32 *Assistance in Criminal Matters Act 1987*, if that
- 33 communication or use relates to the investigation of an
- 34 offence or the conduct of proceedings in respect of an
- 35 offence against a law of that foreign country that is
- 36 punishable by a maximum term of imprisonment of 3 years
- 37 or more, by imprisonment for life or by the death penalty; or

Section 45

- 1 (5) Protected information may be used, recorded, communicated or
2 published, or may be admitted in evidence, if it is necessary to do
3 so for any of the following purposes:
- 4 (a) the investigation of a relevant offence (including a State or
5 Territory relevant offence but not including a relevant
6 offence referred to in paragraph (d) or (h)) or the making of a
7 report on the outcome of such an investigation;
- 8 (b) the making of a decision whether or not to bring a
9 prosecution for a relevant offence (including a State or
10 Territory relevant offence but not including a relevant
11 offence referred to in paragraph (d) or (h));
- 12 (c) a relevant proceeding (including State or Territory relevant
13 proceedings but not including a relevant proceeding in
14 respect of a relevant offence referred to in paragraph (d) or
15 (h));
- 16 (d) an investigation of a complaint against, or into the conduct
17 of, a public officer within the meaning of this Act and also
18 any subsequent investigation or prosecution of a relevant
19 offence arising directly from the investigation of the
20 complaint, or into the conduct;
- 21 (e) the making of a decision in relation to the appointment, term
22 of appointment, termination of the appointment, or
23 retirement, of a person referred to in paragraph (d);
- 24 (f) the keeping of records and the making of reports by a law
25 enforcement agency under Division 2;
- 26 (g) an inspection by the Ombudsman under section 54;
- 27 (h) an investigation under the *Privacy Act 1988* or any other law
28 of the Commonwealth concerning the privacy of personal
29 information and also any subsequent investigation or
30 prosecution of a relevant offence arising directly from that
31 first-mentioned investigation.
- 32 (6) Paragraphs (4)(f) and (5)(a), (b) and (c) do not authorise:
- 33 (a) the use, recording, communication or publication of
34 information of the kind referred to in paragraph (d) of the
35 definition of ***protected information*** in section 44; or
- 36 (b) the giving in evidence of protected information of the kind
37 referred to in paragraph (d) of that definition;

- 1 regardless of whether that information is also information of the
2 kind referred to in paragraph (b) or (c) of that definition.
- 3 (7) If protected information obtained through the use of a surveillance
4 device by a law enforcement officer of a particular law
5 enforcement agency (the *originating agency*):
- 6 (a) is communicated to another law enforcement agency (by
7 communicating it to the chief officer or another officer of
8 that agency); or
- 9 (b) is communicated to any agency that is not a law enforcement
10 agency (other than the Australian Security Intelligence
11 Organisation and the agencies within the meaning if the
12 *Intelligence Services Act 2001*) (by communicating it to the
13 officer in charge of that agency or to another officer of that
14 agency);
- 15 for a particular purpose, the protected information that has been so
16 communicated:
- 17 (c) may be communicated from one officer to another within that
18 agency or organisation for that purpose only; and
- 19 (d) must not, except for the purpose of bringing a relevant
20 proceeding, or a State or Territory relevant proceeding, be
21 communicated to any person who is not a member of that
22 agency or organisation.
- 23 (8) A reference in subsection (5) to a relevant offence is a reference to
24 any relevant offence, whether or not the offence in respect of
25 which the relevant warrant or emergency authorisation was issued
26 or given.
- 27 (9) In this section:
- 28 ***State or Territory relevant offence*** means a relevant offence
29 against the law of a State or self-governing Territory that is
30 punishable by a maximum term of imprisonment of 3 years or
31 more or for life.
- 32 ***State or Territory relevant proceeding*** means:
- 33 (a) the prosecution of a State or Territory relevant offence; or

Section 46

- 1 (b) a proceeding for the confiscation, forfeiture or restraint of
2 property, or for the imposition of a pecuniary penalty, in
3 relation to a State or Territory relevant offence; or
4 (c) a proceeding for the protection of a child or an intellectually
5 impaired person; or
6 (d) a disciplinary offence against a public officer; or
7 (e) a coronial inquest or inquiry if, in the opinion of the coroner,
8 the event that is the subject of the inquest or inquiry may
9 have resulted from the commission of a State or Territory
10 relevant offence; or
11 (f) a proceeding by way of a bail application that relates to a
12 proceeding by way of a prosecution for a State or Territory
13 relevant offence; or
14 (g) a proceeding for a review of a decision to refuse such a bail
15 application; or
16 (h) a proceeding for a review of a decision to grant such a bail
17 application.

18 **46 Dealing with records obtained by use of surveillance devices**

- 19 (1) The chief officer of a law enforcement agency:
20 (a) must ensure that every record or report comprising protected
21 information is kept in a secure place that is not accessible to
22 people who are not entitled to deal with the record or report;
23 and
24 (b) must destroy or cause to be destroyed any record or report
25 referred to in paragraph (a) if satisfied that it is not likely to
26 be required in connection with a purpose referred to in
27 subsection 45(4) or (5).
- 28 (2) The officer in charge of any agency that is not a law enforcement
29 agency but that, as described in subsection 45(4) or (5), receives
30 records or reports obtained by use of a surveillance device:
31 (a) must ensure that every record or report that is so received is
32 kept in a secure place that is not accessible to people who are
33 not entitled to deal with the record or report; and
34 (b) must destroy or cause to be destroyed any record or report
35 referred to in paragraph (a) if satisfied that it is not likely to

1 be required in connection with a purpose referred to in
2 subsection 45(4) or (5).

3 (3) Subsections (1) and (2) do not apply to a record or report that is
4 received into evidence in legal proceedings or disciplinary
5 proceedings.

6 **47 Protection of surveillance device technologies and methods**

7 (1) In a proceeding, a person may object to the disclosure of
8 information on the ground that the information, if disclosed, could
9 reasonably be expected to reveal details of surveillance device
10 technology or methods of installation, use or retrieval of
11 surveillance devices.

12 (2) If the person conducting or presiding over the proceeding is
13 satisfied that the ground of objection is made out, he or she may
14 order that the person who has the information not be required to
15 disclose it in the proceeding.

16 (3) In determining whether or not to make an order under
17 subsection (2), the person conducting or presiding over the
18 proceeding must take into account whether disclosure of the
19 information:

- 20 (a) is necessary for the fair trial of the defendant; or
21 (b) is in the public interest.

22 (4) Subsection (2) does not affect a provision of another law under
23 which a law enforcement officer cannot be compelled to disclose
24 information or make statements in relation to the information.

25 (5) If the person conducting or presiding over a proceeding is satisfied
26 that publication of any information disclosed in the proceeding
27 could reasonably be expected to reveal details of surveillance
28 device technology or methods of installation, use or retrieval of
29 surveillance devices, the person must make any orders prohibiting
30 or restricting publication of the information that he or she considers
31 necessary to ensure that those details are not revealed.

Part 6 Compliance and monitoring

Division 1 Restrictions on use, communication and publication of information

Section 48

1 (6) Subsection (5) does not apply to the extent that the person
2 conducting or presiding over the proceeding considers that the
3 interests of justice require otherwise.

4 (7) In this section:

5 *proceeding* includes a proceeding before a court, tribunal or Royal
6 Commission.

7 **48 Protected information in the custody of a court, tribunal or Royal**
8 **Commission**

9 A person is not entitled to search any protected information in the
10 custody of a court, tribunal or Royal Commission unless the court,
11 tribunal or Royal Commission otherwise orders in the interests of
12 justice.

1

2 **Division 2—Reporting and record-keeping**

3 **49 Report on each warrant or authorisation**

- 4 (1) The chief officer of each law enforcement agency to which there
5 belongs or is seconded a law enforcement officer to whom:
6 (a) a warrant is issued; or
7 (b) an emergency authorisation is given; or
8 (c) a tracking device authorisation is given;
9 must, as soon as practicable after the warrant or authority ceases to
10 be in force:
11 (d) make a report to the Minister in accordance with this section;
12 and
13 (e) give to the Minister a copy of each such warrant or
14 authorisation, and of any instrument revoking, extending or
15 varying such a warrant or authorisation.
- 16 (2) In the case of a surveillance device warrant, or an authorisation
17 referred to in paragraph (1)(b) or (c), the report must:
18 (a) state whether the warrant or authorisation was executed; and
19 (b) if so:
20 (i) state the name of the person primarily responsible for
21 the execution of the warrant or authorisation; and
22 (ii) state the name of each person involved in the
23 installation, maintenance or retrieval of the surveillance
24 device; and
25 (iii) state the kind of surveillance device used; and
26 (iv) state the period during which the device was used; and
27 (v) state the name, if known, of any person whose
28 conversations or activities were overheard, recorded,
29 monitored, listened to or observed by the use of the
30 device; and
31 (vi) state the name, if known, of any person whose location
32 was determined by the use of a tracking device; and
33 (vii) give details of any premises on which the device was
34 installed or any place at which the device was used; and

Section 50

- 1 (viii) give details of any object in or on which the device was
2 installed and any premises where the object was located
3 when the device was installed; and
4 (ix) if the warrant is issued or the authorisation given in
5 respect of the investigation of a relevant offence—give
6 details of the benefit to the investigation of the use of
7 the device and of the general use made or to be made of
8 any evidence or information obtained by the use of the
9 device; and
10 (x) if the warrant is issued or the authorisation given in
11 respect of the location and safe recovery of a child to
12 whom a recovery order relates—give details of use of
13 the device in assisting with the location and safe
14 recovery of the child; and
15 (xi) give details of the communication of evidence or
16 information obtained by the use of the device to persons
17 other than officers of the agency; and
18 (xii) give details of the compliance with the conditions (if
19 any) to which the warrant or authorisation was subject;
20 and
21 (c) if the warrant or authorisation was extended or varied, state:
22 (i) the number of extensions or variations; and
23 (ii) the reasons for them.
24 (3) In the case of a retrieval warrant, the report must:
25 (a) give details of any premises entered, anything opened and
26 any object removed and replaced under the warrant; and
27 (b) state whether the surveillance device was retrieved under the
28 warrant; and
29 (c) if the device was not retrieved, state the reason why; and
30 (d) give details of the compliance with the conditions (if any) to
31 which the warrant was subject.

32 **50 Annual reports**

- 33 (1) The chief officer of a law enforcement agency must submit a report
34 to the Minister that includes the following information in respect of
35 each financial year:

- 1 (a) the number of applications for warrants made by or on behalf
2 of, and the number of warrants issued to, law enforcement
3 officers of the agency during that year; and
- 4 (b) the number of applications for emergency authorisations
5 made by, and the number of emergency authorisations given
6 to, law enforcement officers of the agency during that year;
7 and
- 8 (c) the number of applications for tracking device authorisations
9 made by, and the number of such authorisations given to, law
10 enforcement officers of the agency during that year; and
- 11 (d) the number of remote applications for warrants made by or
12 on behalf of law enforcement officers of the agency during
13 that year; and
- 14 (e) the number of applications for warrants, emergency
15 authorisations or tracking device authorisations made by or
16 on behalf of law enforcement officers of the agency that were
17 refused during that year, and the reasons for refusal; and
- 18 (f) the number of applications for extensions of warrants made
19 by or on behalf of law enforcement officers of the agency
20 during that year, the number of extensions granted or refused
21 and the reasons why they were granted or refused; and
- 22 (g) the number of arrests made by law enforcement officers of
23 the agency during that year on the basis (wholly or partly) of
24 information obtained by the use of a surveillance device
25 under a warrant, emergency authorisation or tracking device
26 authorisation; and
- 27 (h) the number of instances during that year in which the
28 location and safe recovery of children to whom recovery
29 orders related was assisted (wholly or partly) by information
30 obtained by the use of a surveillance device under a warrant,
31 emergency authorisation or tracking device authorisation;
32 and
- 33 (i) the number of prosecutions for relevant offences that were
34 commenced during that year in which information obtained
35 by the use of a surveillance device under a warrant,
36 emergency authorisation or tracking device authorisation was
37 given in evidence and the number of those prosecutions in
38 which a person was found guilty; and
-

Section 51

- 1 (j) any other information relating to the use of surveillance
2 devices and the administration of this Act that the Minister
3 considers appropriate.
- 4 (2) The information referred to in paragraphs (1)(a), (b) and (c) must
5 be presented in such a way as to identify the number of warrants
6 issued, emergency authorisations given, and tracking device
7 authorisations given, in respect of each different kind of
8 surveillance device.
- 9 (3) The report must be submitted to the Minister as soon as practicable
10 after the end of each financial year, and in any event within 3
11 months after the end of the financial year.
- 12 (4) The Minister must cause a copy of the report to be laid before each
13 House of the Parliament within 15 sitting days of that House after
14 the Minister receives it.

15 **51 Keeping documents connected with warrants, emergency**
16 **authorisations and tracking device authorisations**

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

- 19 (a) each warrant issued to a law enforcement officer of the
20 agency;
- 21 (b) each instrument of revocation given to the chief officer under
22 subsection 20(4) or 27(4);
- 23 (c) each record made under section 31 in relation to an
24 emergency authorisation given to a law enforcement officer
25 of the agency;
- 26 (d) each record made under section 40 in relation to a tracking
27 device authorisation given to a law enforcement officer of the
28 agency;
- 29 (e) each written application for an emergency authorisation made
30 by a law enforcement officer of the agency;
- 31 (f) each written application for a tracking device authorisation
32 made by a law enforcement officer of the agency;
- 33 (g) a copy of each application made by or on behalf of a law
34 enforcement officer of the agency for:

- 1 (i) a warrant; or
2 (ii) extension or variation of a warrant;
3 (h) a copy of each application made under section 33 by or on
4 behalf of an appropriate authorising officer for approval of
5 the giving of an emergency authorisation to a law
6 enforcement officer of the agency;
7 (j) a copy of each report made to the Minister under section 49;
8 (k) a copy of each certificate issued by an appropriate
9 authorising officer of the agency concerned under section 62.

10 **52 Other records to be kept**

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

- 13 (a) a statement as to whether each application made by or on
14 behalf of a law enforcement officer of the agency for a
15 warrant, or for the extension or variation of a warrant, was
16 granted, refused or withdrawn;
17 (b) a statement as to whether each application made by a law
18 enforcement officer of the agency for an emergency
19 authorisation was granted, refused or withdrawn;
20 (c) a statement as to whether each application made by or on
21 behalf of an appropriate authorising officer for approval of
22 the giving of an emergency authorisation to a law
23 enforcement officer of the agency was granted, refused or
24 withdrawn;
25 (d) a statement as to whether each application made by a law
26 enforcement officer of the agency for a tracking device
27 authorisation was granted, refused or withdrawn;
28 (e) details of each use by the agency, or by a law enforcement
29 officer of the agency, of information obtained by the use of a
30 surveillance device by a law enforcement officer of the
31 agency;
32 (f) details of each communication by a law enforcement officer
33 of the agency to a person other than a law enforcement
34 officer of the agency of information obtained by the use of a
35 surveillance device by a law enforcement officer of the
36 agency;

Section 53

- 1 (g) details of each occasion when, to the knowledge of a law
2 enforcement officer of the agency, information obtained by
3 the use of a surveillance device by a law enforcement officer
4 of the agency was given in evidence in a relevant proceeding;
- 5 (h) details of each occasion when, to the knowledge of a law
6 enforcement officer of the agency, information obtained by
7 the use of a surveillance device by a law enforcement officer
8 of the agency was used in the location and safe recovery of a
9 child to whom a recovery order related;
- 10 (j) details of the destruction of records or reports under
11 paragraph 46(1)(b).

12 **53 Register of warrants, emergency authorisations and tracking**
13 **device authorisations**

- 14 (1) The chief officer of a law enforcement agency must cause a
15 register of warrants, emergency authorisations and tracking device
16 authorisations sought by law enforcement officers of that agency to
17 be kept.
- 18 (2) The register is to specify, for each warrant sought by or on behalf
19 of a law enforcement officer of the agency:
- 20 (a) the date the warrant was issued or refused; and
21 (b) the name of the eligible Judge or nominated AAT member
22 who issued or refused to issue the warrant; and
23 (c) if the warrant was issued:
- 24 (i) the name of the law enforcement officer named in the
25 warrant as the person primarily responsible for
26 executing it; and
27 (ii) if the warrant was issued in relation to a relevant
28 offence—the relevant offence in relation to which the
29 warrant was issued; and
30 (iii) if the warrant was issued in relation to a recovery
31 order—the date of issue of the recovery order and the
32 name of the child to whom the order related; and
33 (iv) the period during which the warrant is in force; and
34 (v) details of any variation or extension of the warrant.

- 1 (3) The register is to specify, for each emergency authorisation sought
2 by a law enforcement officer of the agency:
3 (a) the date the emergency authorisation was given or refused;
4 and
5 (b) the name of the appropriate authorising officer who gave or
6 refused to give the emergency authorisation; and
7 (c) if the emergency authorisation was given:
8 (i) the name of the law enforcement officer to whom the
9 authorisation was given; and
10 (ii) if the authorisation related to a relevant offence—the
11 relevant offence in relation to which it was given; and
12 (iii) if the authorisation related to a recovery order—the date
13 of issue of the recovery order and the name of the child
14 to whom the order related; and
15 (iv) the date on which the application for approval of powers
16 exercised under the authorisation was made; and
17 (v) whether that application for approval of powers
18 exercised under the authorisation was successful or not.
- 19 (4) The register is to specify, for each tracking device authorisation
20 sought by a law enforcement officer of the agency:
21 (a) the date the tracking device authorisation was given or
22 refused; and
23 (b) the name of the appropriate authorising officer who gave or
24 refused to give the tracking device authorisation; and
25 (c) if the tracking device authorisation was given:
26 (i) the name of the law enforcement officer to whom the
27 authorisation was given; and
28 (ii) if the authorisation related to a relevant offence—the
29 relevant offence in relation to which it was given; and
30 (iii) if the authorisation related to a recovery order—the date
31 of issue of the recovery order and the name of the child
32 to whom the order related.

1

2

Division 3—Inspections

3

54 Appointment of inspecting officers

4

The Ombudsman may, by appointment in writing, under this Division, appoint members of the Ombudsman's staff to be inspecting officers.

5

6

7

55 Inspection of records

8

(1) The Ombudsman must 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.

9

10

11

(2) For the purpose of an inspection under this section, the Ombudsman:

12

13

(a) after notifying the chief officer of the agency, may enter at any reasonable time premises occupied by the agency; and

14

15

(b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and

16

17

18

(c) despite any other law, is entitled to make copies of, and to take extracts from, records of the agency; and

19

20

(d) 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.

21

22

23

24

25

(3) The chief officer must ensure that members of staff of the agency give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this section.

26

27

28

29

(4) While an operation is being conducted under a warrant, emergency authorisation or tracking device authorisation, the Ombudsman may refrain from inspecting any records of the agency concerned that are relevant to the obtaining or execution of that warrant or authorisation.

30

31

32

33

1 **56 Power to obtain relevant information**

- 2 (1) If the Ombudsman has reasonable grounds to believe that a law
3 enforcement officer of a particular law enforcement agency is able
4 to give information relevant to an inspection under this Division of
5 the agency's records, subsections (2) and (3) have effect.
- 6 (2) The Ombudsman may, by writing given to the law enforcement
7 officer, require the officer to give the information to the
8 Ombudsman:
- 9 (a) by writing signed by the officer; and
10 (b) at a specified place and within a specified period.
- 11 (3) The Ombudsman may, by writing given to the law enforcement
12 officer, require the officer to attend:
- 13 (a) before a specified inspecting officer; and
14 (b) at a specified place; and
15 (c) within a specified period or at a specified time on a specified
16 day;
17 to answer questions relevant to the inspection.
- 18 (4) If the Ombudsman:
- 19 (a) has reasonable grounds to believe that a law enforcement
20 officer of a particular law enforcement agency is able to give
21 information relevant to an inspection under this Division of
22 the agency's records; and
23 (b) does not know the officer's identity;
24 the Ombudsman may, by writing given to the chief officer of the
25 agency, require the chief officer, or a person nominated by the
26 chief officer, to attend:
- 27 (c) before a specified inspecting officer; and
28 (d) at a specified place; and
29 (e) within a specified period or at a specified time on a specified
30 day;
31 to answer questions relevant to the inspection.
- 32 (5) The place, and the period or the time and day, specified in a
33 requirement under this section, must be reasonable having regard
34 to the circumstances in which the requirement is made.

Section 57

- 1 (6) A person must not refuse:
2 (a) to attend before a person; or
3 (b) to give information; or
4 (c) to answer questions;
5 when required to do so under this section.

6 Penalty for an offence against this subsection: Imprisonment for 6
7 months.

8 **57 Ombudsman to be given information and access despite other**
9 **laws**

- 10 (1) Despite any other law, a person is not excused from giving
11 information, answering a question, or giving access to a document,
12 as and when required under this Division, on the ground that giving
13 the information, answering the question, or giving access to the
14 document, as the case may be, would contravene a law, would be
15 contrary to the public interest or might tend to incriminate the
16 person or make the person liable to a penalty, but:
17 (a) the information, the answer, or the fact that the person has
18 given access to the document, as the case may be; and
19 (b) any information or thing (including a document) obtained as
20 a direct or indirect consequence of giving the information,
21 answering the question or giving access to the document;
22 is not admissible in evidence against the person except in a
23 proceeding by way of a prosecution for an offence against
24 section 45 or against Part 7.4 or 7.7 of the *Criminal Code*.
- 25 (2) Nothing in section 45 or any other law prevents an officer of an
26 agency from:
27 (a) giving information to an inspecting officer (whether orally or
28 in writing and whether or not in answer to a question); or
29 (b) giving access to a record of the agency to an inspecting
30 officer;
31 for the purposes of an inspection under this Division of the
32 agency's records.
- 33 (3) Nothing in section 45 or any other law prevents an officer of an
34 agency from making a record of information, or causing a record of

1 information to be made, for the purposes of giving the information
2 to a person as permitted by subsection (2).

3 **58 Exchange of information between Ombudsman and State** 4 **inspecting authorities**

5 (1) In this section:

6 *State or Territory agency* means a law enforcement agency of a
7 State or Territory within the meaning of the law of that State or
8 Territory that is of a similar nature to this Act.

9 *State or Territory inspecting authority*, in relation to a State or
10 Territory agency, means the authority that, under the law of the
11 State or Territory concerned, has the function of making
12 inspections of a similar kind to those provided for in section 54
13 when the State or Territory agency is exercising powers under the
14 law of that State or Territory that is of a similar nature to this Act.

15 (2) The Ombudsman may give information that:

16 (a) relates to a State or Territory agency; and

17 (b) was obtained by the Ombudsman under this Act;

18 to the State or Territory inspecting authority in relation to the
19 agency.

20 (3) The Ombudsman may only give information to an authority under
21 subsection (2) if the Ombudsman is satisfied that the giving of the
22 information is necessary to enable the authority to perform its
23 functions in relation to the State or Territory agency.

24 (4) The Ombudsman may receive from a State or Territory inspecting
25 authority information relevant to the performance of the
26 Ombudsman's functions under this Act.

27 **59 Delegation by Ombudsman**

28 (1) The Ombudsman may delegate:

29 (a) to an APS employee responsible to the Ombudsman; or

30 (b) to a person holding an equivalent office to the Ombudsman
31 under the law of a State or Territory or to an employee
32 responsible to that person;

Section 60

1 all or any of the Ombudsman's powers under this Division other
2 than a power to report to the Minister.

3 (2) A delegate must, upon request by a person affected by the exercise
4 of any power delegated to the delegate, produce the instrument of
5 delegation, or a copy of the instrument, for inspection by the
6 person.

7 **60 Ombudsman not to be sued**

8 The Ombudsman, an inspecting officer, or a person acting under an
9 inspecting officer's direction or authority, is not liable to an action,
10 suit or proceeding for or in relation to an act done, or omitted to be
11 done, in good faith in the performance or exercise, or the purported
12 performance or exercise, of a function or power conferred by this
13 Division.

14 **61 Report on inspection**

15 (1) The Ombudsman must make a written report to the Minister at 6
16 monthly intervals on the results of each inspection under
17 section 54.

18 (2) The Minister must cause a copy of the report to be laid before each
19 House of the Parliament within 15 sitting days of that House after
20 the Minister receives it.

1

Division 4—General**62 Evidentiary certificates**

- 4 (1) An appropriate authorising officer for a law enforcement officer, or
5 a person assisting the appropriate authorising officer, may issue a
6 written certificate signed by the officer or person, setting out any
7 facts he or she considers relevant with respect to:
- 8 (a) anything done by the law enforcement officer or by a person
9 assisting or providing technical expertise to him or her:
- 10 (i) in connection with the execution of a warrant; or
11 (ii) in accordance with an emergency authorisation; or
12 (iii) in accordance with a tracking device authorisation; or
- 13 (b) anything done by the law enforcement officer in connection
14 with:
- 15 (i) the communication by a person to another person; or
16 (ii) the making use of; or
17 (iii) the making of a record of; or
18 (iv) the custody of a record of;
19 information obtained by the use of a surveillance device
20 under a warrant, emergency authorisation or tracking device
21 authorisation.
- 22 (2) A certificate issued under subsection (1) is admissible in evidence
23 in any proceedings as prima facie evidence of the matters stated in
24 the certificate.
- 25 (3) Subsection (2) does not apply to a certificate to the extent that the
26 certificate sets out facts with respect to anything done in
27 accordance with an emergency authorisation unless the giving of
28 that authorisation has been approved under section 35.
- 29 (4) For the purposes of this section, a document purporting to be a
30 certificate issued under subsection (1) is, unless the contrary
31 intention is established, to be taken to be such a certificate and to
32 have been duly given.

Section 62

- 1 (5) A certificate must not be admitted in evidence under subsection (2)
2 in prosecution proceedings unless the person charged or a solicitor
3 who has appeared for the person in those proceedings has, at least
4 14 days before the certificate is sought to be so admitted, been
5 given a copy of the certificate together with reasonable evidence of
6 the intention to produce the certificate as evidence in those
7 proceedings.
- 8 (6) Subject to subsection (7), if, under subsection (2), a certificate is
9 admitted in evidence in prosecution proceedings, the person
10 charged may require the person giving the certificate to be called as
11 a witness for the prosecution and cross-examined as if he or she
12 had given evidence of the matters stated in the certificate.
- 13 (7) Subsection (6) does not entitle the person charged to require the
14 person giving a certificate to be called as a witness for the
15 prosecution unless the court before which the prosecution
16 proceedings are brought, by order, allows the person charged to
17 require the person giving the certificate to be so called.
- 18 (8) Any evidence given in support, or in rebuttal, of a matter stated in
19 a certificate given under subsection (2) or (3) must be considered
20 on its merits and the credibility and probative value of such
21 evidence must be neither increased nor diminished by reason of
22 this section.

1

2

Part 7—Miscellaneous

3

4

63 Delegation by chief officer of law enforcement agency

5

The chief officer of a law enforcement agency may, by writing, delegate to a member of the staff of the agency who is an SES employee or a person of equivalent rank, all or any of the chief officer's powers or functions.

6

7

8

9

64 Regulations

10

(1) The Governor-General may make regulations prescribing matters:

11

(a) required or permitted by this Act to be prescribed; or

12

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

13

14

(2) The regulations may impose a penalty, not exceeding 50 penalty units, for a contravention of the regulations.

15

1 **Schedule 1—Amendment of other legislation**
2 **and transitional and saving provisions**
3

4 *Australian Federal Police Act 1979*

5 **1 Division 2 of Part II**

6 Repeal the Division.

7 **2 Transitional and saving provision**

8 Despite the repeal of Division 2 of Part II of the *Australian Federal*
9 *Police Act 1979* by item 1 of this Schedule:

- 10 (a) any warrant issued under that Division and in force
11 immediately before the day of that repeal remains in force,
12 according to its terms, after that day as if that Division had
13 not been repealed; and
- 14 (b) any consent by a Judge of a court created by the Parliament
15 to be nominated by the Minister under subsection 12D(2) of
16 the *Australian Federal Police Act 1979*, being a consent that
17 is in force immediately before the day of that repeal, is to be
18 treated, with effect from that day, as if it were a consent to be
19 declared by the Minister to be an eligible Judge under
20 subsection 12(3) of the *Surveillance Devices Act 2004*; and
- 21 (c) any nomination by the Minister of a Judge of a court created
22 by the Parliament as a Judge who may issue warrants under
23 section 12G of the *Australian Federal Police Act 1979*, being
24 a nomination that was in force immediately before the day of
25 that repeal, is to be treated, with effect from that day, as if it
26 were a nomination of that Judge as an eligible Judge for the
27 purposes of section 12 of the *Surveillance Devices Act 2004*;
28 and
- 29 (d) any nomination by the Minister of a person holding an
30 appointment referred to in subsection 12DA(1) of the
31 *Australian Federal Police Act 1979*, being a nomination that
32 was in force immediately before the day of that repeal, is
33 taken, with effect from that day, to be a nomination of that
34 person for the purposes of section 13 of the *Surveillance*
35 *Devices Act 2004*.

1 **3 Operation of Division 2 of Part II of the *Australian Federal***
2 ***Police Act 1979* preserved for limited purposes**

3 Despite the repeal of Division 2 of Part II of the Australian Federal
4 Police Act 1979 by item 1 of this Schedule, that Division is to be treated
5 as continuing to apply in relation to the use of listening devices in
6 respect of offences against the law of the Australian Capital Territory as
7 if:

- 8 (a) the Division had not been repealed; and
9 (b) the definitions of *class 1 general offence* and *class 2 general*
10 *offence* and the definition of *general offence* were limited to
11 offences against the law of the Australian Capital Territory;
12 and
13 (c) for the purposes of the continued operation of section 12L of
14 the *Australian Federal Police Act 1979*:
15 (i) sections 219F to 219K of the *Customs Act 1901* had not
16 been repealed; and
17 (ii) references in section 12L of the *Australian Federal*
18 *Police Act 1979* to general offences, class 1 general
19 offences or class 2 general offences were to be
20 construed as if limited to offences against the law of the
21 Australian Capital Territory.

22 ***Criminal Code Act 1995***

23 **4 Paragraph 476.2(4)(b) of the *Criminal Code***

24 Repeal the paragraph, substitute:

- 25 (b) the person does so:
26 (i) under a warrant issued under the law of the
27 Commonwealth, a State or a Territory; or
28 (ii) under an emergency authorisation given to the person
29 under Part 3 of the *Surveillance Devices Act 2004* or
30 under a law of a State or Territory that makes provision
31 to similar effect; or
32 (iii) under a tracking device authorisation given to the
33 person under section 39 of that Act;

34 ***Customs Act 1901***

35 **5 Division 1A of Part XII**

1 Repeal the Division.

2 **6 Transitional and saving provision**

3 Despite the repeal of Division 1A of Part XII of the *Customs Act 1901*
4 by item 5 of this Schedule:

- 5 (a) any warrant issued under that Division and in force
6 immediately before the day of that repeal remains in force,
7 according to its terms, after that day as if that Division had
8 not been repealed; and
9 (b) any consent by a Judge of a court created by the Parliament
10 to be nominated by the Minister under subsection 219AA(1)
11 of the *Customs Act 1901*, being a consent that is in force
12 immediately before the day of that repeal, is to be treated,
13 with effect from that day, as if it were a consent to be
14 declared by the Minister to be an eligible Judge under
15 subsection 12(3) of the *Surveillance Devices Act 2004*; and
16 (c) any nomination by the Minister of a Judge of a court created
17 by the Parliament as a Judge who may issue warrants under
18 that Division, being a nomination that was in force
19 immediately before the day of that repeal, is to be treated,
20 with effect from that day, as if it were a nomination of that
21 Judge as an eligible Judge for the purposes of section 12 of
22 the *Surveillance Devices Act 2004*; and
23 (d) any nomination by the Minister of a person holding an
24 appointment referred to in subsection 219AB(1) of the
25 *Customs Act 1901*, being a nomination that was in force
26 immediately before the day of that repeal, is taken, with
27 effect from that day, to be a nomination of that person for the
28 purposes of section 13 of the *Surveillance Devices Act 2004*.

29 ***Mutual Assistance in Criminal Matters Act 1987***

30 **7 At the end of Part II**

31 Add:

32 **13A Requests by foreign countries for provision of material lawfully**
33 **obtained**

34 (1) If:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

- (a) a foreign country (the **requesting country**) has commenced an investigation into, or proceedings in relation to, a serious offence against the laws of that country; and
- (b) that foreign country requests the provision of material relevant to that investigation or those proceedings; and
- (c) the Attorney-General is satisfied that the material requested is:
 - (i) material lawfully obtained by an enforcement agency in Australia; and
 - (ii) material lawfully in the possession of that enforcement agency;

the Attorney-General may, by writing in accordance with the approved form, authorise the provision of that material to the requesting country.

- (2) Subsection (1) does not permit the Attorney-General to authorise the provision to the requesting country of material obtained through the use of a surveillance device unless the request relates to an investigation into, or proceedings in relation to, a serious offence against the laws of that country that is punishable by a maximum term of imprisonment of 3 years or more, by imprisonment for life or by the death penalty.
- (3) An authorisation by the Attorney-General under subsection (1) may include a direction to an authorised officer of the enforcement agency having possession of the material about how the material is to be provided to that foreign country.

- (4) In authorising the provision of material to a foreign country, the Attorney-General may specify the uses to which that material can be put.

- (5) In this section:

authorised officer includes a law enforcement officer within the meaning of section 6 of the *Surveillance Devices Act 2004*.

enforcement agency includes a law enforcement agency within the meaning of section 6 of the *Surveillance Devices Act 2004*.

material lawfully obtained by an enforcement agency in Australia includes:

- (a) material obtained from individuals or entities by consent; and

1 (b) material obtained by warrant or the exercise of a coercive
2 power by a court in Australia for the purposes of a domestic
3 investigation or prosecution;
4 but does not include material obtained under the
5 *Telecommunications (Interception) Act 1979*.

6 Note: The heading to section 13 is altered by inserting “**for the taking of evidence or the**
7 **production of documents**” after “**countries**”.

