



Australian Capital Territory

Security Industry Amendment Act 2011

A2011-37

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Australian Capital Territory

Security Industry Amendment Act 2011

A2011-37

An Act to amend the *Security Industry Act 2003*, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Security Industry Amendment Act 2011*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

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

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

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the following legislation:

- *Security Industry Act 2003*
- *Security Industry Regulation 2003*
- *Spent Convictions Act 2000*.

Part 2 Security Industry Act 2003

4 New part 2A

insert

Part 2A Criminal intelligence

9A Definitions—pt 2A

In this part:

criminal intelligence means information relating to actual or suspected criminal activity (whether in the ACT or elsewhere) the disclosure of which could reasonably be expected to—

- (a) prejudice a criminal investigation; or
- (b) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or
- (c) endanger anyone's life or physical safety.

maintain—an entity ***maintains*** the confidentiality of information in relation to an applicant for a licence or licensee only if—

- (a) the information is not used by the entity for a purpose other than exercising a function mentioned in this part; and
- (b) the information is not disclosed to the applicant or licensee, representatives of the applicant or licensee or any member of the public; and
- (c) evidence and submissions about the information are received and heard in private in the absence of the applicant or licensee and representatives of the applicant or licensee, and are not disclosed to any member of the public; and

(d) the information is not disclosed in any reasons for decision.

9B Disclosure of criminal intelligence—chief police officer

- (1) Information that is classified by the chief police officer as criminal intelligence must not be disclosed for this Act to anyone other than the commissioner for fair trading, the Minister, a court or an entity to whom the chief police officer authorises its disclosure.
- (2) The chief police officer may only disclose the information to the commissioner for fair trading if the officer believes on reasonable grounds that the information is relevant to—
 - (a) the making of a decision by the commissioner about issuing a licence to an applicant; or
 - (b) the making of a decision by the commissioner about whether to apply to the ACAT for an occupational discipline order in relation to a licensee.
- (3) Subsection (1) does not prevent the chief police officer from disclosing the information for another lawful purpose.

9C Disclosure of criminal intelligence—commissioner for fair trading and ACAT

- (1) This section applies—
 - (a) if—
 - (i) the commissioner for fair trading refuses to issue a licence to an applicant; or
 - (ii) the commissioner for fair trading applies to the ACAT for an occupational discipline order in relation to a licensee; or
 - (iii) the ACAT makes an occupational discipline order in relation to a licensee; and

- (b) if a thing mentioned in paragraph (a) is done because, or partly because, of information that is classified by the chief police officer as criminal intelligence.
- (2) The commissioner or ACAT must not give any reason for doing the thing other than the following:
 - (a) for subsection (1) (a) (i)—that issuing the licence would not be in the public interest;
 - (b) for subsection (1) (a) (ii)—that disclosing the reason for the application would not be in the public interest;
 - (c) for subsection (1) (a) (iii)—that disclosing the reason for the order would not be in the public interest.

9D Whether information is criminal intelligence—application and decision

- (1) This section applies if the commissioner for fair trading—
 - (a) refuses to issue a licence to an applicant because, or partly because, of information that is classified by the chief police officer as criminal intelligence, and the applicant applies to the ACAT for review of the decision (*the proceeding*); or
 - (b) applies to the ACAT for an occupational discipline order in relation to a licensee because, or partly because, of information that is classified by the chief police officer as criminal intelligence (also *the proceeding*).
- (2) The commissioner or chief police officer must apply to the ACAT for a decision about whether the information is criminal intelligence.
- (3) The application need not be served on anyone unless the ACAT otherwise orders on its own initiative.
- (4) The ACAT may decide that the information is, or is not, criminal intelligence.

- (5) If the ACAT proposes to decide that the information is not criminal intelligence, the applicant must be told about the proposal and given the opportunity to withdraw the information from the proceeding.

9E Appeal—applicant may withdraw information

- (1) This section applies to the following proceedings:
- (a) if—
 - (i) the ACAT has made a decision that information is not criminal intelligence, and there is an appeal to the Supreme Court from that decision; and
 - (ii) the court proposes to find that the information is not criminal intelligence;
 - (b) if—
 - (i) the applicant mentioned in section 9D (1) (a) appeals the ACAT's decision to the Supreme Court; and
 - (ii) the court proposes to find that the information is not criminal intelligence;
 - (c) if—
 - (i) the licensee mentioned in section 9D (1) (b) appeals the ACAT's decision to the Supreme Court; and
 - (ii) the court proposes to find that the information is not criminal intelligence.
- (2) The applicant mentioned in section 9D (2) must be told about the court's proposal and given the opportunity to withdraw the information from the proceeding.

9F Confidentiality of criminal intelligence—commissioner for fair trading and ACAT

- (1) The commissioner for fair trading must maintain the confidentiality of information classified by the chief police officer as criminal intelligence when deciding whether to—
 - (a) issue a licence to an applicant; or
 - (b) apply to the ACAT for an occupational discipline order in relation to a licensee.
- (2) The commissioner for fair trading and ACAT must maintain the confidentiality of information that is the subject of an application mentioned in section 9D (2)—
 - (a) until the tribunal makes a decision about whether the information is criminal intelligence; or
 - (b) that the tribunal—
 - (i) decides is criminal intelligence; or
 - (ii) decides is not criminal intelligence, if there is an appeal from that decision and the appeal is upheld.
- (3) The commissioner for fair trading and ACAT must maintain the confidentiality of information that is the subject of an application mentioned in section 9D (2) if the information is withdrawn.
- (4) The commissioner for fair trading or ACAT may take any steps the commissioner or tribunal considers appropriate to maintain the confidentiality of the information.
- (5) However, if the Supreme Court finds that the information is not criminal intelligence, and the information is not withdrawn, the commissioner for fair trading or ACAT need not maintain the confidentiality of the information.

9G Confidentiality of criminal intelligence—courts

- (1) This section applies if a court deals (on appeal or otherwise) with—
 - (a) a decision by the ACAT about whether information is criminal intelligence; or
 - (b) the question of whether information classified by the chief police officer as criminal intelligence is criminal intelligence.
- (2) The court must maintain the confidentiality of the information.
- (3) The court may take any steps it considers appropriate to maintain the confidentiality of the information.
- (4) The court must not give any reason for making a finding in relation to the information, other than the public interest.
- (5) However, if the Supreme Court finds that information is not criminal intelligence, and the information is not withdrawn—
 - (a) the court need not maintain the confidentiality of the information and may give reasons for the finding; and
 - (b) any other court need not maintain the confidentiality of the information and may give reasons for making a finding in relation to the information.

9H Delegation by chief police officer

- (1) The chief police officer may delegate a function under this part to a senior police officer.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (2) In this section:

senior police officer means a police officer of or above the rank of superintendent.

**5 Application for licence
Section 17 (3) (a) and (b)**

substitute

- (a) a police certificate for the applicant, dated not earlier than 2 months before the day the application is made; and

Note See s 49A (Destruction of fingerprints).

- (b) evidence of the applicant's identity in accordance with the requirements under the *Financial Transaction Reports Act 1988* (Cwlth) that apply in relation to the opening of a bank account; and

- (c) any information prescribed by regulation.

- (3A) For subsection (3) (a), the police certificate must be verified by the applicant's fingerprints if the applicant has not previously given the commissioner for fair trading a fingerprint-verified police certificate.

**6 Request for further information
New section 18 (1A)**

insert

- (1A) Without limiting subsection (1), if the applicant has lived in a foreign country as an adult for a continuous period of 1 year or more in the 5 years before the day the application is made, the commissioner may require the applicant to give the commissioner a certified copy of the applicant's criminal history record from that country.

7 New section 18 (3)

insert

- (3) In this section:

criminal history record, of an applicant, means a written report about the applicant's criminal history from an entity in a foreign country that has access to records about the criminal history of people in that country.

**8 Request for fingerprints
Section 19**

omit

**9 General suitability criteria
Section 21 (1) (a)**

substitute

- (a) satisfied—

- (i) about the applicant's identity; and
- (ii) that the applicant is eligible to hold the licence; and

Note Eligibility for employee, trainer and employee temporary visitor licences is dealt with in s 24.

- (iii) for a licence other than a temporary visitor licence—that the applicant has satisfactorily completed a training course, or has experience or other training that is equivalent, or substantially equivalent, to completion of a training course, prescribed by regulation for the licence applied for; and

- (iv) for an application for an employee licence to do 1 or more of the things mentioned in section 13 (1) (a), (b), (c), (d), (e), (f) or (h)—that an employee organisation has given the applicant the information prescribed by regulation in relation to workplace rights and responsibilities (*workplace information*); and
- (v) that the applicant satisfies any condition prescribed by regulation for the licence; and
- (vi) that it is otherwise in the public interest to issue a licence to the applicant; and
- (vii) for a master temporary visitor licence—that the applicant holds a full licence (however described) under the law of a State to employ or provide a person to carry on the activity authorised under the licence; and
- (viii) for an employee temporary visitor licence—that the applicant holds a full licence (however described) under the law of a State to do the activity authorised under the licence; and

10 New section 21 (1A) and (1B)

insert

- (1A) Also, the commissioner for fair trading must not issue or vary a licence if—
 - (a) within the 10 years before the day the application is made, the applicant has been convicted of 1 or more of the offences mentioned in subsection (1B), in the ACT or elsewhere; or
 - (b) within the 5 years before the day the application is made, the applicant has been found guilty (but not convicted) of 1 or more of the offences mentioned in subsection (1B), in the ACT or elsewhere.

(1B) The offences are as follows:

- (a) if the stated circumstances apply—an offence involving assault, violence against a person, dishonesty or theft;
- (b) if the stated circumstances apply—an offence relating to the possession, storage or use of a firearm or other weapon;
- (c) if the stated circumstances apply—an offence, other than for possession, involving a controlled drug, controlled plant or controlled precursor within the meaning of the *Criminal Code 2002*;
- (d) an offence involving robbery;
- (e) an offence against the *Criminal Code Act 1995* (Cwlth), schedule, part 5.3 (Terrorism);
- (f) an offence committed outside the ACT involving terrorism that is an offence against a law of the place where the offence is committed.

11 Section 21 (3), new definition of *stated circumstances*

insert

stated circumstances, for an offence for which an applicant has been convicted, means that—

- (a) a penalty is imposed on the applicant for the offence; and
- (b) the penalty is imprisonment, a fine of \$500 or more, or both.

**12 Review of workplace information criterion
Section 21A (1)**

omit

(iii)

substitute

(iv)

13 Section 23

substitute

23 Public interest

- (1) In deciding whether it is in the public interest to issue a licence to an applicant, the commissioner for fair trading must consider whether the applicant has—
- (a) committed a relevant offence, whether or not the applicant has been convicted of the offence; or
 - (b) been convicted or found guilty of any other offence (other than an offence mentioned in section 21 (1B)) that the commissioner believes on reasonable grounds affects the person's suitability to hold a licence.

Example—par (b)

an offence involving violence against an animal

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

- (2) The commissioner for fair trading may consider any other relevant matter to decide whether it is in the public interest to issue a licence to an applicant.

Examples—matters to be considered

- 1 a police certificate accompanying an application under s 17 (3)
- 2 information collected under s 20
- 3 if an applicant mentioned in s 18 (1A) failed to give the commissioner a certified copy of the applicant's criminal history record from a foreign country as requested by the commissioner, and the applicant has not given the commissioner any other information or documents about the applicant's probity
- 4 if the applicant has been subject to a final order under the *Domestic Violence and Protection Orders Act 2008*

**14 Temporary licences
Section 26 (1) (b) (ii)**

omit

(ii)

substitute

(iii)

**15 Term of licence
Section 29**

omit

1 year

substitute

3 years

16 New division 3.7A

insert

Division 3.7A Cancellation and immediate suspension of licence by commissioner**29A Commissioner must cancel licence**

- (1) This section applies if a licensee is convicted or found guilty of an offence mentioned in section 21 (1B) (General suitability criteria) during the term of the licence.
- (2) The commissioner for fair trading must cancel the licence.

Note The commissioner must give notice of the decision to the licensee (see s 36A).

29B Immediate suspension of licence

- (1) This section applies if—
 - (a) the commissioner for fair trading applies, or intends to apply, to the ACAT for an occupational discipline order in relation to a licensee; and
 - (b) having regard to the reasons for the application, the commissioner believes on reasonable grounds that the licence should be suspended immediately in the interests of public safety.
- (2) The commissioner for fair trading must give the licensee a written notice (the *immediate suspension notice*) suspending the licence.

Note See also s 36A (Reviewable decision notices).
- (3) The suspension of a licence under this section takes effect when the immediate suspension notice is given to the licensee.

- (4) The suspension of a licence under this section ends—
- (a) if the ACAT makes an occupational discipline order in relation to the licensee—when the order takes effect, or 30 days after the day the immediate suspension notice is given to the licensee, whichever is the earlier; or
 - (b) if the ACAT does not make an occupational discipline order in relation to the licensee—when the licensee is given written notice of the tribunal’s decision not to make an order, or 30 days after the day the immediate suspension notice is given to the licensee, whichever is the earlier.

17 New section 49A

insert

49A Destruction of fingerprints

- (1) If an image of a person’s fingerprints is taken by a public servant for section 17 (3) (a), the commissioner for fair trading must—
- (a) ensure that a copy of the image is given to the person; and
 - (b) ensure that the image, and any copy not given to the person, is destroyed; and
 - (c) tell the person in writing about the destruction.
- (2) If an image of a person’s fingerprints is taken by a police officer for section 17 (3) (a), the chief police officer must—
- (a) ensure that a copy of the image is given to the person; and
 - (b) ensure that the image, and any copy not given to the person, is destroyed; and
 - (c) tell the person in writing about the destruction.

18 New part 8*insert***Part 8 Transitional—Security Industry
Amendment Act 2011****80 Cancellation of licence by commissioner**

- (1) This section applies to a person who held a licence immediately before the commencement of this section.
- (2) Section 29A (Commissioner must cancel licence) applies in relation to the person as if a reference to the term of the licence were a reference to the term of the licence that remains on and after the commencement of this section.

81 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Security Industry Amendment Act 2011*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
- (4) This section expires 2 years after the day it commences.

82 Expiry—pt 8

This part (other than section 81) expires 3 years after the day it commences.

19 Schedule 1, new items 5A and 5B*insert*

5A	29A	cancel licence	licensee
5B	29B	suspend licence immediately	licensee

20 Dictionary, note 2*insert*

- foreign country
- public servant

21 Dictionary, new definitions of *criminal intelligence* and *maintain**insert*

criminal intelligence, for part 2A (Criminal intelligence)—see section 9A.

maintain, confidentiality of information, for part 2A (Criminal intelligence)—see section 9A.

22 Dictionary, definition of *police certificate* and note*substitute*

police certificate, for a person, means a written statement by the Australian Federal Police or a police force of a State or Territory indicating—

- (a) whether, according to the records held by that entity or another entity (for example, the Commonwealth CrimTrac agency), the person has been charged with, or convicted of, an offence against a law of—
 - (i) the Territory; or

- (ii) the Commonwealth; or
 - (iii) a State; or
 - (iv) another country; and
- (b) if so—particulars of each offence.

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

23 Dictionary, definition of *relevant offence*

omit everything before paragraph (a), substitute

relevant offence means an offence (other than an offence mentioned in section 21 (1B)) against—

24 Dictionary, definition of *workplace information*

omit

(iii)

substitute

(iv)

Part 3 Security Industry Regulation 2003

**25 Exempt people—Act, s 9
Section 6 (2) (a)**

omit

(ii)

substitute

(iii)

26 Section 7A heading

substitute

7A Information to accompany certain employee licence applications—Act, s 17 (3) (c)

27 Section 8 heading

substitute

8 Prescribed training courses for employee licences—Act, s 21 (1) (a) (iii)

28 Table 8, item 1, column 3

substitute

Certificate II in Security Operations
Certificate in first aid (current)

29 Table 8, item 5, column 3*substitute*

Certificate II in Security Operations
with electives about—

- controlling access to and from premises; and
- operating basic security equipment; and
- patrolling premises; and
- managing dogs for security functions; and
- handling dogs for security patrol

Certificate in first aid (current)

30 Table 8, items 6 to 10, column 3*substitute*

Certificate II in Security Operations
with electives about—

- protecting people; and
- protecting self and others using basic defensive tactics

Certificate in first aid (current)

Certificate IV in Security and Risk
Management

Certificate in first aid (current)

Certificate II in Security Operations with electives about—

- controlling access to and from premises; and
- monitoring and controlling individual and crowd behaviour; and
- protecting self and others using basic defensive tactics

Certificate in first aid (current)

- for a person who is not a locksmith—Certificate II in Technical Security
- for a locksmith—Certificate III in Engineering Technology (Locksmithing stream) or Certificate III in Engineering-Mechanical Trade (Locksmithing)

Certificate in first aid (current)

- for a person who is not a locksmith—Certificate III in Technical Security
- for a locksmith—Certificate III in Engineering Technology (Locksmithing stream) or Certificate III in Engineering-Mechanical Trade (Locksmithing)

Certificate in first aid (current)

31 Section 9 heading*substitute***9 Prescribed training courses for trainer licences—Act, s 21 (1) (a) (iii)****32 Section 9A heading***substitute***9A Conditions for certain master licences—Act, s 21 (1) (a) (v)****33 Section 9B heading***substitute***9B Workplace information—Act, s 21 (1) (a) (iv)**

Part 4 Spent Convictions Act 2000

34 Exclusions New section 19 (8A)

insert

- (8A) Section 16 does not apply to a conviction that is spent under section 12 (When is a conviction spent?) in relation to—
- (a) the making of an application for a licence under the *Security Industry Act 2003*; and
 - (b) the giving of a police certificate under that Act;
 - (c) the making of a decision about issuing a licence under that Act.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 June 2011.

2 Notification

Notified under the Legislation Act on 27 September 2011.

3 Republications of amended laws

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

I certify that the above is a true copy of the Security Industry Amendment Bill 2011, which was passed by the Legislative Assembly on 22 September 2011.

Acting Clerk of the Legislative Assembly

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