

FAIR TRADING REGULATIONS (AMENDMENT)

Subordinate Law No. 12 of 1998

PURPOSE

The intention of this amendment is to have the *Fair Trading Regulations* ("the Principal Regulations") prescribe the *Access Control Industry Code of Practice* ("the Code") as a code of practice under section 34 of the *Fair Trading Act 1992* ("the Act").

BACKGROUND

The Director of Consumer Affairs has submitted the Code to the Minister in accordance with section 33 of the Act and the Minister has approved the Code without amendment.

DETAILS OF AMENDMENT

Regulation 4 of the Principal Regulations is amended by adding a reference to the Code so as to prescribe it as a code of practice under section 34 of the Act.

The *Access Control Industry Code of Practice* and accompanying explanatory notes are contained in the Attachment to this memorandum.

FINANCIAL IMPLICATIONS

The Code will be self-funding.

1998

THE LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

FAIR TRADING ACT 1992

FAIR TRADING REGULATIONS (AMENDMENT)

Subordinate Law No. 12 of 1998

EXPLANATORY MEMORANDUM

**Circulated by the authority of
Gary Humphries MLA
MINISTER FOR JUSTICE AND COMMUNITY SAFETY**

*Attachment to Explanatory Memorandum
to Fair Trading Regulations*

Fair Trading Act 1992

**Access Control Industry
CODE OF PRACTICE**

EXPLANATORY NOTES

PART I : PRELIMINARY

Clause 1 : Objectives

Clause 1 sets out the overall objectives of the Code which is intended to be a co-regulatory scheme under which both the Government and industry have roles and responsibilities in regulating participation in the industry.

Clause 2 : Interpretation

Clause 2 sets out definitions of terms used in the Code.

Generally, the terms used in the Code are defined in a broad way to ensure a comprehensive application of the Code. Notably, "**employ**" and the related "**employee**" are defined with the intention of capturing more than just persons with an employment contract with the principal.

The definition of "**principal**" extends to a business entity that is outside the ACT and covers both natural persons and corporate bodies.

The concept of the "**relevant influential person**" has been included to prevent persons with relevant convictions from using a corporate persona to escape the ambit of the Code. The aim of this definition is to draw into the Code anyone who is exercising a substantial influence over a corporation without falling into the definitions of "principal" or "employee".

The definition of "**access control service**" has three separate limbs. In subclause (a) the key reference is to "designed" which is intended to refer to the value-added component of a service that incorporates technical knowledge, expertise or experience. A service will be "designed" to control access where the provider devises a solution to an access control problem for the consumer. There is no "design" where a service involves no value-added component, as is the case where a person merely installs a product from instructions that have been provided by the manufacturer.

While subclause (a) describes an access control service by looking at the "mental" component of the service, subclauses (b) and (c) are described by reference to the "physical" component of the service; installation. It is envisaged that in many cases a service will satisfy both subclause (a) and one of either subclause (b) or (c).

Subclause (b) relates to the installation of physical, rather than electronic, devices that control access. Whether such installation will fall within subclause (b) is determined by reference to the *person* who performs the installation. In this regard, the Code is intended to cover a person who is "an installer of security devices", "a security consultant" or "a locksmith". Rather than defining these terms, subclause (b) has the effect of causing a service provider to categorise him or herself in relation to those terms through a holding out that he or she is broadly responsible for.

Subclause (c) relates to the installation of electronic, rather than physical, devices that control access. In contrast to subclause (b), whether such installation will fall within

subclause (c) is determined by reference to the *product* that is installed. Therefore any service whereby one of the devices listed is installed will satisfy subclause (3) irrespective of who performs the service.

The definition of "access control service" does not include a service that is provided by the owner of the premises or place if that owner is an individual rather than a body corporate.

Clause 3

Clause 3 places the onus for compliance with the Code on the principal. The aim of the Code is to regulate the actions of principals directly, and regulate the actions of employees indirectly, through the obligations placed on principals under the Code.

Clause 4

Clause 4 aims to provide a mechanism to prevent the Code placing a obligation on a principal where to do so would, in practice, defeat the objectives of the Code. It is also intended to facilitate the Australian Capital Territory's obligations under the Competition Principles Agreement.

PART II : PRINCIPAL'S OBLIGATIONS

Clause 5

Clause 5 sets out obligations for principals.

Registration

Subclause (1) sets up the registration requirement for principals that is crucial to the scheme created by the Code. Registration amounts to the right to participate in the industry.

Subclause (4) regulates who is to be registered and makes registration automatic where a principal satisfies certain criteria. The subclause aims to prevent any person, who has a specified conviction, operating as a principal, unless that person has been certified by the Director. The Director has the discretion to certify persons as "unlikely to reoffend" under subclause 18(2).

The convictions specified in subparagraphs 5(4)(b)(ii), 5(4)(c)(iii) and, in the case of employees, paragraph 10(2)(c) are intended to be convictions for which, at the time of conviction, a custodial sentence was prescribed under the law creating the offence, whether or not the person applying for certification was actually given a custodial sentence.

The registration criteria amount to continuing requirements as deregistration, dealt with in clause 18, may occur where a principal subsequently fails to satisfy a registration requirement. In recognition of the continuing nature of the registration requirements, subclause (5) is intended to ensure that the Director can obtain the same information and perform the same checks where a person becomes a relevant influential person of a principal after the date of registration.

Criminal Record Checking

For the purpose of determining whether an applicant for registration has a specified conviction, subclause (4) makes it a mandatory registration requirement that an applicant who is a natural person, an applicant who is a body corporate and, in the case of an applicant who is a body corporate, all relevant influential persons of the applicant, submit to a criminal record check. These requirements are specified in subparagraphs (4)(b)(i), (4)(c)(i) and 4(c)(ii) respectively.

The criminal record check is intended to relate to an applicant's name or alias and therefore the Director can make the check directly with the AFP, without the need for the applicant to deal directly with the AFP.

Subclause (6) is intended to give the Director a discretion to require a principal or any relevant influential person to undertake a fingerprint check where it appears to the Director that a criminal record check may not adequately disclose that person's convictions. This discretion is considered an important safeguard to the integrity of the registration scheme and is intended to be used at anytime, not merely at the time of an application for registration.

Other Obligations

Subclause (2) incorporates the obligations contained in the Schedule, while subclause (3) is intended to be a statement of vicarious liability.

Clause 6

Clause 6 aims to ensure that consumers of access control services are aware of the obligations that the Code places on Principals.

Subclauses (1) and (2) place different obligations on a principal depending on whether that principal makes a written or oral offer to supply. It is envisaged that most written offers will be made in response to a call for tenders, while oral offers will typically be collateral to existing contracts.

Subclause (3) is intended to allow the Minister to make a broad exclusion for all principals from this particular requirement of the Code.

Clause 7

Paragraph (a) is intended to ensure that those who provide access control services do not abuse their position. In the co-regulatory scheme created by the Code, it is anticipated that industry will determine appropriate ethical standards.

Paragraph (b) is intended to capture all "unreasonable" sales methods including techniques that over-exaggerate how vulnerable the consumer will be without the service offered.

Clause 8

Subclause (1) is intended to protect the privacy of the consumer by prohibiting the principal from disclosing the information specified unless authorised by this clause. The prohibition extends to the situation where a principal makes such a disclosure through any other person, whether or not that other person is employed by the principal.

Subclause (2) allows a principal, who has any information relevant to the commission of a criminal offence, to offer this information to the police or the Director of Consumer Affairs without having been requested for that information and without being fettered by the prohibition in subclause (1).

PART III : STANDARDS

Clause 9

This clause is intended to ensure that the safety of those providing the service and the public at large is not compromised by the use of substandard equipment.

PART IV : STAFF

Clause 10

Clause 10 is intended to regulate which persons may be engaged by a principal to provide an access control service. Subclause (1) determines who is eligible to be engaged to provide an access control service. There are two separate requirements that must be satisfied for a person to be eligible: the registration and capability requirements.

Registration

Registration is governed by subclause (2) and is automatic provided a person meets specific criteria. The registration requirement is analogous to that applying to principals in clause 5, with mandatory criminal record checks and certification necessary where a person has been convicted of a relevant offence. It is the industry body ACTSPIIC that determines applications for registration and certification. ACTSPIIC's discretion to certify is exercised under subclause 19(2).

It is envisaged that ACTSPIIC (or the Director as appropriate) will develop guidelines on which forms of identification it considers satisfactory for the purpose of paragraph 10(2)(a). It is also envisaged that the Director will develop an analogous guideline for the purpose of the identification requirement in paragraph 5(4)(b)(iv).

Capability

The onus is on the principal to ensure that those he or she engages are capable of providing a service. It is expected that the principal will make such assessments based on any guidelines developed by ACTSPIIC and having regard to the provisions of subclause (4).

Subclause (4) provides an objective guide for a principal making such an assessment where training under competency based industry standards is available. This does **not** preclude a principal assessing a person as capable even if that person has neither undertaken such training nor been licensed in another jurisdiction.

The Continuing Nature of the Requirements

A person who is eligible to be engaged to provide a service will later become ineligible if he or she ceases to meet the eligibility requirements. The aim of the continuing nature of the requirements is to ensure that those registered and employed by a principal must maintain that registration and capability. It is envisaged that a person who is initially capable may need to undertake training in the future, as developments in the industry arise, so that they can maintain that capability.

A Principal who Personally Provides a Service.

Subclause (7) is intended to ensure that a principal or relevant influential person who personally provides a service is capable of doing so. There is no further registration requirement under this clause because the registration of a principal or relevant influential person has been addressed under clause 5.

Fingerprint checking

Subclause (8) provides a discretionary fingerprinting requirement in relation to employees, analogous to that provided for principals in subclause 5(6) (which is inserted by clause 3 of the Amendment).

Where a reference is made in the Code to "or, where ACTSPIIC has entered an agreement with the Director under subclause 19(7), the Director" it is made with the intention of facilitating the Director's performance of functions on ACTSPIIC's behalf where ACTSPIIC has contracted the performance of such functions to the Director.

PART V : ADMINISTRATION

Clause 11

Clause 11 establishes the Code Administration Committee which is intended to be a policy body that oversees the performance of the scheme. The Code Administration Committee's role under subclause 11(1) of the Code does not allow it to perform any of the functions that the Code creates for ACTSPIIC, the Director, or the Complaints Resolution Committee.

The Code Administration Committee is intended to be representative of industry, the ACT Government and consumers.

Clause 12

This clause sets out the procedure for the resolution of complaints. The first stage towards resolution is that a complainant should attempt to resolve the complaint directly with the principal. A consumer may have regard to the advice of the Consumer Affairs Bureau in its existing capacity as a resource for consumers.

Subclause (2) sets out the next step for resolution. Paragraph 12(2)(a) deals with complaints other than complaints between principals and allows a complainant to make a request to the Director where the complaint was not resolved at the first stage. Paragraph (b) deals with principals only and does not require a resolution to have failed at the first stage because this type of dispute may involve industry concerns which are appropriately dealt with by a more formal process.

The next stage in the process is for the Director to send appropriate complaints on to the Complaint Resolution Committee that he or she appoints under subclause 12(3). It is envisaged that the Complaints Resolution Committee shall reach a majority decision under subclause 12(5) but should that not occur in practice, the process is repeated by the Director referring the complaint to a new Complaints Resolution Committee appointed under subclause 12(3).

Clause 13

Subclause 13(1) sets out membership to the Complaints Resolution Committee. In determining membership the intention is to balance the objective of providing industry self-regulation against the need for the parties to receive a fair hearing.

The panel of persons eligible for appointment to the Complaints Resolution Committee is intended to include at least two persons for each of the positions on the Committee. The Code Administration Committee may determine a standing member for each position. The Director shall appoint the panel member specified as the standing member unless that member is unavailable or disqualified. If the panel is convened by the Director and a member becomes unavailable or disqualified, the Director has the power to appoint an alternate person under subclause 13(9).

Clause 14

This clause sets out the sanctions available to the Complaints Resolution Committee where it determines that a principal has breached the Code. The Director must be notified of a breach but further sanctions can be imposed at the Committee's discretion. It is open to the Committee, therefore, to impose no sanction in a given case where, for example, the complaint resolution process itself has caused enough embarrassment to the principal within the industry.

Paragraph 14(e) gives the Committee a discretion to make recommendations to the Director. These recommendations are not binding on the Director but may include a recommendation that the Director use his or her powers under the *Fair Trading Act 1992* to seek an undertaking or injunctive relief. Such powers are available to the Director at all times, regardless of the outcome of the disputes resolution process.

Clause 15

This clause recognises that the Director is ultimately responsible for enforcing the Code should a principal fail to comply with the complaint process of the Code.

Clause 16

Clause 16 requires the Code Administration Committee to submit a report to the Minister on the operation of the Code. This clause should be read as authorising the

free flow of all information that subclause (3) specifies to the Code Administration Committee, whoever holds that information.

Clause 17

This clause sets up an important part of the co-regulatory system created by the Code. Under clause 17, the industry, though ACTSPIIC, is able to assess the way the industry is regulated and has a direct channel through which suggestions for reform can be made.

Clause 18

Certification

Subclause 18(2) establishes the Director's discretion to certify an applicant for the purposes of clause 5. In exercising the discretion, the Director must consider the information obtained through the channels described in paragraphs 18(2)(a) and 18(2)(b). The onus is, therefore, upon a principal to indicate all material that the person considers relevant to his or her application for certification. There is only one ground upon which the Director can certify an applicant, namely, that the applicant is unlikely to commit another relevant offence because of the efflux of time and the efforts made by that person to re-establish a good character.

Charging Fees

Subclause (3) sets out the points at which the Director can set fees to recover the overall operational and administrative costs associated with his or her functions under the Code.

Deregistration

There are two types of deregistration of principals under this clause. The first is automatic and occurs whenever an event listed in subclause (4) occurs. The second type of deregistration occurs upon an exercise of the Director's discretion under subclause (5). The purpose of this subclause is to provide a power for the Director to remove a principal's right to participate in the industry where the gravity or frequency of offences committed by the principal are such that it is in the public interest to do so.

Clause 19

Clause 19 contains a certification procedure and fee charging scheme analogous to those in clause 18. An equivalent power to automatically deregister employees is contained in subclause 19(5); however, no discretionary power to deregister employees is given to ACTSPIIC.

Subclause (7) is intended to allow the Director and ACTSPIIC to enter an agreement for the Director to perform ACTSPIIC's registration functions on behalf of ACTSPIIC. It is envisaged that such an arrangement may be entered into because of potential efficiency gains, in practice, where all registration under the Code is undertaken and administered by a single authority. It is also envisaged that an online electronic registration system may be employed in performing all registration functions.

Clause 20

As this Code regulates who may participate in the access control industry, this clause has been included to prevent the introduction of the Code causing a major disruption to industry. This is particularly important because of existing contracts with and within the industry, the fact that the registration scheme may not be fully operational by the time the Code becomes law and the waiting list anticipated for persons obtaining fingerprint checks from the Australian Federal Police.

Paragraph 20(b) makes compliance by a principal mandatory from 1 August 1998 onward, regardless of such considerations. However, paragraph 20(a) makes compliance with the Code, from its commencement to 1 August 1998, mandatory to the extent that a principal can reasonably comply in practice.

SCHEDULE

The purpose of the Schedule is to specify obligations for the principal under subclause 5(2) and to notify the consumer of the principal's obligations under the Code. Each obligation in the Schedule should be read as additional to those imposed in the body of the Code. However, where an obligation described in the Schedule relates to an analogous obligation elsewhere in the Code, such as advertising and marketing practices, then regard should be had to that analogous obligation when interpreting the scope of the obligation in the Schedule. This principle would apply in the case of "advertising and marketing practices", "principal" and "employees", but not "improper conduct", "incident reports" and "identification" in the Schedule.

*Attachment to Explanatory Memorandum
to Fair Trading Regulations*

Fair Trading Act 1992

**Access Control Industry
CODE OF PRACTICE**

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Code of Practice Fair Trading Act

Access Control Industry

PART I: PRELIMINARY

Objectives

1. The objectives of this code of practice are:
 - (a) to ensure appropriate standards of trading are maintained by those who provide access control services;
 - (b) to promote consumer and community confidence in those who provide access control services;
 - (c) to ensure that those who provide access control services and their employees provide services in a safe, ethical and professional manner;
 - (d) to support and promote those who provide access control services; and
 - (e) to establish adequate procedures to resolve complaints.

Interpretation

2. In this Code, unless the contrary intention appears:

Access Control Industry: a service industry encompassing principals within the meaning of this Code;

Access control service: means:

- (a) a service designed to control access to premises or a place through the use of a physical or electronic device;
- (b) the installation of a physical device to control access to premises or a place by a person who has held him or herself out, or allowed or caused him or herself to be held out, as:
 - (i) an installer of security devices;
 - (ii) a security consultant; or
 - (iii) a locksmith; or
- (c) the installation of an electronic alarm system, closed circuit television or other electronic surveillance system in premises or a place,

and includes the provision of management, secretarial or administrative support in respect of such a service, but does not

include the provision of such a service by an individual who owns the premises or place;

ACTSPIIC: ACT Security Protection and Investigation Industry Council Incorporated, unless the Minister has approved some other body, in which case; that other body;

Advertisement: includes any business card, stationery, brochure, flyer, circular, newsletter, fax form, printed or published paid advertisement in any media form (but does not include a simple telephone book listing);

Code: this Code of Practice;

Consumer: a person who is provided with an access control service or who is making enquires about an access control service;

Director: the Director of Consumer Affairs or his or her nominee;

Employ: includes any engagement whether or not for remuneration;

Employee: includes any person engaged by a principal to provide an access control service, whether or not for remuneration;

Incident report: a record of a relevant incident that shall include:

- (a) the date and time at which the incident occurred;
- (b) the location at which the incident occurred;
- (c) details of the incident;
- (d) for each employee involved in, or witnessing, the incident:
 - (i) the name and ACTSPIIC registration number of that employee;
 - (ii) the identification used by the employee; and
 - (iii) if applicable, the name of the person supervising that employee; and
- (e) the names and contact details of any witnesses;

Minister: the Minister responsible for administering the *Fair Trading Act 1992*;

Principal: A person, wherever located, who:

- (a) for any consideration whatsoever, engages in business to provide, accepts an engagement to furnish, or agrees to provide, an access control service but does not include a Territory, State or the Commonwealth Government insofar as an officer of that government is not engaging in business within the meaning of the *Competition Policy Reform Act 1996*; or
- (b) voluntarily accedes by notice in writing to the Director;

Relevant influential person: in relation to a body corporate is:

- (a) a director or secretary of the body; or
- (b) a person who is:
 - (i) substantially concerned in the management of the body; or
 - (ii) able to control, or to substantially influence, the body's activities or internal affairs.

Application of Code

3. This Code applies to a Principal.

Exemptions from Code

4. (1) A principal may apply to the Minister for an exemption from the application of all or any of the provisions of this Code.
- (2) An application to the Minister under subclause (1) shall be in writing setting out the grounds on which the principal seeks the exemption.
- (3) Where the Minister receives an application in accordance with subclause (1), the Minister shall seek advice from the Code Administration Committee.
- (4) The Minister may:
 - (a) after considering advice from the Code Administration Committee; and
 - (b) if satisfied that there will be no substantial detriment caused to consumers;
grant to a principal:
 - (c) an unconditional exemption; or
 - (d) an exemption subject to conditions.
- (5) The Minister may, at any time, revoke an exemption.
- (6) If the Minister revokes an exemption, he or she shall give notice, in writing, to the principal.

PART II: PRINCIPAL'S OBLIGATIONS

Principal's obligations

5. (1) A principal shall not participate in the access control industry unless registered by the Director.
- (2) A principal shall ensure, in respect to the provision of an access control service, compliance with the obligations listed in the Schedule.
- (3) A principal is responsible for the good conduct of his or her employees in the course their employment.
- (4) For the purpose of subclause (1), the Director shall register a principal who:
 - (a) has provided to the Director a notification in the form of Attachment "A";
 - (b) in the case of a natural person;
 - (i) has authorised the Director to undertake a criminal record check of the principal with the Australian Federal Police;
 - (ii) if convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, has been certified by the Director for employment in the industry on the ground that the principal is unlikely to reoffend;
 - (iii) is at least 18 years of age; and

- (iv) has produced to the Director two forms of identification to the satisfaction of the Director.
 - (c) in the case of a body corporate;
 - (i) has authorised the Director to undertake a criminal record check of the principal with the Australian Federal Police;
 - (ii) has provided to the Director such details of all relevant influential persons of the body corporate as requested by the Director and has obtained an authorisation from each relevant influential person for the Director to undertake a criminal record check of the person with the Australian Federal Police; and
 - (iii) if it, or a relevant influential person of the body corporate, has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, then each such person has been certified by the Director for employment in the industry on the ground that the person is unlikely to reoffend; and
 - (d) has paid the registration fee, if any.
- (5) Where a person becomes a relevant influential person of a principal after that principal has been registered, the principal shall:
- (a) notify the Director within 14 days;
 - (b) provide the Director, within a reasonable time, with such details of that person as he or she requests; and
 - (c) obtain, within 14 days, an authorisation from the relevant influential person for the Director to undertake a criminal record check of the person with the Australian Federal Police.
- (6) Where the Director is satisfied, having regard to any recommendation of ACTSPIIC and any circumstances that he or she considers relevant, that the criminal record check undertaken in regard to a principal or relevant influential person may not adequately disclose that person's convictions, the Director may require that person to undertake, within 14 days, a fingerprint check with the Australian Federal Police.

Agreement for an access control service

6. (1) When a principal makes a written offer for the supply of a service, the principal shall provide to the prospective customer:
- (a) a copy of the Schedule to this Code endorsed by the principal, unless done so previously; and
 - (b) material that discloses information from which the price or value of the services being offered may be determined.
- (2) Subject to subclause (3), when a principal makes an oral offer for the supply of a service, the principal shall, unless that principal has done so previously, provide to the prospective customer a copy of the Schedule to this Code endorsed by the principal as soon as possible after the offer is made.

(3) Subclause (2) has no application if the value of the services to be supplied is less than the amount set by the Minister, if any.

Service quality

7. A principal shall ensure that employees:

- (a) in providing a service, act in a safe, ethical and professional manner; and
- (b) in attempting to sell a service, do not use unreasonable sales methods.

Confidentiality of personal information

8. (1) Subject to this clause, a principal shall not disclose, or cause to be disclosed, to any person information acquired by him or her from or for a consumer unless:

- (a) authorised by the consumer;
- (b) required or permitted by law; or
- (c) required by ACTSPIIC, the Director, a Code Administration Committee or a Complaints Resolution Committee under the Code in respect of a complaint.

(2) Any principal or employee may divulge to a police officer or the Director any information that he or she may acquire as to any offence whether or not a lawful request has been made for such information.

PART III: STANDARDS

Standard of Equipment

9. (1) A principal shall only supply equipment that:

- (a) conforms to safety standards established by the Australian Standards Association;
- (b) is mechanically sound; and
- (c) where so required under a contract, is serviced adequately, efficiently and regularly to ensure continued user safety.

(2) A principal shall ensure that equipment used by an employee:

- (a) conforms to safety standards established by the Australian Standards Association;
- (b) is mechanically sound; and
- (c) where so required under a contract, is serviced adequately, efficiently and regularly to ensure continued user safety.

PART IV: STAFF

Staff

10. (1) A principal shall not employ or continue to employ a person to provide an access control service unless that person is:
- (a) registered by ACTSPIIC; and
 - (b) capable of providing the particular access control service that he or she is to provide.
- (2) ACTSPIIC shall, for the purpose of subclause (1), only register a person:
- (a) who has provided to ACTSPIIC (or, where ACTSPIIC has entered an agreement with the Director under subclause 19(7), the Director) a notification in the form of Attachment "B" and has produced to ACTSPIIC (or, where ACTSPIIC has entered an agreement with the Director under subclause 19(7), the Director) two forms of identification to the satisfaction of ACTSPIIC (or the Director as the case may be);
 - (b) who has authorised ACTSPIIC (or, where ACTSPIIC has entered an agreement with the Director under subclause 19(7), the Director) to undertake a criminal record check of that person with the Australian Federal Police, the results of which are to be provided to ACTSPIIC (or the Director as the case may be);
 - (c) if that person has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, who has been certified by ACTSPIIC for employment in the industry on the ground that the person is unlikely to reoffend; and
 - (d) who has paid the registration fee, if any.
- (3) A principal shall not represent to a consumer that a person who is to provide an access control service is capable of providing the service if the person is not capable.
- (4) For the purpose of this clause, if training under competency based industry standards has been approved in accordance with Commonwealth or Territory law, a person is deemed to be capable of providing an access control service if that person:
- (a) has successfully undertaken that training and provides the service at a level appropriate to that training; or
 - (b) is licensed to provide the access control service under the law of another jurisdiction and provides the service at a level appropriate to that registration.
- (5) A person who is gaining experience to provide an access control service shall be supervised by a person who is capable of providing the service at the appropriate level.
- (6) Where a person cannot offer themselves for employment without the approval of a third person, the principal shall sight that approval and keep a copy of the approval.

(7) Where a principal, or a relevant influential person, personally provides an access control service, he or she must be capable of providing the particular access control service that he or she is providing.

(8) Where ACTSPIIC (or, where ACTSPIIC has entered an agreement with the Director under subclause 19(7), the Director) is satisfied, having regard to any recommendation of the Director and any circumstances that he or she considers relevant, that the criminal record check undertaken in regard to an employee may not adequately disclose that employee's convictions, ACTSPIIC (or the Director as the case may be) may require that employee to undertake, within 14 days, a fingerprint check with the Australian Federal Police.

Part V: ADMINISTRATION

Code Administration Committee

11. (1) The Code shall be administered by the Code Administration Committee.

(2) The Code Administration Committee shall consist of:

- (a) the Director;
- (b) a representative of ACTSPIIC;
- (c) two representatives of principals;
- (d) a representative of a peak consumer organisation; and
- (e) an employee representative.

(3) The persons in paragraph (2)(c) shall be drawn from different sectors of the access control industry and shall be elected at an open meeting of principals in the access control industry. The person in paragraph (2)(d) shall be appointed by the Director. The person in paragraph (2)(e) shall be elected at an open meeting of employees in the access control industry convened by the Director.

(4) The Chairperson of the Code Administration Committee shall be the Director.

(5) The Consumer Affairs Bureau shall provide secretariat services to the Code Administration Committee.

(6) The Code Administration Committee may appoint to the Code Administration Committee such other people as it considers necessary to carry out its functions.

(7) Each member of the Code Administration Committee shall be elected or appointed for a period of 2 years and shall be eligible for reelection or reappointment.

(8) The Code Administration Committee shall meet at least once each year but may meet more frequently as required.

(9) The Code Administration Committee shall:

- (a) monitor compliance with the Code;
- (b) report to the Minister on the effectiveness of the Code;

- (c) monitor the operation and administration of the complaints handling procedures and the Complaints Resolution Committee;
 - (d) develop policy and procedures to promote the Code within the industry and its recognition by consumers; and
 - (e) conduct periodic reviews of the effectiveness of the Code and consider recommendations for amendments to the Code.
- (10) A member, or former member, of a Code Administration Committee shall not disclose any confidential or sensitive information acquired by him or her as a consequence of his or her position.
- (11) A member, or former member, of a Code Administration Committee shall not be liable for anything done or omitted to be done in good faith in or in connection with the exercise or purported exercise of any duties conferred on him or her under this Code.
- (12) The appointment of a member of the Code Administration Committee is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment of the member.

Complaint resolution procedure

12. (1) A principal shall make every reasonable effort to resolve quickly and fairly any complaint made in relation to the provision of services offered under an agreement with that principal, whether or not the complainant is a party to that agreement.
- (2) Where:
- (a) a complaint cannot be resolved between a principal and a consumer or other member of the public; or
 - (b) a complaint is made by a principal against another principal,
- the complainant may request, by writing to the Director, that the complaint be dealt with by the Complaints Resolution Committee.
- (3) Where the Director receives a request under subclause (2), he or she shall, as soon as practicable, appoint a Complaints Resolution Committee and refer the complaint to it for determination.
- (4) Where a complaint is referred to a Complaints Resolution Committee, the Committee shall, within 7 working days of the referral, hear the complaint.
- (5) Where a Complaints Resolution Committee reaches a majority decision on a complaint the Committee shall, within 7 working days:
- (a) notify the parties to the complaint, of the decision in writing; and
 - (b) provide a report to the Code Administration Committee specifying the decision and the reasons for that decision.

Complaints Resolution Committee

13. (1) A Complaints Resolution Committee shall consist of:
- (a) a chair;

- (b) a representative of the access control industry who is the owner or manager of an access control service company; and
 - (c) a nominee of ACTSPIIC who is not a principal nor an employee under this Code.
- (2) The Code Administration Committee shall appoint a panel of persons for membership to a Complaints Resolution Committee for the purposes of subclause (1).
- (3) The Director shall appoint, from the panel referred to in subclause (2), a Complaints Resolution Committee, to determine a complaint in accordance with subclause 12(3).
- (4) The member of the Complaints Resolution Committee referred to in paragraph (1)(b) shall be selected from appropriately qualified people who have expressed an interest in being a member of the Committee.
- (5) The Complaints Resolution Committee shall observe the principles of natural justice.
- (6) Where a member:
- (a) has a direct interest, pecuniary or otherwise; or
 - (b) has an interest which could otherwise conflict, or appear to conflict, with the proper performance of his or her duties as a member of the Committee in a matter before the Complaints Resolution Committee,
- the member shall advise the Committee and the Director of the interest and take no further part in those proceedings as a member of the Committee.
- (7) A member, or former member, of a Complaints Resolution Committee shall not disclose any information acquired by him or her as a consequence of his or her position.
- (8) A member or former member of the Complaints Resolution Committee shall not be liable for anything done or omitted to be done in good faith in or in connection with the exercise or purported exercise of any duties conferred on him or her under this Code.
- (9) The Director may appoint eligible persons as alternates in the event that a member advises the Director of a conflict of interest under subclause (6).
- (10) Each member of the panel referred to in subclause (2) shall be appointed for a period of 2 years and shall be eligible for reappointment.
- (11) The appointment of a member of the Complaints Resolution Committee is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment of the member.

Sanctions

14. Where a Complaints Resolution Committee determines that a principal has breached the Code, the Committee shall notify the Director and may do one or more of the following:
- (a) require the principal to remove or change any offending material;
 - (b) require the principal to publish a corrective statement in a manner and with wording approved by the Committee;

- (c) require the principal to have future advertising and promotional material monitored by the Director;
- (d) require the principal to refund to a consumer an amount determined by the Committee; or
- (e) make such recommendation to the Director as it considers appropriate.

Compliance

15. If a principal refuses to:

- (a) attend to have a complaint determined by a Complaints Resolution Committee;
- (b) comply with a requirement imposed by the Complaints Resolution Committee; or
- (c) comply with the provisions of the Code,

the Complaints Resolution Committee shall notify the Code Administration Committee to request the Director to exercise his or her powers under section 36 of the *Fair Trading Act 1992*.

Administrative report

16. (1) The Code Administration Committee shall, within 3 months after the end of each financial year, submit a report to the Minister.

(2) The report shall identify industry specific problems and recommend changes to inappropriate practices.

(3) The report shall include details of:

- (a) the number of complaints lodged;
- (b) the number of principals found to be in breach of the Code and the nature of those breaches;
- (c) the amount of time taken to deal with each complaint;
- (d) the number of breaches identified through monitoring; and
- (e) the number and type of sanctions imposed.

Review and evaluation of Code

17. ACTSPIIC shall review the effectiveness of the Code after the first 6 months of its operation, and then at intervals of not more than 3 years, and may make recommendations for amendments to the Code.

Administration - Director

18. (1) The Director shall maintain a register in which he or she shall record details of principals.

(2) The Director may issue a certification of a principal, or a relevant influential person, for the purposes of subparagraph 5(4)(b)(ii) or subparagraph 5(4)(c)(iii) if,

- (a) having considered the person's record;

- (b) having considered any material the person wishes the Director to take into account; and
- the Director believes the person is unlikely to reoffend by reason of:
- (c) the efforts made by the person to reestablish a good character; and
 - (d) the efflux of time.
- (3) The Director may, in consultation with the Code Administration Committee, charge a fee for any registration, maintenance of registration or certification under the Code to the extent reasonably necessary to recover his or her administrative and operative costs associated with the Code.
- (4) The Director shall deregister a principal where the principal has:
- (a) failed to pay a fee for the maintenance of registration;
 - (b) failed to comply, or has a relevant influential person who has failed to comply, with a requirement of the Director under subclause 5(6);
 - (c) been convicted in this country or any other country of an offence referred to in subparagraph 5(4)(b)(ii) or 5(4)(c)(iii) and has not obtained a certification under subclause (2) in relation to that offence;
 - (d) a relevant influential person who has been convicted in this country or any other country of an offence referred to in subparagraph 5(4)(c)(iii) and has not obtained a certification under subclause (2) in relation to that offence;
 - (e) failed to comply with subclause 5(5); or
 - (f) given any false or misleading information in relation to an application for, or the maintenance of, registration.
- (5) Where it appears to the Director, having made appropriate inquiry in accordance with the principles of natural justice, that a principal has committed persistent breaches or a serious breach of the Code, the Director may deregister a principal and impose conditions on that person obtaining future registration.

Administration - ACTSPIIC

19. (1) ACTSPIIC shall maintain a register in which it shall record details of employees.
- (2) ACTSPIIC may issue a certification for the purposes of paragraph 10(2)(c) if,
- (a) having considered the person's record;
 - (b) having considered any material the person wishes ACTSPIIC to take into account; and
 - (c) having considered any material the person's employer or prospective employer wishes ACTSPIIC to take into account;
- ACTSPIIC believes the person is unlikely to reoffend by reason of:
- (d) the efforts made by the person to reestablish a good character; and
 - (e) the efflux of time.

(3) ACTSPIIC, by notice in writing to the Director, may convene or establish a subcommittee of ACTSPIIC to discharge the duties referred to in subclause (2).

(4) ACTSPIIC may charge a fee, in consultation with the Code Administration Committee, for any registration, maintenance of registration or certification performed by ACTSPIIC under the Code to the extent reasonably necessary to recover its administrative and operative costs associated with the Code.

(5) ACTSPIIC (or, where ACTSPIIC has entered an agreement with the Director under subclause 19(7), the Director) shall deregister a person where the person has:

- (a) failed to pay a fee for the maintenance of registration;
- (b) failed to comply with a requirement of ACTSPIIC (or, where ACTSPIIC has entered an agreement with the Director under subclause 19(7), the Director) under subclause 10(8);
- (c) been convicted in this country or any other country of an offence referred to in paragraph 10(2)(c) and has not obtained a certification under subclause (2) in relation to that offence; or
- (d) given any false or misleading information in relation to an application for, or the maintenance of, registration.

(6) A member or former member of ACTSPIIC shall not be liable for anything done or omitted to be done in good faith in or in connection with the performance or purported performance of any function carried on by him or her under this Code.

(7) ACTSPIIC may enter into an arrangement with the Director under which the Director may perform, on behalf of ACTSPIIC, any of ACTSPIIC's registration functions under the Code, including the maintenance of the register under subclause (1) and the registration of persons under clause 10.

Transitional arrangements

20. A principal shall:

- (a) from the day on which the Code commences, comply with the Code to the extent that he or she is reasonably capable of complying; and
- (b) as soon as practicable but in any case no later than 1 August 1998, comply with the Code.

Schedule

clause 5

The following specific obligations apply to principals in relation to the provision of an **access control service**. Where an obligation below purports to place an obligation on an employee or agent of the principal, the principal is responsible for ensuring that the obligation is discharged.

	Obligation
Advertising and marketing practices	<p>A principal shall not use misleading or unfair advertising or marketing practices.</p> <p>Every advertisement by a principal soliciting or advertising business shall contain his or her business name, business address or telephone number, and registration number as they appear in the records maintained under this Code.</p> <p>A principal shall ensure that sufficient information is available to enable a consumer to make an informed decision in relation to the provision of the service, and in particular shall:</p> <ul style="list-style-type: none"> • ensure that all promotional material is truthful, accurate and unambiguous; • ensure that promotional material does not encourage unrealistic expectations about the need for the service or equipment provided; and • not make misleading or false comparisons with services provided by competitors.
Incident Reports	<p>A principal, or a person authorised by the principal, shall submit an incident report to the consumer as soon as reasonably practicable after the incident occurs.</p> <p>The person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.</p> <p>A principal shall not knowingly make any false statement in the incident report.</p>
Identification	<p>A principal or an employee of a principal:</p> <ul style="list-style-type: none"> • shall use such identification as prescribed by ACTSPIIC. ACTSPIIC, in prescribing such identification, shall: <ul style="list-style-type: none"> • differentiate persons who are gaining experience to provide an access control service; and • have regard to any applicable Australian standards. • shall not knowingly use any identification to indicate that he or she is registered as a principal other than that approved by ACTSPIIC or the business card regularly used by the business. • shall not knowingly use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent to give an impression that he or she is connected in any way with the Commonwealth of Australia, a state or territory government, or any government authority. • shall not knowingly impersonate, or permit or aid and abet an employee to impersonate a police officer or employee or officer of the Commonwealth of Australia, or of any state or territory or statutory authority.
Principal	<p>A principal shall not provide an access control service where the principal has been convicted of an offence for which imprisonment has been prescribed unless, having been convicted of an offence for which imprisonment is prescribed, the principal has been certified as</p>

	<p>a principal by the Director of Consumer Affairs.</p> <p>In this part, offence means an offence involving violence, dishonesty, drugs or weapons.</p>
Employees	<p>A principal shall ensure that an employee who provides an access control service is capable of providing the service and:</p> <ul style="list-style-type: none">• has not been convicted of an offence for which imprisonment has been prescribed; or• having been convicted of an offence for which imprisonment has been prescribed, has been approved as an employee by ACTSPIIC. <p>In this part, offence means an offence involving violence, dishonesty, drugs or weapons.</p> <p>A principal shall provide appropriate supervision where services are provided.</p> <p>A principal shall not permit an employee in his or her own name to advertise, engage clients, furnish reports or present bills to clients, or in any manner whatever conduct a business for the provision of a guard and patrol service.</p>
Improper conduct	<p>A principal or an employee of a principal, shall not knowingly disobey, or advise, encourage, or assist disobedience of any court order or injunction in the course of business providing an access control service.</p> <p>A principal shall not direct an employee to take an action which contravenes any law and shall not take any action because an employee refused to take an action contrary to any law.</p>

Under clause 6 of the Code of Practice, a copy of this Schedule, endorsed by the principal, must be provided to a consumer where the principal makes an offer for the supply of an access control service. Failure to do so, is a breach of the Code of Practice.

Endorsed:

Date:

Attachment A

APPLICANT WHO IS A COMPANY

Notification of Participation in the ACT Security (Protection) Industry as a Principal

Warning: Please read the notification carefully. Providing false or misleading information will result in automatic disqualification.

To the Director of Consumer Affairs

Applicant name: [enter full name of company and ACN number]

Contact details: [enter full contact details]

The following are relevant influential persons in relation to the applicant:
[list the names (including prior names and aliases), full contact details of each relevant influential person and that person's position in, or relationship to, the company].

NB: A "relevant influential person" is, in relation to a body corporate:

- (a) a director or secretary of the body; or
- (b) a person who is:
 - (i) substantially concerned in the management of the body; or
 - (ii) able to control, or to substantially influence, the body's activities or internal affairs.

The applicant proposes to participate in the Security Protection Industry as a principal in the: [mark one or more as appropriate]

- access control industry
- guard and patrol services industry
- crowd marshals industry
- bodyguard industry
- cash transit industry

The applicant has authorised the Director to undertake a criminal record check of the applicant with the Australian Federal Police **AND** the applicant has obtained an authorisation from each relevant influential person for the Director to undertake a criminal record check of that person with the Australian Federal Police.

The applicant has not been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons; **OR**

The applicant has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty,

violence, drugs or weapons and the applicant will make an application for certification by the Director of Consumer Affairs for participation in the industry.

None of the relevant influential persons in relation to this company have been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons; **OR**

For each relevant influential person who has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, an application has been made by that person for certification by the Director for participation in the industry.

The results of criminal record checks shall only be made available to the Director.

The applicant notes that principals may become members of ACTSPIIC.

The applicant understands that a relevant Code of Practice applies to each abovementioned industry in which the applicant participates and the applicant agrees to abide by each relevant code.

This notification is a public notification.

Signed for and on behalf of the applicant:

Dated:

APPLICANT WHO IS AN INDIVIDUAL

Notification of Participation in the ACT Security (Protection) Industry as a Principal

Warning: Please read the notification carefully. Providing false or misleading information will result in automatic disqualification.

To the Director of Consumer Affairs

I: [enter full name and provide details of any alias, previous name or trade name]

of: [enter full contact details]

My date of birth is:

I propose to participate in the Security Protection Industry as a principal in the: [mark one or more as appropriate]

- **access control industry**
- **guard and patrol services industry**
- **crowd marshals industry**
- **bodyguard industry**
- **cash transit industry**

I have produced to the Director the following two forms of identification:
[please describe each form of identification and state any reference number and expiry date]

I am at least 18 years of age.

I have authorised the Director to undertake a criminal record check regarding myself with the Australian Federal Police.

I have not been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons; **OR**

I have been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons and I will make an application for certification by the Director for participation in the industry as a principal.

The results of the criminal record check shall only be made available to the Director.

I note that I may become a member of ACTSPIIC.

I understand that the Code of Practice relevant to the industry in which I propose to participate will apply to me, and I agree to abide by the Code.

This notification is a public notification.

Signed:

Dated:

Attachment B

Notification of Participation in the ACT Security (Protection) Industry as an Employee *Warning: Please read the notification carefully. Providing false or misleading information will result in automatic disqualification.*

To the ACT Security Protection and Investigation Industry Council Incorporated (ACTSPIIC), or, where ACTSPIIC has entered an agreement with the Director of Consumer Affairs under subclause 19(7), the Director

I: [enter full name details of any alias or previous name]

of: [enter full contact details]

My date of birth is:

I propose to participate in the Security Protection Industry as an employee in the:

[mark one or more as appropriate]

- access control industry
- guard and patrol service industry
- crowd marshals industry
- bodyguard industry
- cash transit industry

I have produced to ACTSPIIC (or, where ACTSPIIC has entered an agreement with the Director under subclause 19(7), the Director) the following two forms of identification:

[describe each form of identification and state any reference number and expiry date]

I have not been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons; **OR**

I have been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons and I will make an application for certification by ACTSPIIC for employment in the industry on the ground that I am unlikely to reoffend.

I have authorised ACTSPIIC (or, where ACTSPIIC has entered an agreement with the Director under subclause 19(7), the Director) to undertake a criminal record check regarding myself with the Australian Federal Police.

The result of the criminal record check will be made available to ACTSPIIC and the Director and may be made available to your employer or any prospective employer.

My current employer is:

My prospective employer is:

I understand that the information in this notification may be made available as follows:

my name will be publicly available; and

my contact details be made available to a registered principal, the Director and ACTSPIIC.

Signed:

Dated: