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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

REGULATORY SERVICES LEGISLATION AMENDMENT BILL 2007

EXPLANATORY STATEMENT

Circulated with the authority of
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REGULATORY SERVICES LEGISLATION AMENDMENT BILL 2007

Overview of Bill

The Regulatory Services Legislation Amendment Bill 2007 (the Bill) amends the legislation governing the operation of the Office of Regulatory Services (ORS). The amendments will make improvements to the legislation governing the operations of the ORS and some of the amendments will improve the efficiency of the ORS.

The establishment of the ORS was announced in the 2006-07 budget. The purpose of the creation of the ORS was to create "simpler, clearer and more efficient organisational structures, scaled to the reality of a small city-state, and ready to support business. We are simplifying the regulatory framework, and its administration too."

The ORS encompasses the functions of the Office of Fair Trading, the Registrar-General's Office and ACT WorkCover. The ORS has also assumed responsibility for:

- tobacco licensing and smoke-free area regulation;
- approvals and administration of a range of business activities associated with the use of public land (outdoor café approvals, verge parking for motor vehicle dealers, and hawkers licences);
- the licensing and regulatory responsibilities of the Independent Competition and Regulatory Commission (ICRC);
- charitable collections; and
- regulatory activities related to parking operations.

The Bill includes amendments to the following Acts governing the operations of the ORS:

- *Agents Act 2003*;
- *Births, Deaths and Marriages Registration Act 1997*;
- *Business Names Act 1963*;
- *Door-to-Door Trading Act 1991*;
- *Liquor Act 1975*;
- *Security Industry Act 2003*; and the
- *Sale of Motor Vehicles Act 1977*.

Agents Act 2003

The *Agents Act 2003* provides for the Commissioner for Fair Trading to apply to the Consumer and Trader Tribunal for disciplinary action to be taken against a licensed agent. The grounds for disciplinary action are specified in section 41 of the Act. The grounds include breaching conduct rules and licence conditions. It has not been possible to take disciplinary action against a licensee for breaching the Act, unless the licensee has been convicted or found guilty of an offence. Legal action may take some time to complete, and during this time there is no provision allowing the Commissioner for Fair

Trading to apply to the Tribunal for a licence to be suspended or revoked or conditions imposed. This may expose the community to further loss from agents who are breaching the Act.

The Bill has dealt with this issue by providing that disciplinary action can be taken against a licensee if the licensee contravenes the Act, whether or not the licensee has been convicted of an offence for the contravention. A licensee will still have an opportunity to present their case to the Consumer and Trader Tribunal before any disciplinary action is taken.

Section 43 of the *Agents Act 2003* specifies the disciplinary action that the Consumer and Trader Tribunal can take against an agent. This section provides that if the Tribunal cancels or suspends a licence then it can also disqualify the agent from holding a licence for a period of time or indefinitely. There is some uncertainty as to whether the Tribunal has the power to disqualify a person whose licence expires before the hearing occurs or where a person hands their licence back to the regulator. This Bill removes any uncertainty in this provision.

Section 139 of the *Agents Act 2003* allows an administrator to be appointed where an agent's licence has been suspended or cancelled. Currently, an administrator can not be appointed if an agent hands in their licence, if an agent dies, if an agent's licence is not renewed, for unlicensed traders or if an agent disappears without there being grounds for disciplinary action. The Bill rectifies this and ensures that the decision to appoint an administrator can be appealed.

Bankruptcy provisions

The Bill amends a number of provisions in the *Agents Act 2003* and the *Sale of Motor Vehicles Act 1977* dealing with bankruptcy. The amendments bring the provisions into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Births, Deaths and Marriages Registration Act 1997

Sections 18 and 19 of the *Births, Deaths and Marriages Registration Act 1997* provide for the Registrar-General to change a person's name if the applicant is a resident of the ACT or was born in the ACT. Where a person was not born in the ACT, but as an ACT resident applies for a change of name, the Registrar-General is only required to notify the original registering authority if there is a request in writing to do so by the applicant for registration of a change of name.

The Bill provides that a change in a person's name must be linked with their birth registration. This will address the current disconnect between a person's name that was registered at birth and a subsequent change of name. This will also ensure that any birth certificate or extract that is issued will show the person's new name and should decrease the opportunity for identity fraud.

Business Names Act 1963

A business name registration currently lasts for three years. The Bill provides business with the choice of having a three or five year business name registration. This will assist business and will reduce the work of the ORS in processing over three thousand business name renewals each year.

Door-to-Door trading

The *Door-to-Door Trading Act 1991* protects consumers in their dealings with traders who sell goods or services from door-to-door or over the telephone without being requested to by the consumer. In particular, the Act sets hours of permitted trade and allows a ten-day cooling off period for any contract entered into as a result of the direct approach by the trader or their representative.

The Act clearly states that it applies to trade over the telephone, however, there are some inconsistencies in how the Act applies to sales by telephone, rather than in person. In particular, section 4 of the Act states that the Act only applies to contracts if the negotiations leading to formation of the contract take place between the consumer and trader in each other's presence in the ACT. This excludes all phone call sales where the trader is calling from outside the ACT and this section raises doubt about the extent to which a consumer and trader are in each other's presence during a phone call. The Bill remedies this issue.

The Act provides in section 7(1)(d) that a trader must give the consumer a duplicate of a contract immediately after it is made. This is not possible over the telephone. The Bill remedies this issue by providing that a copy of the contract must be provided as soon as possible after the contract is made and provides that the cooling off period commences on the day the contract is received by the consumer.

Liquor Act 1975

Section 91 of the *Liquor Act 1975* provides for disciplinary action to be taken against a licensee if they are no longer a fit and proper person. In determining whether a person is a fit and proper person the Liquor Board can consider defined offences, which include offences under the ACT *Crimes Act 1900* and the Commonwealth *Crimes Act 1914*. Section 91 of the Act does not refer to the ACT or Commonwealth Criminal Codes, which include many offences that were previously located in the Crimes Acts. The Bill rectifies this by including as defined offences the offences under the *Criminal Code 2002* and the *Criminal Code Act 1995* (Cth).

Police record checks

The ORS currently processes over 6000 applications for a licence or registration a year, not including certification and licences under workplace safety legislation and business name registrations. Most applications require the ORS to consider the criminal record of the applicant before issuing a licence or registration. Some of the Acts governing licensing and registration require the applicant to provide the criminal record check, whereas the *Security Industry Act 2003*, *Agents Act 2003* and the *Sale of Motor Vehicles*

Act 1975 require the ORS to apply for a criminal record check on the applicant's behalf. Requiring the ORS to apply to the Australian Federal Police for a criminal record check is time-consuming and inefficient

The Bill amends the *Security Industry Act 2003*, *Agents Act 2003* and the *Sale of Motor Vehicles Act 1977* to remove the obligation on the ORS to obtain criminal record checks. The Acts will instead provide for the applicant to obtain a criminal record check and to provide this to the ORS as part of their application for a licence or registration.

Sale of Motor Vehicles Act 1977

The *Sale of Motor Vehicles Act 1977* regulates the sale of motor vehicles in the Territory. The Act requires an applicant for a licence or a renewal to obtain a statement from the ACT Planning and Land Authority (ACTPLA) about the land use of the block. The purpose of this provision is to ensure that the land use for the block is consistent with using the land for a car dealership. This is the same requirement as occurs when the licence is initially granted. The Bill removes this requirement for renewals, if the application relates to the same block as under the previous licence.

The Act includes a requirement to notify on the Legislation Register a list of licensees after 30 June each year. The Bill replaces this with the requirement to keep a public register. This register would be updated on a regular basis and would be similar to registers kept by the ORS for other industries, such as the security industry.

The Act provides for inspectors to enter the premises of a licensed car dealer to inspect documents and the like for the purposes of the Act. There is, however, no provision that permits an inspector to enter the premises of an unlicensed dealer. The Bill rectifies this omission and permits inspectors from the ORS to properly investigate unlicensed dealers. In correcting this omission it was opportune to amend the inspectors powers to replace them with powers that are consistent with the *Human Rights Act 2004*.

The Bill includes a number of offences where strict liability applies to the offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides for strict liability, there are no fault elements for the physical elements of the offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, if strict liability applies, the defence of mistake of fact is available where the person considered whether or not facts existed and was under a mistaken but reasonable belief about the facts. Other defences may also be available.

Clause Notes

Clause 1 - Name of Act names the Act as the Regulatory Services Legislation Amendment Act 2007.

Clause 2 - Commencement – provides that the Act commences on a day fixed by the Minister by notice.

Clause 3 - Legislation amended – pt 2 – provides that this part amends the *Agents Act 2003*.

Clause 4 – People disqualified from being licensed Section 27(1)(b) – brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Clause 5 – Section 27(2) – brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Clause 6 – Licence applications Section 29(2) and (3) – provides that an applicant for a licence must include with their application a copy of a police certificate. The police certificate will be issued by the Federal Police and will set out whether the applicant has been charged with, or convicted of, an offence. The police certificate must not be older than two months.

Clause 7 – Grounds for disciplinary action – agents Section 41(a) – changes the grounds for disciplinary action. Disciplinary action will be able to be taken against an agent who has contravened or is contravening the fair trading legislation.

Clause 8 – Disciplinary action tribunal may take – agents Section 43(2) and (3) – provides that the Commissioner for Fair Trading may apply to the Consumer and Trader Tribunal to disqualify an agent from holding a licence. Currently, the Tribunal can only disqualify a person from holding a licence if the Tribunal has cancelled the licence.

The section also clarifies that if the Tribunal disqualifies an agent from holding a licence then the Tribunal can disqualify the agent from holding any other licence. For example, if the Tribunal disqualifies a person from holding a real estate agent licence then the Tribunal may also disqualify the person from holding a stock and station agents licence.

Clause 9 – People disqualified from being registered Section 51(1)(b) – brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cth). Under that Act, personal

insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Clause 10 – Section 51(2) – brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Clause 11 – Registration applications Section 53(2) – provides that an applicant for registration must include with their application a copy of a police certificate. The police certificate will be issued by the Federal Police and will set out whether the applicant has been charged with, or convicted of, an offence. The police certificate must not be older than two months.

Clause 12 – Grounds for disciplinary action – salespeople Section 65(1)(a) - changes the grounds for disciplinary action. Disciplinary action will be able to be taken against a salesperson who has contravened or is contravening the fair trading legislation.

Clause 13 – Disciplinary action tribunal may take – salespeople Section 67(2) and (3) – provides that the Commissioner for Fair Trading may apply to the Consumer and Trader Tribunal to disqualify a salesperson from being registered. Currently, the Tribunal can only disqualify a person from being registered if the Tribunal has cancelled the registration.

The section also clarifies that if the Tribunal disqualifies a salesperson from being registered then the Tribunal can disqualify the salesperson from holding any other registration.

Clause 14 – Main place of business Section 68(1) – this is a consequential amendment which changes a reference in section 68(1) to refer to the new section 29(2)(a).

Clause 15 – Section 139 – includes additional grounds for when an administrator may be appointed by the Commissioner for Fair Trading. Currently, an administrator can only be appointed if a licence has been cancelled or suspended.

The new section permits an administrator being appointed in the following circumstances:

- If the licence is cancelled, suspended or expires;
- If the agent is disqualified from holding a licence;
- If the licence is surrendered;
- If the agent is missing;
- If the agent dies; and
- If a person is carrying on business as an agent without a licence.

The decision to appoint an administrator will also now be able to be appealed to the Consumer and Trader Tribunal.

Clause 16 – Reviewable decisions Schedule 1, new items – provides that the decision to appoint an administrator will be able to be appealed to the Consumer and Trader Tribunal.

Clause 17 – Dictionary, new definition of *police certificate* – provides a new definition of police certificate. A police certificate is a statement by the Australian Federal Police indicating whether the person has been charged with or convicted of an offence in the ACT or another jurisdiction. If a person has been charged or convicted of an offence then the statement will set out particulars of each offence, unless the offence is spent under the *Spent Convictions Act 2000*.

Clause 18 - Legislation amended – pt 3 – provides that this part amends the *Births, Deaths and Marriages Registration Act 1997*.

Clause 19 – Section 21 – omits section 21 and replaces it with a new section 21 about entries to be made on the register. The new section ensures that when a person changes their name the Registrar-General will either alter the register by changing the person's name in the entry relating to their birth, or notify the relevant registering authority of the change of name.

Clause 20 – Legislation amended – pt 4 – provides that this part amends the *Business Names Act 1963*.

Clause 21 – Registration of business names New section 7(1)(g) – provides that a business name can be registered for three years or five years. Currently a business name can only be registered for three years.

Clause 22 – New Section 7(3A) – provides that the period for the registration of a business name is the period mentioned in the statement lodged with the Registrar-General for registration of the business name.

Clause 23 – Renewal of registration Section 11(1) and (2) - provides that a business name can be renewed for three or five years, rather than the current provision which provides that a business name can only be renewed for three years.

Clause 24 – Subsection 11(4) – makes a consequential amendment to ensure that the business name cannot be used by another business until at least one month after the registration ends.

Clause 25 – Legislation amended – pt 5 – provides that this part amends the *Door-to-Door Trading Act 1991*.

Clause 26 – Contracts to which Act applies Section 4(1)(a) – clarifies the application of the Act to telephone calls. Specifically, this section provides that the Act applies to negotiations leading to the making of the contract if the negotiations take place between a consumer and a dealer during a phone call made or received in the ACT.

Clause 27 – Section 4(1)(b) – amends section 4(1)(b) of the Act to ensure that the Act applies to both phone calls and face-to-face negotiations.

Clause 28 – Requirements in relation to prescribed contracts

Section 7(1)(d) – provides that, where a contract is negotiated over the phone, the dealer must give a copy of the contract to the consumer as soon as practicable after the contract is made.

Clause 29 – Rescission – right of consumer Section 12(1)(b) – makes a consequential amendment to change the references to formation of a contract to making of a contract.

Clause 30 – Dictionary, definition of cooling-off period – provides a new definition of cooling-off period. The new definition states that if a contract is made over the phone then the cooling-off period starts from the day a copy of the contract is received by the consumer.

Clause 31 – Dictionary, definition of negotiation, paragraph (b) – makes a minor and consequential amendment to the definition of negotiation.

Clause 32 – Legislation amended – pt 6 – provides that this part amends the *Liquor Act 1975*.

Clause 33 – Dictionary, definition of *defined offence* – updates the definition of defined offence. Section 91 of the *Liquor Act 1975* provides for disciplinary action to be taken against a licensee if they are no longer a fit and proper person. In determining whether a person is a fit and proper person the Liquor Board can consider defined offences, which include offences under the ACT *Crimes Act 1900* and the Commonwealth *Crimes Act 1914*. Section 91 of the Act does not refer to the ACT or Commonwealth Criminal Codes, which include many offences that were previously located in the Crimes Acts. The Bill rectifies this by including as defined offences the offences under the *Criminal Code 2002* and the *Criminal Code Act 1995* (Cth).

Clause 34 – Legislation amended – pt 7 – provides that this part amends the *Sale of Motor Vehicles Act 1977*.

Clause 35 – Section 6 – provides that the Registrar must keep a register of licences issued under the Act. The register will be available for public inspection.

Clause 36 – Section 8 heading – makes minor changes to the heading for section 8.

Clause 37 – Section 8(1)(c) – brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Clause 38 – Application for licences by individuals Section 10(1)(g) and (h) – provides that an application for a licence must be accompanied by a certificate from ACTPLA about the premises where the applicant proposes to carry on business. The certificate sets out whether the business is permitted under the Territory Plan and the lease.

This amendment also brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Clause 39 – New section 10(1)(la) – provides that an applicant for a licence must include with their application a copy of a police certificate. The police certificate will be issued by the Federal Police and will set out whether the applicant has been charged with, or convicted of, an offence. The police certificate must not be older than two months.

Clause 40 – Applications for licences by corporations Section 11(1)(h) and (i) – provides that an application for a licence must be accompanied by a certificate from ACTPLA about the premises where the applicant proposes to carry on business. The certificate sets out whether the business is permitted under the Territory Plan and the lease.

Clause 41 – Section 11 (1)(m) – provides that an applicant for a licence must include with their application a copy of a police certificate. The police certificate will be issued by the Federal Police and will set out whether the applicant has been charged with, or convicted of, an offence. The police certificate must not be older than two months.

Clause 42 – Section 12 – omits section 12 which is no longer needed. Section 12 dealt with certificates of conviction. Sections 10 and 11 now require the applicant for a licence must include with their application a copy of a police certificate.

Clause 43 – Grant or refusal of licence Section 13(3)(b) and 4(b) – is a consequential amendment which changes references to certificate of conviction to police certificate.

Clause 44 – Eligibility for renewal of licences Section 14A(1)(b) – brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Clause 45 – Applications for renewal of licences Section 14B(e) – removes the requirement for applicants for a renewal to obtain a certificate from ACTPLA if the renewal is for the same premises.

Clause 46 – Intended change of executive officers – notification and objection Section 45(2)(c) – makes minor and consequential changes to section 45(2)(c).

Clause 47 – Section 45(3) – provides that a prospective executive officer must provide the Registrar with a copy of a police certificate. The police certificate will be issued by the Federal Police and will set out whether the applicant has been charged with, or convicted of, an offence. The police certificate must not be older than two months before the day the notice in the newspaper was published.

Clause 48 – Section 46 heading – provides a new heading for section 46 which reflects the change in the section.

Clause 49 – New section 46(2)(d) – provides that a copy of the police certificate under section 45 must be included with the notice to the Registrar that a person has become an executive officer.

Clause 50 – Section 46(3), (4) and (5) – omits three subsections which are now redundant as the new provisions provide for a police certificate to be obtained by a prospective executive officer.

Clause 51 – When registrar may take action in relation to licences Section 48(1)(b), Examples of when individual licensees no longer eligible to apply, example 2 – brings the provision into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

Clause 52 – Review by administrative appeals tribunal Section 57(2) – makes a consequential amendment to refer to an ACTPLA certificate, rather than a certificate.

Clause 53 – Part 10 heading – substitutes a new heading for part 10. The new heading is “Offences”.

Clause 54 – New Part 10A - inserts a new Part 10A dealing with enforcement.

New section 70 – Definitions – pt 10A – provides new definitions for part 10A of occupier, offence and connected.

New section 70A – Power to enter premises – sets out when an inspector may enter premises under the Act. This section includes the power of inspectors to enter licensed premises, unlicensed premises, and any other premises in certain circumstances.

New section 70B – Production of identity card – provides that an inspector cannot remain at premises if they cannot produce their identity card when requested by the occupier.

New section 70C – Consent to entry – sets out requirements on an inspector when they are seeking consent to enter premises. The inspector must produce their identity card and tell the occupier a number of specified things, such as the purpose of the entry. The provision also provides for the inspector to seek written acknowledgement from the occupier that they were told the required things.

New section 70D – General powers on entry to premises – provides that an inspector who has entered the premises may exercise any of the powers set out in this section. This includes the power to:

- inspect or examine, this includes but is not limited to inspecting car parts or records;
- take measurements or conduct tests;
- take samples;
- take photographs, films, or audio, video or other recordings;
- take copies of, or an extract from, any document relating to the business being carried out at the premises or the sale of a motor vehicle;
- require the occupier, or anyone apparently working at the premises, to give the inspector reasonable help to exercise a power under this part, including assistance in producing records.

This section provides that it is an offence to fail to take all reasonable steps to comply with a requirement of an inspector under (1)(f). The maximum penalty for this offence is 50 penalty units.

New section 70E – Power to seize things – provides a series of powers for inspectors to seize premises. The powers vary depending on how the inspector entered the premises, such as whether they entered under a warrant or with consent.

This section provides that it is an offence to interfere with a seized item where access has been restricted under (6) without an inspector's approval. The maximum penalty for this offence is 50 penalty units. This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

New section 70F – Power to require name and address – provides that an inspector may require a person to state the person's name and home address if the inspector reasonably believes that the person is committing or has committed an offence against this Act.

This section provides that it is an offence to fail to comply with a requirement of an inspector under (1). The maximum penalty for this offence is 10 penalty units. This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

New section 70G – Warrants generally – provides for an inspector to apply to a magistrate for a warrant to enter premises. A warrant may only be issued if there are reasonable grounds for suspecting that:

- there is a particular thing or activity connected with an offence against this Act; and
- the thing or activity is being engaged in or may be engaged in at the premises within the next seven days.

New section 70H – Warrants – application made other than in person – provides that warrants can be applied for by phone, fax, radio, or other means if necessary due to special or urgent circumstances. This section sets out the requirements if such a warrant is applied for.

New section 70I – Search warrants – announcement before entry – provides that an inspector must do the following before entering premises under a warrant:

- announce that the inspector is authorised to enter the premises; and
- give anyone at the premises an opportunity to allow entry to the premises; and
- if an occupier is present at the premises—identify himself or herself to the person.

An inspector is not required to comply with these requirements if immediate entry is required to ensure safety or that the execution of the warrant is not frustrated.

New section 70J – Details of search warrant to be given to occupier etc – provides that if a search warrant is being used then a copy must be made available to the occupier if they are present. A document must also be provided which sets out the rights and obligations of the person.

New section 70K – Occupier entitled to be present during search etc – provides that an occupier is entitled to be present during a search under a warrant. This entitlement does not apply if it would impede the search or if the person is under arrest.

New section 70L – Use of electronic equipment at premises - provides that an inspector or an assistant may operate electronic equipment at premises under a search warrant to access data.

New section 70M – Person with knowledge of computer or computer system to assist access etc – provides that an inspector may apply to a magistrate for an order requiring a person to give any information or assistance to allow the inspector or assistant to access data held on a computer or to copy data to a storage device.

This section provides that it is an offence to contravene an order under this section. The maximum penalty for this offence is 50 penalty units and/or imprisonment for six months.

New section 70N – Securing electronic equipment – provides that an inspector or assistant may secure equipment if:

- something that the warrant relates is accessible using the equipment; and
- expert assistance is required to operate the equipment; and
- the material may be destroyed or interfered with if action is not taken to secure the equipment.

The provision sets out the maximum time period that the equipment can be secured for.

New section 70O – Copies of seized things to be provided – provides that an occupier may ask an inspector to give them a copy of an item seized.

New section 70P – Receipt for things seized – provides that an inspector must give a receipt for an item that is seized. The receipt must include the following:

- a description of the thing seized;
- an explanation of why the thing was seized;
- the inspector's name, and how to contact the inspector;
- if the thing is moved from the premises where it is seized—where the thing is to be taken.

New section 70Q – Moving things to another place for examination or processing under search warrant – provides that a thing may be moved to another place for examination or processing to decide whether the item may be seized under the warrant. This can only occur if the occupier consents or if there are reasonable grounds for believing that the item is something to which the warrant applies and it is significantly more practicable to do so.

New section 70R – Access to things seized – provides that a person may be entitled to inspect a seized item or to take copies of it.

New section 70S – Return of things seized – provides for the return of seized items or for the Territory to compensate the owner for the loss of the item if an infringement notice has not been issued in relation to the item or a prosecution started.

New section 70T – Forfeiture of seized things – provides for the forfeiture of seized items in certain circumstances. The circumstances are when the seized item has not been returned and an application for disallowance has not been made within the time period or has been refused.

New section 70U – Application for order disallowing seizure – provides for a person to apply to the Magistrates Court for an order disallowing the seizure.

New section 70V – Order for return of seized thing – provides for the Magistrates Court to make an order disallowing a seizure if there are exceptional circumstances or if:

- the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
- the thing is not connected with an offence against this Act; and
- possession of the thing by the person would not be an offence.

New section 70W – Damage etc to be minimised – provides that inspectors must take all reasonable steps to minimise the damage, inconvenience and detriment in exercising functions under this Part.

New section 70X – Compensation for exercise of enforcement powers – provides for a person to claim compensation from the Territory if the person suffers loss because of the exercise of a function under this Part by an inspector or a person assisting an inspector.

Clause 55 – Sections 76, 77, 78 and 80 – omits sections 76, 77, 78 and 80. These sections are no longer necessary. Sections 76 and 77 dealt with inspectors and are now covered by new part 10A. Section 78 and 80 dealt with the register and these are now covered by sections 6 and 6AA.

Clause 56 – Dictionary, new definitions – inserts new definitions of ACTPLA certificate, connected with an offence, occupier, offence and police certificate.

Clause 57 – Legislation amended – pt 8 – provides that this part amends the *Security Industry Act 2003*.

Clause 58 – Application for licence Section 17(3) - provides that an applicant for a licence must include with their application a copy of a police certificate. The police certificate will be issued by the Federal Police and will set out whether the applicant has been charged with, or convicted of, an offence. The police certificate must not be older than two months.

Clause 59 – Section 17(5) – omits section 17(5) which is no longer necessary. Section 17(5) provided that the applicant had to give the Commissioner for Fair Trading consent to have a police record check undertaken.

Clause 60 – Public interest Section 23(2), example— provides an example of a matter to be considered in determining whether it is in the public interest to issue a licence.

Clause 61 – Dictionary, new definition of *police certificate* – provides a new definition of police certificate. A police certificate is a statement by the Australian Federal Police indicating whether the person has been charged with or convicted of an offence in the ACT or another jurisdiction. If a person has been charged or convicted of an offence then the statement will set out particulars of each offence, unless the offence is spent under the *Spent Convictions Act 2000*.