

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Security Industry Amendment Bill 2011

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Security Industry Amendment Bill 2011

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

4 **2 Commencement**

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

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

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

12 (2) If this Act has not commenced within 12 months beginning on its
13 notification day, it automatically commences on the first day after
14 that period.

15 (3) The Legislation Act, section 79 (Automatic commencement of
16 postponed law) does not apply to this Act.

17 **3 Legislation amended**

18 This Act amends the following legislation:

- 19
- 20 • *Security Industry Act 2003*
 - 21 • *Security Industry Regulation 2003*
 - *Spent Convictions Act 2000*.

1 Part 2 Security Industry Act 2003

2 4 New part 2A

3 *insert*

4 Part 2A Criminal intelligence

5 9A Definitions—pt 2A

6 In this part:

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

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

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

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

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

2 **9B Disclosure of criminal intelligence—chief police officer**

3 (1) Information that is classified by the chief police officer as criminal
4 intelligence must not be disclosed for this Act to anyone other than
5 the commissioner for fair trading, the Minister, a court or an entity
6 to whom the chief police officer authorises its disclosure.

7 (2) The chief police officer may only disclose the information to the
8 commissioner for fair trading if the officer believes on reasonable
9 grounds that the information is relevant to—

10 (a) the making of a decision by the commissioner about issuing a
11 licence to an applicant; or

12 (b) the making of a decision by the commissioner about whether to
13 apply to the ACAT for an occupational discipline order in
14 relation to a licensee.

15 (3) Subsection (1) does not prevent the chief police officer from
16 disclosing the information for another lawful purpose.

17 **9C Disclosure of criminal intelligence—commissioner for fair
18 trading and ACAT**

19 (1) This section applies—

20 (a) if—

21 (i) the commissioner for fair trading refuses to issue a
22 licence to an applicant; or

23 (ii) the commissioner for fair trading applies to the ACAT for
24 an occupational discipline order in relation to a licensee;
25 or

26 (iii) the ACAT makes an occupational discipline order in
27 relation to a licensee; and

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

12 **9D Whether information is criminal intelligence—application**
13 **and decision**

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

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

4 **9E Appeal—applicant may withdraw information**

- 5 (1) This section applies to the following proceedings:
- 6 (a) if—
- 7 (i) the ACAT has made a decision that information is not
8 criminal intelligence, and there is an appeal to the
9 Supreme Court from that decision; and
- 10 (ii) the court proposes to find that the information is not
11 criminal intelligence;
- 12 (b) if—
- 13 (i) the applicant mentioned in section 9D (1) (a) appeals the
14 ACAT's decision to the Supreme Court; and
- 15 (ii) the court proposes to find that the information is not
16 criminal intelligence;
- 17 (c) if—
- 18 (i) the licensee mentioned in section 9D (1) (b) appeals the
19 ACAT's decision to the Supreme Court; and
- 20 (ii) the court proposes to find that the information is not
21 criminal intelligence.
- 22 (2) The applicant mentioned in section 9D (2) must be told about the
23 court's proposal and given the opportunity to withdraw the
24 information from the proceeding.

- 1 **9F Confidentiality of criminal intelligence—commissioner for**
2 **fair trading and ACAT**
- 3 (1) The commissioner for fair trading must maintain the confidentiality
4 of information classified by the chief police officer as criminal
5 intelligence when deciding whether to—
6 (a) issue a licence to an applicant; or
7 (b) apply to the ACAT for an occupational discipline order in
8 relation to a licensee.
- 9 (2) The commissioner for fair trading and ACAT must maintain the
10 confidentiality of information that is the subject of an application
11 mentioned in section 9D (2)—
12 (a) until the tribunal makes a decision about whether the
13 information is criminal intelligence; or
14 (b) that the tribunal—
15 (i) decides is criminal intelligence; or
16 (ii) decides is not criminal intelligence, if there is an appeal
17 from that decision and the appeal is upheld.
- 18 (3) The commissioner for fair trading and ACAT must maintain the
19 confidentiality of information that is the subject of an application
20 mentioned in section 9D (2) if the information is withdrawn.
- 21 (4) The commissioner for fair trading or ACAT may take any steps the
22 commissioner or tribunal considers appropriate to maintain the
23 confidentiality of the information.
- 24 (5) However, if the Supreme Court finds that the information is not
25 criminal intelligence, and the information is not withdrawn, the
26 commissioner for fair trading or ACAT need not maintain the
27 confidentiality of the information.

- 1 **9G Confidentiality of criminal intelligence—courts**
- 2 (1) This section applies if a court deals (on appeal or otherwise) with—
- 3 (a) a decision by the ACAT about whether information is criminal
- 4 intelligence; or
- 5 (b) the question of whether information classified by the chief
- 6 police officer as criminal intelligence is criminal intelligence.
- 7 (2) The court must maintain the confidentiality of the information.
- 8 (3) The court may take any steps it considers appropriate to maintain
- 9 the confidentiality of the information.
- 10 (4) The court must not give any reason for making a finding in relation
- 11 to the information, other than the public interest.
- 12 (5) However, if the Supreme Court finds that information is not
- 13 criminal intelligence, and the information is not withdrawn—
- 14 (a) the court need not maintain the confidentiality of the
- 15 information and may give reasons for the finding; and
- 16 (b) any other court need not maintain the confidentiality of the
- 17 information and may give reasons for making a finding in
- 18 relation to the information.
- 19 **9H Delegation by chief police officer**
- 20 (1) The chief police officer may delegate a function under this part to a
- 21 senior police officer.
- 22 *Note* For the making of delegations and the exercise of delegated functions,
- 23 see the Legislation Act, pt 19.4.
- 24 (2) In this section:
- 25 *senior police officer* means a police officer of or above the rank of
- 26 superintendent.

1 **5 Application for licence**
2 **Section 17 (3) (a) and (b)**

3 *substitute*

4 (a) a police certificate for the applicant, dated not earlier than
5 2 months before the day the application is made; and

6 *Note* See s 49A (Destruction of fingerprints).

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

11 (c) any information prescribed by regulation.

12 (3A) For subsection (3) (a), the police certificate must be verified by the
13 applicant's fingerprints if the applicant has not previously given the
14 commissioner for fair trading a fingerprint-verified police
15 certificate.

16 **6 Request for further information**
17 **New section 18 (1A)**

18 *insert*

19 (1A) Without limiting subsection (1), if the applicant has lived in a
20 foreign country as an adult for a continuous period of 1 year or more
21 in the 5 years before the day the application is made, the
22 commissioner may require the applicant to give the commissioner a
23 certified copy of the applicant's criminal history record from that
24 country.

7 New section 18 (3)

insert

(3) In this section:

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

**8 Request for fingerprints
Section 19**

omit

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

substitute

(a) satisfied—

(i) about the applicant's identity; and

(ii) that the applicant is eligible to hold the licence; and

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

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

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

19 **10 New section 21 (1A) and (1B)**

20 *insert*

- 21 (1A) Also, the commissioner for fair trading must not issue or vary a
22 licence if—
- 23 (a) within the 10 years before the day the application is made, the
24 applicant has been convicted of 1 or more of the offences
25 mentioned in subsection (1B), in the ACT or elsewhere; or
- 26 (b) within the 5 years before the day the application is made, the
27 applicant has been found guilty (but not convicted) of 1 or
28 more of the offences mentioned in subsection (1B), in the ACT
29 or elsewhere.

- 1 (1B) The offences are as follows:
- 2 (a) if the stated circumstances apply—an offence involving
3 assault, violence against a person, dishonesty or theft;
- 4 (b) if the stated circumstances apply—an offence relating to the
5 possession, storage or use of a firearm or other weapon;
- 6 (c) if the stated circumstances apply—an offence, other than for
7 possession, involving a controlled drug, controlled plant or
8 controlled precursor within the meaning of the *Criminal*
9 *Code 2002*;
- 10 (d) an offence involving robbery;
- 11 (e) an offence against the *Criminal Code Act 1995* (Cwlth),
12 schedule, part 5.3 (Terrorism);
- 13 (f) an offence committed outside the ACT involving terrorism that
14 is an offence against a law of the place where the offence is
15 committed.

16 **11 Section 21 (3), new definition of *stated circumstances***

17 *insert*

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

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

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

3 *omit*

4 (ii)

5 *substitute*

6 (iv)

7 **13 Section 23**

8 *substitute*

9 **23 Public interest**

10 (1) In deciding whether it is in the public interest to issue a licence to an
11 applicant, the commissioner for fair trading must consider whether
12 the applicant has—

13 (a) committed a relevant offence, whether or not the applicant has
14 been convicted of the offence; or

15 (b) been convicted or found guilty of any other offence (other than
16 an offence mentioned in section 21 (1B)) that the
17 commissioner believes on reasonable grounds affects the
18 person's suitability to hold a licence.

19 **Example—par (b)**

20 an offence involving violence against an animal

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

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

4 **Examples—matters to be considered**

- 5 1 a police certificate accompanying an application under s 17 (3)
6 2 information collected under s 20
7 3 if an applicant mentioned in s 18 (1A) failed to give the commissioner a
8 certified copy of the applicant's criminal history record from a foreign
9 country as requested by the commissioner, and the applicant has not given
10 the commissioner any other information or documents about the applicant's
11 probity
12 4 if the applicant has been subject to a final order under the *Domestic Violence*
13 *and Protection Orders Act 2008*

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

16 *omit*

17 (ii)

18 *substitute*

19 (iii)

20 **15 Term of licence**
21 **Section 29**

22 *omit*

23 1 year

24 *substitute*

25 3 years

16 New division 3.7A

insert

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

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

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

29B Immediate suspension of licence

- (1) This section applies if—
- (a) the commissioner for fair trading applies, or intends to apply, to the ACAT for an occupational discipline order in relation to a licensee; and
 - (b) having regard to the reasons for the application, the commissioner believes on reasonable grounds that the licence should be suspended immediately in the interests of public safety.
- (2) The commissioner for fair trading must give the licensee a written notice (the *immediate suspension notice*) suspending the licence.
- Note* See also s 36A (Reviewable decision notices).
- (3) The suspension of a licence under this section takes effect when the immediate suspension notice is given to the licensee.

- 1 (4) The suspension of a licence under this section ends—
- 2 (a) if the ACAT makes an occupational discipline order in relation
- 3 to the licensee—when the order takes effect, or 30 days after
- 4 the day the immediate suspension notice is given to the
- 5 licensee, whichever is the earlier; or
- 6 (b) if the ACAT does not make an occupational discipline order in
- 7 relation to the licensee—when the licensee is given written
- 8 notice of the tribunal’s decision not to make an order, or
- 9 30 days after the day the immediate suspension notice is given
- 10 to the licensee, whichever is the earlier.

11 **17 New section 49A**

12 *insert*

13 **49A Destruction of fingerprints**

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

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

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

81 **Transitional regulations**

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

82 **Expiry—pt 8**

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

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

2 *insert*

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

3 **20 Dictionary, note 2**

4 *insert*

- 5 • foreign country
- 6 • public servant

7 **21 Dictionary, new definitions of *criminal intelligence* and**
8 ***maintain***

9 *insert*

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

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

14 **22 Dictionary, definition of *police certificate* and note**

15 *substitute*

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

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

23 (i) the Territory; or

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

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

8 **23 Dictionary, definition of *relevant offence***

9 *omit everything before paragraph (a), substitute*

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

12 **24 Dictionary, definition of *workplace information***

13 *omit*

14 (iii)

15 *substitute*

16 (iv)

1 **Part 3** **Security Industry Regulation**
2 **2003**

3 **25 Exempt people—Act, s 9**
4 **Section 6 (2) (a)**

5 *omit*

6 (ii)

7 *substitute*

8 (iii)

9 **26 Section 7A heading**

10 *substitute*

11 **7A Information to accompany certain employee licence**
12 **applications—Act, s 17 (3) (c)**

13 **27 Section 8 heading**

14 *substitute*

15 **8 Prescribed training courses for employee licences—Act,**
16 **s 21 (1) (a) (iii)**

17 **28 Table 8, item 1, column 3**

18 *substitute*

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

1 **29 Table 8, item 5, column 3**

2 *substitute*

Certificate II in Security Operations
with electives about—

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

Certificate in first aid (current)

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

4 *substitute*

Certificate II in Security Operations
with electives about—

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

Certificate in first aid (current)

Certificate IV in Security and Risk
Management

Certificate in first aid (current)

Certificate II in Security Operations with electives about—

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

Certificate in first aid (current)

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

Certificate in first aid (current)

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

Certificate in first aid (current)

1	31	Section 9 heading
2		<i>substitute</i>
3	9	Prescribed training courses for trainer licences—Act,
4		s 21 (1) (a) (iii)
5	32	Section 9A heading
6		<i>substitute</i>
7	9A	Conditions for certain master licences—Act, s 21 (1) (a)
8		(v)
9	33	Section 9B heading
10		<i>substitute</i>
11	9B	Workplace information—Act, s 21 (1) (a) (iv)

1 **Part 4 Spent Convictions Act 2000**

2 **34 Exclusions**
3 **New section 19 (8A)**

4 *insert*

5 (8A) Section 16 does not apply to a conviction that is spent under section
6 12 (When is a conviction spent?) in relation to—

7 (a) the making of an application for a licence under the *Security*
8 *Industry Act 2003*; and

9 (b) the giving of a police certificate under that Act;

10 (c) the making of a decision about issuing a licence under that Act.

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

2 **Notification**

Notified under the Legislation Act on 2011.

3 **Republications of amended laws**

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