



Australian Capital Territory

Regulatory Services Legislation Amendment Act 2008

A2008-5

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Australian Capital Territory

Regulatory Services Legislation Amendment Act 2008

A2008-5

An Act to amend legislation about regulatory services

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

Part 1 Preliminary

1 Name of Act

This Act is the *Regulatory Services Legislation Amendment Act 2008*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

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

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

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Part 2 Agents Act 2003

3 Legislation amended—pt 2

This part amends the *Agents Act 2003*.

4 People disqualified from being licensed Section 27 (1) (b)

substitute

- (b) is bankrupt or, at any time in the last 3 years—
- (i) has been bankrupt; or
 - (ii) has executed a personal insolvency agreement; or

5 Section 27 (2)

omit

application, compounding,

substitute

personal insolvency agreement,

6 Licence applications Section 29 (2) and (3)

substitute

- (2) An application must be accompanied by—
- (a) a statement setting out the place that, if the licence is issued, will be the applicant's main place of business; and
 - (b) a police certificate dated not earlier than 2 months before the day the application is made for each of the following people:
 - (i) the applicant;

- (ii) any partners of the applicant;
- (iii) if the applicant is a corporation—each director of the corporation.

7 Grounds for disciplinary action—agents
Section 41 (1) (a)

substitute

- (a) the agent has contravened, or is contravening, the fair trading legislation;

8 Disciplinary action tribunal may take—agents
Section 43 (2) and (3)

substitute

- (2) On application by the commissioner for fair trading, the consumer and trader tribunal may also disqualify an agent from holding a licence for a stated period or indefinitely.
- (3) If the consumer and trader tribunal cancels or suspends an agent's licence, or disqualifies an agent from holding a licence, the tribunal may also cancel or suspend any other licence held by the agent, or disqualify the agent from holding any other licence.

9 People disqualified from being registered
Section 51 (1) (b)

substitute

- (b) is bankrupt or, at any time in the last 3 years—
 - (i) has been bankrupt; or
 - (ii) has executed a personal insolvency agreement; or

10 Section 51 (2)

omit

bankruptcy, application or compounding

substitute

bankruptcy or personal insolvency agreement

**11 Registration applications
Section 53 (2)**

substitute

- (2) An application must be accompanied by a police certificate for the applicant, dated not earlier than 2 months before the day the application is made.

**12 Grounds for disciplinary action—salespeople
Section 65 (1) (a)**

substitute

- (a) the salesperson has contravened, or is contravening, the fair trading legislation;

**13 Disciplinary action tribunal may take—salespeople
Section 67 (2) and (3)**

substitute

- (2) On application by the commissioner for fair trading, the consumer and trader tribunal may also disqualify a salesperson from being registered for a stated period or indefinitely.
- (3) If the consumer and trader tribunal cancels or suspends a salesperson's registration, or disqualifies a salesperson from being registered, the tribunal may also cancel or suspend any other registration the salesperson has, or disqualify the salesperson from being registered otherwise.

**14 Main place of business
Section 68 (1)**

omit

section 29 (2)

substitute

section 29 (2) (a)

15 Section 139

substitute

139 When administrators may be appointed

- (1) The commissioner for fair trading may appoint someone to administer the business of a licensed agent or former licensed agent if any of the following occurs:
- (a) the agent's licence is suspended or cancelled;
 - (b) the agent is disqualified from holding a licence;
 - (c) the agent's licence has expired;
 - (d) the agent surrenders the licence under section 39;
 - (e) the agent is missing and cannot be located after making reasonable enquiries;
 - (f) the agent dies.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (2) The commissioner for fair trading may appoint someone to administer the business of a person who is not a licensed agent if the person is—
- (a) carrying on business as an agent; or
 - (b) pretending to be a licensed agent.

**16 Reviewable decisions
Schedule 1, new items 15A and 15B**

insert

15A	139 (1)	appoint an administrator	licensed agent or former licensed agent
15B	139 (2)	appoint an administrator	person carrying on the business to be administered

17 Dictionary, new definition of *police certificate*

insert

police certificate, for a person, means a written statement by the Australian Federal Police indicating—

- (a) whether, according to the records held by the Australian Federal Police, the person has been charged with, or convicted of, an offence against a law of—
 - (i) the Territory; or
 - (ii) the Commonwealth; or
 - (iii) a State; or
 - (iv) another country; and
- (b) if so—particulars of each offence.

Note A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

Part 3 Births, Deaths and Marriages Registration Act 1997

18 Legislation amended—pt 3

This part amends the *Births, Deaths and Marriages Registration Act 1997*.

19 Section 21

substitute

21 Change of name entries in register

- (1) This section applies if the registrar-general registers a change of name for a person whose birth is registered in the ACT or under a corresponding law.
 - (2) The registrar-general must—
 - (a) either—
 - (i) if the person's birth is registered in the ACT—alter the register by changing the person's name in the entry relating to the person's birth; or
 - (ii) if the person's birth is registered under a corresponding law—notify the relevant registering authority of the change of name; and
 - (b) include in the register any particulars prescribed by regulation.
- Note* A fee may be determined under s 67 for this section.
- (3) Any birth certificate issued by the registrar-general for the person must show the person's name as changed.

Part 4 Business Names Act 1963

20 Legislation amended—pt 4

This part amends the *Business Names Act 1963*.

21 Registration of business names New section 7 (1) (g)

insert

- (g) whether the application is for registration of the name for 3 years or 5 years.

22 New section 7 (3A)

insert

- (3A) The registration period of a business name is the period of intended registration mentioned in the statement.

23 Renewal of registration Section 11 (1) and (2)

substitute

- (1) The registration of a business name remains in force for the period stated in the certificate of registration but may be renewed for a period of 3 years or 5 years by giving the registrar-general a statement setting out the intended period of renewed registration.
- (2) The statement under subsection (1) must be—
 - (a) signed by the person or 1 of the people in relation to whom the name is registered; and
 - (b) given to the registrar-general within 1 month before or after the end of the registration.

- (2A) The registration period of a business name renewed under this section is the period of intended registration mentioned in the statement beginning on the day after the end of the previous registration period.

24 Subsection 11 (4)

omit everything after

1 month after

substitute

the registration ends.

Part 5 Door-to-Door Trading Act 1991

25 Legislation amended—pt 5

This part amends the *Door-to-Door Trading Act 1991*.

26 Contracts to which Act applies Section 4 (1) (a)

substitute

- (a) negotiations leading to the making of the contract (whether or not they are the only negotiations that precede the making of the contract) take place between the consumer and a dealer—
 - (i) in each other's presence in the ACT at a place other than trade premises of the supplier; or
 - (ii) during a telephone call made or received in the ACT; and

27 Section 4 (1) (b)

omit

attends at that place

substitute

attends at the place or takes part in the telephone call

28 Requirements in relation to prescribed contracts Section 7 (1) (d)

substitute

- (d) the consumer must be given a copy of the contract—
 - (i) if the contract is negotiated in the presence of the consumer and the dealer—immediately after the making of the contract; or

- (ii) if the contract is negotiated by telephone—as soon as practicable after the making of the contract;

**29 Rescission—right of consumer
Section 12 (1) (b)**

omit

formation

substitute

making

30 Dictionary, definition of *cooling-off period*

substitute

cooling-off period, in relation to a prescribed contract, means—

- (a) if the contract is negotiated by telephone—the period of 10 days beginning on the day the copy of the contract is received by the consumer; or
- (b) in any other case—the period of 10 days beginning on the day the contract is made.

Note The *Evidence Act 1995* (Cwlth), s 160 provides a rebuttable presumption that a postal article sent by prepaid post addressed to a person at an address in Australia or an external territory was received on the 4th working day after posting.

31 Dictionary, definition of *negotiation*, paragraph (b)

omit

formation

substitute

making

Part 6 Liquor Act 1975

32 Legislation amended—pt 6

This part amends the *Liquor Act 1975*.

33 Dictionary, definition of *defined offence*

substitute

defined offence means an offence against any of the following Acts:

- (a) this Act;
- (b) the *Crimes Act 1900*;
- (c) the *Criminal Code*;
- (d) the *Unlawful Games Act 1984*;
- (e) the *Crimes Act 1914* (Cwlth);
- (f) the *Criminal Code Act 1995* (Cwlth).

Note A reference to a law (including a Commonwealth law) includes a reference to the statutory instruments made or in force under the law, including any regulation (see Legislation Act, s 104).

Part 7 Sale of Motor Vehicles Act 1977

34 Legislation amended—pt 7

This part amends the *Sale of Motor Vehicles Act 1977*.

35 Section 6

substitute

6 Register of licences

- (1) The registrar must keep a register of licences under this Act.
- (2) The register must be available for public inspection at reasonable times.

6AA Keeping of register

- (1) The register may include licence information given to the registrar under this Act.
- (2) The register may be kept in the form of, or as part of, 1 or more computer databases or in any form the registrar considers appropriate.
- (3) The registrar may correct any mistake, error or omission in the register subject to any requirements prescribed by regulation.
- (4) The registrar may change a detail included in the register to keep the register up-to-date.

36 Section 8 heading

substitute

8 Eligibility for grant of licences to individuals

37 Section 8 (1) (c)

substitute

- (c) the individual is not bankrupt and has not executed a personal insolvency agreement; and

**38 Application for licences by individuals
Section 10 (1) (g) and (h)**

substitute

- (g) must be accompanied by an ACTPLA certificate for the premises where the applicant proposes to carry on business under the licence, dated not earlier than 3 months before the day the application is made; and
- (h) must state whether the person is bankrupt or has executed a personal insolvency agreement that is in force; and

39 New section 10 (1) (la)

insert

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

**40 Applications for licences by corporations
Section 11 (1) (h) and (i)**

substitute

- (h) must be accompanied by an ACTPLA certificate for the premises where the corporation proposes to carry on business under the licence, dated not earlier than 3 months before the day the application is made; and
- (i) must be accompanied by 2 certificates for each executive officer of the corporation indicating the executive officer's fame and character; and

41 Section 11 (1) (m)

substitute

- (m) must be accompanied by a police certificate for each executive officer of the corporation, dated not earlier than 2 months before the day the application is made; and
- (n) must include any other information prescribed by regulation.

42 Section 12

omit

**43 Grant or refusal of licence
Section 13 (3) (b) and (4) (b)**

omit

certificate of conviction

substitute

police certificate

**44 Eligibility for renewal of licences
Section 14A (1) (b)**

substitute

- (b) the individual is not bankrupt and has not executed a personal insolvency agreement; and

**45 Applications for renewal of licences
Section 14B (e)**

substitute

- (e) if the premises stated in the application for renewal (the *new premises*) are different from the premises for which the licensee is licensed—must be accompanied by an ACTPLA certificate for the new premises, dated not earlier than 3 months before the day the application is made.

**46 Intended change of executive officers—notification and objection
Section 45 (2) (c)**

substitute

- (c) state that, if a person wishes to object to the continuation of the licensee's licence if the prospective executive officer becomes an executive officer, the person must object by notice given to the registrar within 14 days at the registrar's address stated in the notice.

47 Section 45 (3)

substitute

- (3) The prospective executive officer must give the registrar a police certificate for the officer, dated not earlier than 2 months before the day the notice is published under subsection (1).

48 Section 46 heading

substitute

46 Change of executive officers

49 New section 46 (2) (d)

insert

- (d) be accompanied by a police certificate for the new executive officer, dated not earlier than 2 months before the day the notice mentioned in section 45 (1) is published.

50 Section 46 (3), (4) and (5)

omit

**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**

substitute

- 2 The member becomes bankrupt or executes a personal insolvency agreement.

**52 Review by administrative appeals tribunal
Section 57 (2)**

omit

a certificate

substitute

an ACTPLA certificate

53 Part 10 heading

substitute

Part 10 Offences

54 New part 10A*insert***Part 10A Enforcement****Division 10A.1 General****70 Definitions—pt 10A**

In this part:

connected—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.**Division 10A.2 Powers of inspectors****70A Power to enter premises**

- (1) For this Act, an inspector may—
 - (a) at any reasonable time, enter premises to which a licence relates to carry out an inspection authorised under the licence; or

- (b) at any reasonable time, enter premises where the inspector suspects on reasonable grounds that a person is carrying on any of the following businesses without a licence:
 - (i) the business of a dealer;
 - (ii) the business of a wholesaler;
 - (iii) the business of a car market operator; or
 - (c) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (d) at any time, enter premises with the occupier's consent; or
 - (e) enter premises in accordance with a search warrant.
- (2) However, subsection (1) (a), (b) or (c) does not authorise entry into a part of premises that is being used for residential purposes.
 - (3) An inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
 - (4) To remove any doubt, an inspector may enter premises under subsection (1) without payment of an entry fee or other charge.
 - (5) In this section:

at any reasonable time includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

70B Production of identity card

- (1) An inspector must not remain at premises entered under this part if the inspector does not produce the inspector's identity card when asked by the occupier.
- (2) This section does not apply in relation to an inspector who is a police officer in uniform.

70C Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 70A (1) (d), an inspector must—
 - (a) produce the inspector's identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court may find that the occupier did not consent to entry to the premises by the inspector under this part if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and

- (b) an acknowledgment of consent is not produced in evidence;
and
- (c) it is not proved that the occupier consented to the entry.

70D General powers on entry to premises

- (1) An inspector who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
 - (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) 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;
 - (f) require the occupier, or anyone apparently working at the premises, to give the inspector reasonable help to exercise a power under this part.

Examples—par (a)

- 1 inspect or examine motor vehicles or motor vehicle parts
- 2 inspect or examine a register required to be kept under this Act

Example—par (f)

producing a register required to be kept under this Act

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (f).

Maximum penalty: 50 penalty units.

70E Power to seize things

- (1) An inspector who enters premises under this part with the occupier's consent may seize anything at the premises if—
- (a) the inspector is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An inspector who enters premises under a warrant under this part may seize anything at the premises that the inspector is authorised to seize under the warrant.
- (3) An inspector who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Subsections (1) and (3) do not apply to the seizure of a computer, or data storage device, for use in carrying on a licensed dealer's business if—
- (a) the only reason for the seizure is to access data held in or accessible from the computer or device; and
 - (b) the data is accessible—
 - (i) with the occupier's consent; or

- (ii) under section 70D (General powers on entry to premises).
- (5) The powers of an inspector under subsection (3) are additional to any powers of an inspector under subsection (1) or subsection (2) or any other territory law.
- (6) Having seized a thing, an inspector may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it.
- (7) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6); and
 - (b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (8) An offence against this section is a strict liability offence.

70F Power to require name and address

- (1) An inspector may require a person to state the person's name and home address if the inspector believes on reasonable grounds that the person is committing or has just committed an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The inspector must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the inspector to produce the inspector's identity card for inspection by the person.

- (4) Subsection (3) does not apply in relation to an inspector who is a police officer in uniform.
- (5) A person must comply with a requirement made of the person under subsection (1) if the inspector—
 - (a) tells the person the reason for the requirement; and
 - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

- (6) An offence against this section is a strict liability offence.
- (7) In this section:

home address, of a person, means the address of the place where the person usually lives.

Division 10A.3 Search Warrants

70G Warrants generally

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and

- (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
 - (a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector's powers under this part; and
 - (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 7 days after the day of the warrant's issue, the warrant ends.

70H Warrants—application made other than in person

- (1) An inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) If the magistrate issues the warrant, the magistrate must immediately fax a copy to the inspector if it is practicable to do so.

- (5) If it is not practicable to fax a copy to the inspector—
- (a) the magistrate must tell the inspector—
 - (i) the terms of the warrant; and
 - (ii) the date and time the warrant was issued; and
 - (b) the inspector must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under the warrant.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the inspector was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

70I Search warrants—announcement before entry

- (1) An inspector must, before anyone enters premises under a search warrant—
 - (a) announce that the inspector is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if an occupier is present at the premises—identify himself or herself to the person.
- (2) The inspector is not required to comply with subsection (1) if the inspector believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including the inspector or any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

70J Details of search warrant to be given to occupier etc

If the occupier of premises is present at the premises while a search warrant is being executed, the inspector or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

70K Occupier entitled to be present during search etc

- (1) If the occupier of premises is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or

- (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

70L Use of electronic equipment at premises

- (1) An inspector or a person assisting may operate electronic equipment at premises entered under a search warrant to access data (including data not held at the premises) if the inspector or person believes on reasonable grounds that—
 - (a) the data might be something to which the warrant relates; and
 - (b) the equipment can be operated without damaging the data.
- (2) If the inspector or person assisting believes on reasonable grounds that any data accessed by operating the electronic equipment might be something to which the warrant relates, the inspector or person may—
 - (a) copy the data to a data storage device brought to the premises; or
 - (b) if a person in charge of the premises agrees in writing—copy the data to a data storage device at the premises.
- (3) The inspector or person assisting may take the device from the premises.
- (4) The inspector or person assisting may do the following things if the inspector or person finds that anything to which the warrant relates (the *material*) is accessible using the equipment:
 - (a) seize the equipment and any data storage device;
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents produced.

- (5) An inspector may seize equipment under subsection (4) (a) only if—
- (a) it is not practicable to copy the data as mentioned in subsection (2) or to put the material in documentary form as mentioned in subsection (4) (b); or
 - (b) possession of the equipment by a person in charge of the premises or someone else could be an offence.

70M Person with knowledge of computer or computer system to assist access etc

- (1) An inspector may apply to a magistrate for an order requiring a stated person to give any information or assistance that is reasonably necessary to allow the inspector or a person assisting to do 1 or more of the following:
- (a) access data held in or accessible from a computer that is at the premises;
 - (b) copy the data to a data storage device;
 - (c) convert the data into documentary form.
- (2) The magistrate may make an order if satisfied that—
- (a) there are reasonable grounds for suspecting that something to which the warrant relates is accessible from the computer; and
 - (b) the stated person is—
 - (i) reasonably suspected of possessing, or having under the person's control, something to which the warrant relates; or
 - (ii) the owner or lessee of the computer; or
 - (iii) an employee or agent of the owner or lessee of the computer; and

- (c) the stated person has knowledge of—
 - (i) the computer or a computer network of which the computer forms a part; or
 - (ii) measures applied to protect data held in or accessible from the computer.
- (3) A person commits an offence if the person contravenes an order under this section.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (4) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the making of an order under this section.

70N Securing electronic equipment

- (1) This section applies if an inspector or a person assisting believes on reasonable grounds that—
 - (a) something to which a warrant relates (the *material*) may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) the material may be destroyed, altered or otherwise interfered with if the inspector or person does not take action.
- (2) The inspector or person may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (3) The inspector or a person assisting must give written notice to a person in charge of the premises of—
 - (a) the inspector's or person's intention to secure the equipment; and
 - (b) the fact that the equipment may be secured for up to 24 hours.

- (4) The equipment may be secured until the earlier of the following events happens:
 - (a) the end of the 24-hour period;
 - (b) the equipment is operated by the expert.
- (5) If the inspector or a person assisting believes on reasonable grounds that the expert assistance will not be available within the 24-hour period, the inspector or person may apply to a magistrate to extend the period.
- (6) The inspector or a person assisting must tell a person in charge of the premises of the intention to apply for an extension, and the person is entitled to be heard on the application.
- (7) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

700 Copies of seized things to be provided

- (1) This section applies if—
 - (a) the occupier of premises is present at the premises while a search warrant is executed; and
 - (b) the inspector seizes—
 - (i) a document, film, computer file or something else that can be readily copied; or
 - (ii) a data storage device containing information that can be readily copied.
- (2) The person in charge or other person may ask the inspector to give the person a copy of the thing or information.
- (3) The inspector must give the person the copy as soon as practicable after the seizure.

- (4) However, the inspector is not required to give the copy if—
- (a) the thing was seized under section 70L (Use of electronic equipment at premises); or
 - (b) possession of the thing or information by a person in charge of the premises or someone else would be an offence.

Division 10A.4 Return and forfeiture of things seized

70P Receipt for things seized

- (1) If an inspector seizes a thing under this part, the inspector must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously, at the place of seizure under section 70E (Power to seize things).
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the inspector's name, and how to contact the inspector;
 - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

70Q Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
 - (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

- (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 3 business days.
- (3) An inspector may apply to a magistrate for an extension of time if the inspector believes on reasonable grounds that the thing cannot be examined or processed within 3 business days.
- (4) The inspector must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the inspector must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

70R Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

70S Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—
- (a) an infringement notice for an offence relating to the thing is not served on the owner within 90 days after the day of the seizure and a prosecution for an offence relating to the thing—
 - (i) is not started within the 90-day period; or
 - (ii) is started within the 90-day period but the court does not find the offence proved; or
 - (b) an infringement notice for an offence relating to the thing is served on the owner within 90 days after the day of the seizure, the infringement notice is withdrawn and a prosecution for an offence relating to the thing—
 - (i) is not started within the 90-day period; or
 - (ii) is started within the 90-day period but the court does not find the offence proved; or
 - (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 90 days after the day of the seizure, liability for the offence is disputed under the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and an information—
 - (i) is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 132 of that Act that liability is disputed; or
 - (ii) is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved; or

- (d) before the thing is forfeited to the Territory under section 70T, the chief executive—
 - (i) becomes satisfied that there has been no offence against this Act with which the thing was connected; or
 - (ii) decides not to prosecute or have an infringement notice served for the offence.
- (2) However, this section does not apply to a thing if—
 - (a) the chief executive believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
 - (b) possession of the thing by its owner would be an offence.

70T Forfeiture of seized things

- (1) This section applies if—
 - (a) anything seized under this part has not been returned under section 70S; and
 - (b) an application for disallowance of the seizure under section 70U—
 - (i) has not been made within 10 days after the day of the seizure; or
 - (ii) has been made within that period, but the application has been refused or has been withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
 - (a) it is forfeited to the Territory; and
 - (b) it may be sold, destroyed or otherwise disposed of as the chief executive directs.

70U Application for order disallowing seizure

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the chief executive.
- (3) The chief executive is entitled to appear as respondent at the hearing of the application.

70V Order for return of seized thing

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 70U for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if the court is satisfied that—
 - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
 - (b) the thing is not connected with an offence against this Act; and
 - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
 - (a) an order directing the chief executive to return the thing to the applicant or to someone else who appears to be entitled to it;

- (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
- (c) an order about the payment of costs in relation to the application.

Division 10A.5 Miscellaneous

70W Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an inspector must take all reasonable steps to ensure that the inspector, and any person assisting the inspector, causes as little inconvenience, detriment and damage as practicable.
- (2) If an inspector, or a person assisting an inspector, damages anything in the exercise or purported exercise of a function under this part, the inspector must give written notice of the particulars of the damage to the person the inspector believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

70X Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an inspector or a person assisting an inspector.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.

- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

55 Sections 76, 77, 78 and 80

omit

56 Dictionary, new definitions

insert

ACTPLA certificate, for premises to which an application for the grant or renewal of a licence relates, means a certificate by the planning and land authority stating—

- (a) whether the authority considers the carrying on of business at the premises under the licence would not comply with a provision of—
- (i) the lease of the land where premises are located; or
 - (ii) the Territory plan; and
- (b) if paragraph (a) applies—the relevant provision of the lease or Territory plan.

connected with an offence, for part 10A (Enforcement)—see section 70.

occupier, of premises, for part 10A (Enforcement)—see section 70.

offence, for part 10A (Enforcement)—see section 70.

police certificate, for a person, means a written statement by the Australian Federal Police indicating—

- (a) whether, according to the records held by the Australian Federal Police, the person has been charged with, or convicted of, an offence against a law of—
 - (i) the Territory; or
 - (ii) the Commonwealth; or
 - (iii) a State; or
 - (iv) another country; and
- (b) if so—particulars of each offence.

Note A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

Part 8 Security Industry Act 2003

57 Legislation amended—pt 8

This part amends the *Security Industry Act 2003*.

58 Application for licence Section 17 (3)

substitute

- (3) The application must be accompanied by—
- (a) a police certificate for the applicant, dated not earlier than 2 months before the day the application is made; and
 - (b) any information prescribed by regulation.

59 Section 17 (5)

omit

60 Public interest Section 23 (2), example

substitute

Examples—matters to be considered

- 1 a police certificate accompanying an application under s 17 (3)
- 2 information collected under s 20

61 Dictionary, new definition of *police certificate*

insert

police certificate, for a person, means a written statement by the Australian Federal Police indicating—

- (a) whether, according to the records held by the Australian Federal Police, the person has been charged with, or convicted of, an offence against a law of—
 - (i) the Territory; or
 - (ii) the Commonwealth; or
 - (iii) a State; or
 - (iv) another country; and
- (b) if so—particulars of each offence.

Note A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 22 November 2007.

2 Notification

Notified under the Legislation Act on 15 April 2008.

3 Republications of amended laws

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

I certify that the above is a true copy of the Regulatory Services Legislation Amendment Bill 2008, which originated in the Legislative Assembly as the Regulatory Services Legislation Amendment Bill 2007 and was passed by the Assembly on 1 April 2008.

Clerk of the Legislative Assembly

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