

FAIR TRADING REGULATIONS (AMENDMENT)

Subordinate Law No. 3 of 1998

PURPOSE

The intention of this amendment is to have the *Fair Trading Regulations* ("the Principal Regulations") prescribe the following Codes as codes of practice under section 34 of the *Fair Trading Act 1992* ("the Act"):

- "the Cash Transit Industry Code of Practice";
- "the Guard and Patrol Services Industry Code of Practice"; and
- "the Bodyguard Industry Code of Practice".

BACKGROUND

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

DETAILS OF AMENDMENT

Regulation 4 of the Principal Regulations is amended by adding references to each of the Codes so as to prescribe them as codes of practice under section 34 of the Act.

The Codes and accompanying explanatory notes for each are contained in the Attachment to this memorandum.

FINANCIAL IMPLICATIONS

The Code will be self-funding.

***Attachment to Explanatory Memorandum
to Fair Trading Regulations***

Fair Trading Act 1992

**Bodyguard Industry
CODE OF PRACTICE**

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Code of Practice Fair Trading Act

Bodyguard Industry

PART I: PRELIMINARY

Objectives

1. The objectives of this code of practice are:

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

Interpretation

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

ACTSPIC: ACT Security Protection Industry and Investigation Council Incorporated;

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

Bodyguard service: any service whereby a person provides close personal protection of a specific person and includes the provision of management, secretarial or administrative support in respect of such a service;

Bodyguard Industry: a service industry encompassing principals within the meaning of this code;

Code: this Code of Practice;

Consumer: a person who is provided with a bodyguard service or who is making enquires about a bodyguard service;

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

Employ: includes any engagement whether or not for remuneration;

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

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

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

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

Principal: A person, wherever located, who:

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

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

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

Application of Code

3. This Code applies to a Principal.

Exemptions from the Code

4. (1) A principal may apply to the Minister for an exemption from the application of all or any of the provisions of this Code.

(2) An application to the Minister under subclause (1) shall be in writing setting out the grounds on which the principal seeks the exemption.

(3) Where the Minister receives an application in accordance with subclause (1), the Minister shall seek advice from the Code Administration Committee.

(4) The Minister may:

- (a) after considering advice from the Code Administration Committee; and
- (b) if satisfied that there will be no substantial detriment caused to consumers;

grant to a principal:

- (c) an unconditional exemption; or
 - (d) an exemption subject to conditions.
- (5) The Minister may, at any time, revoke an exemption.
- (6) If the Minister revokes an exemption, he or she shall give notice, in writing, to the principal.

PART II: PRINCIPAL'S OBLIGATIONS

Principal's obligations

5. (1) A principal shall not participate in the bodyguard service industry unless registered by the Director.
- (2) A principal shall ensure, in respect to the provision of a bodyguard service, compliance with the obligations listed in the Schedule.
- (3) A principal is responsible for the good conduct of his or her employees in the course their employment.
- (4) For the purpose of subclause (1), the Director shall register a principal who:
- (a) has provided to the Director a notification in the form of Attachment "A";
 - (b) in the case of a natural person;
 - (i) has either previously had or has undertaken to have within a week of the notification above, a fingerprint check with the Australian Federal Police to be provided to the Director;
 - (ii) if convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, has been certified by the Director for employment in the industry on the ground that the principal is unlikely to reoffend; and
 - (iii) is at least 18 years of age;
 - (c) in the case of a body corporate,
 - (i) has either previously had or has undertaken to have within a week of the notification above, a criminal record check across Australian jurisdictions performed by the Australian Federal Police to be provided to the Director;
 - (ii) has provided to the Director such details of all relevant influential persons of the body corporate as requested by the Director; and
 - (iii) if it has a relevant influential person who has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, that person has been certified by the Director for employment in the industry on the ground that the person is unlikely to reoffend; and
 - (d) has paid the registration fee, if any.

(5) For the purpose of subparagraph (4)(c)(ii) and subclause (6), the Director may require a fingerprint check of any relevant influential person or request such details as he or she considers relevant.

(6) The Director may, at any time, request a principal which is a body corporate to provide details of any relevant influential person.

Agreement for a bodyguard service

6. (1) When a principal makes a written offer for the supply of a service, the principal shall provide to the prospective customer:

- (a) a copy of the Schedule to this Code endorsed by the principal, unless done so previously; and
- (b) material that discloses information from which the price or value of the services being offered may be determined.

(2) Subject to subclause (3), when a principal makes an oral offer for the supply of a service, the principal shall, unless that principal has done so previously, provide to the prospective customer a copy of the Schedule to this Code endorsed by the principal as soon as possible after the offer is made.

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

Service quality

7. A principal shall ensure that employees:

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

Confidentiality of personal information

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

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

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

PART III: STANDARDS

Standard of Equipment

9. (1) A principal shall only supply equipment that:
- (a) conforms to safety standards established by the Australian Standards Association;
 - (b) is mechanically sound; and
 - (c) where so required under a contract, is serviced adequately, efficiently and regularly to ensure continued user safety.
- (2) A principal shall ensure that equipment used by an employee:
- (a) conforms to safety standards established by the Australian Standards Association;
 - (b) is mechanically sound; and
 - (c) where so required under a contract, is serviced adequately, efficiently and regularly to ensure continued user safety.

PART IV: STAFF

Staff

10. (1) A principal shall not employ or continue to employ a person to provide a bodyguard service unless that person is:
- (a) registered by ACTSPIC; and
 - (b) capable of providing the particular bodyguard service that he or she is to provide.
- (2) ACTSPIC shall, for the purpose of subclause (1), only register a person:
- (a) who has provided to ACTSPIC a notification in the form of Attachment "B";
 - (b) if a natural person, who has either previously had or has undertaken to have within a week of the notification above, a fingerprint check with the Australian Federal Police to be provided to ACTSPIC;
 - (c) if that person has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, who has been certified by ACTSPIC for employment in the industry on the ground that the person is unlikely to reoffend;
 - (d) who is at least 18 years; and
 - (e) who has paid the registration fee, if any.
- (3) A principal shall not represent to a consumer that a person who is to provide a bodyguard service is capable of providing the service if the person is not capable.
- (4) For the purpose of this clause, if training under competency based industry standards has been approved in accordance with Commonwealth

or Territory law, a person is deemed to be capable of providing a bodyguard service if that person:

- (a) has successfully undertaken that training and provides the service at a level appropriate to that training; or
- (b) is licensed to provide the bodyguard service under the law of another jurisdiction and provides the service at a level appropriate to that registration.

(5) A person who is gaining experience to provide a bodyguard service shall be supervised by a person who is capable of providing the service at the appropriate level.

(6) Where a person cannot offer themselves for employment without the approval of a third person, the principal shall sight that approval and keep a copy of the approval.

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

Part V: ADMINISTRATION

Code Administration Committee

11. (1) The Code shall be administered by the Code Administration Committee under the Guard and Patrol Service Industry Code of Practice.

(2) The Code Administration Committee has the same powers, role and responsibility in relation to this Code as if it formed part of the Guard and Patrol Service Industry Code of Practice.

Complaint resolution procedure

12. (1) A principal shall make every reasonable effort to resolve quickly and fairly any complaint made in relation to the provision of services offered under an agreement with that principal, whether or not the complainant is a party to that agreement.

(2) Where:

(a) a complaint cannot be resolved between a principal and a consumer or other member of the public; or

(b) a complaint is made by a principal against another principal, the complainant may request, by writing to the Director, that the complaint be dealt with by the Complaints Resolution Committee.

(3) Where the Director receives a request under subclause (2), he or she shall, as soon as practicable, appoint a Complaints Resolution Committee and refer the complaint to it for determination.

(4) Where a complaint is referred to a Complaints Resolution Committee, the Committee shall, within 7 working days of the referral, hear the complaint.

(5) Where a Complaints Resolution Committee reaches a majority decision on a complaint the Committee shall, within 7 working days:

- (a) notify the parties to the complaint, of the decision in writing; and
- (b) provide a report to the Code Administration Committee specifying the decision and the reasons for that decision.

Complaints Resolution Committee

13. (1) A Complaints Resolution Committee shall consist of:

- (a) a chair;
- (b) a representative of the bodyguard service industry who is the owner or manager of a bodyguard service company; and
- (c) a nominee of ACTSPIC who is not a principal nor an employee under this Code.

(2) The Code Administration Committee shall appoint a panel of persons for membership to a Complaints Resolution Committee for the purposes of subclause (1).

(3) The Director shall appoint, from the panel referred to in subclause (2), a Complaints Resolution Committee, to determine a complaint in accordance with subclause 12(3).

(4) The member of the Complaints Resolution Committee referred to in paragraph (1)(b) shall be selected from appropriately qualified people who have expressed an interest in being a member of the Committee.

(5) The Complaints Resolution Committee shall observe the principles of natural justice.

(6) Where a member:

- (a) has a direct interest, pecuniary or otherwise; or
- (b) has an interest which could otherwise conflict, or appear to conflict, with the proper performance of his or her duties as a member of the Committee in a matter before the Complaints Resolution Committee,

the member shall advise the Committee and the Director of the interest and take no further part in those proceedings as a member of the Committee.

(7) A member, or former member, of a Complaints Resolution Committee shall not disclose any information acquired by him or her as a consequence of his or her position.

(8) A member or former member of the Complaints Resolution Committee shall not be liable for anything done or omitted to be done in good faith in or in connection with the exercise or purported exercise of any duties conferred on him or her under this Code.

(9) The Director may appoint eligible persons as alternates in the event that a member advises the Director of a conflict of interest under subclause (6).

(10) Each member of the panel referred to in subclause (2) shall be appointed for a period of 2 years and shall be eligible for reappointment.

(11) The appointment of a member of the Complaints Resolution Committee is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment of the member.

Sanctions

14. Where a Complaints Resolution Committee determines that a principal has breached the Code, the Committee shall notify the Director and may do one or more of the following:

- (a) require the principal to remove or change any offending material;
- (b) require the principal to publish a corrective statement in a manner and with wording approved by the Committee;
- (c) require the principal to have future advertising and promotional material monitored by the Director;
- (d) require the principal to refund to a consumer an amount determined by the Committee; or
- (e) make such recommendation to the Director as the Committee considers appropriate.

Compliance

15. If a principal refuses to:

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

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

Administrative report

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

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

(3) The report shall include details of:

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

Review and evaluation of Code

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

Administration - Director

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

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

- (a) having considered the person's record;
- (b) having considered any material the person wishes the Director to take into account; and

the Director believes the person is unlikely to reoffend by reason of:

- (c) the efforts made by the person to reestablish a good character; and
- (d) the efflux of time.

(3) The Director may, in consultation with the Code Administration Committee, charge a fee for any registration, maintenance of registration or certification under the Code to the extent reasonably necessary to recover his or her administrative and operative costs associated with the Code.

(4) The Director shall deregister a principal where the principal has:

- (a) failed to pay a fee for the maintenance of registration;
- (b) failed an undertaking given under subparagraph 5(4)(b)(i) or subparagraph 5(4)(c)(i);
- (c) been convicted in this country or any other country of an offence referred to in subparagraph 5(4)(b)(ii) and has not obtained a certification under subclause (2) in relation to that offence;
- (d) a relevant influential person who has been convicted in this country or any other country of an offence referred to in subparagraph 5(4)(c)(iii) and has not obtained a certification under subclause (2) in relation to that offence; or
- (e) failed, within a reasonable time, to provide details requested by the Director under subclause 5(6).

(5) Where it appears to the Director, having made appropriate inquiry in accordance with the principles of natural justice, that a principal has committed persistent breaches or a serious breach of the Code, the Director may deregister a principal and impose conditions on that person obtaining future registration.

Administration - ACTSPIC

19. (1) ACTSPIC shall maintain a register in which it shall record details of employees.

(2) ACTSPIC may issue a certification for the purposes of paragraph 10(2)(c) if,

- (a) having considered the person's record;
- (b) having considered any material the person wishes ACTSPIC to take into account; and
- (c) having considered any material the person's employer or prospective employer wishes ACTSPIC to take into account;

ACTSPIC believes the person is unlikely to reoffend by reason of:

- (d) the efforts made by the person to reestablish a good character; and
 - (e) the efflux of time.
- (3) ACTSPIC, by notice in writing to the Director, may convene or establish a subcommittee of ACTSPIC to discharge the duties referred to in subclause (2).
- (4) ACTSPIC may charge a fee, in consultation with the Code Administration Committee, for any registration, maintenance of registration or certification performed by ACTSPIC under the Code to the extent reasonably necessary to recover its administrative and operative costs associated with the Code.
- (5) ACTSPIC shall deregister a person where the person has:
- (a) failed to pay a fee for the maintenance of registration;
 - (b) failed an undertaking given under paragraph 10(2)(b); or
 - (c) been convicted in this country or any other country of an offence referred to in paragraph 10(2)(c) and has not obtained a certification under subclause (2) in relation to that offence.
- (6) A member or former member of ACTSPIC shall not be liable for anything done or omitted to be done in good faith in or in connection with the performance or purported performance of any function carried on by him or her under this Code.
- (7) ACTSPIC may enter into an arrangement with the Director under which the Director may perform, on behalf of ACTSPIC, any of ACTSPIC's registration functions under the Code, including the maintenance of the register under subclause (1) and the registration of persons under clause 10.

Transitional arrangements

20. A principal shall:

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

Schedule

clause 5

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

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

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

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

Endorsed:

Date:

Attachment A

Notification of Participation in the ACT Security (Protection) Industry: Principals

Warning: Before making this notification, please read the notification carefully. Failure to make the notification or making a misrepresentation in the disclosure could expose you to serious criminal sanction.

To the Director of Consumer Affairs

I [please enter full name and business address of the person or company]:

of [address]:

having date of birth:

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

- guard and patrol services industry
- crowd marshals industry
- body guard industry
- cash transit industry

I have not been convicted in this country or any other country of an offence involving dishonesty, violence, drugs or weapons. OR

I have been convicted in this country or any other country of an offence involving dishonesty, violence, drugs or weapons and I will make an application for certification by the Director of Consumer Affairs for participation in the industry as a principal on the ground that I am unlikely to reoffend.

If a natural person: I have (indicate when) or will (within 1 week of this notification) undertake a fingerprint check with the Australian Federal Police to be provided to the Director of Consumer Affairs.

If a company: I have (indicate when) or will (within 1 week of this notification) undertake a criminal record check with the Australian Federal Police to be provided to the Director of Consumer Affairs.

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

I note that I am entitled to become a member of ACTSPIC .

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

This notification is a public notification.

Signed:

Dated:

Attachment B

Notification of Participation in the ACT Security (Protection) Industry: Employee

Warning: Before making this notification, please read the notification carefully. Failure to make the notification or making a misrepresentation in the disclosure could expose you to exclusion from the industry.

To the ACT Security Protection and Investigation Industry Council Incorporated (ACTSPIC)

I [please enter full name]:

of [please enter full address]:

having date of birth:

propose to participate in the Security Protection Industry as an employee in the [please mark as appropriate:]

- guard and patrol service industry
- crowd marshals industry
- body guard industry
- cash transit industry

I have not been convicted in this country or any other country of an offence involving dishonesty, violence, drugs or weapons. OR

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

I have (indicate when) or will (within 1 week of this notification) undertake a fingerprint check with the Australian Federal Police to be provided to my current employer or (if no current employer) my prospective employer or (if no current nor prospective employer) ACTSPIC.

I understand that the effect of having a fingerprint check is that, in addition to disclosing any existing convictions, if I am subsequently convicted of an offence, details of the offence shall be provided to the Director of Consumer Affairs and ACTSPIC who will provide it to my employer or to another principal in the industry.

My current employer is:

My prospective employer is:

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

- my name will be publically available; and
- my address to be made available to a registered principal or the Director of Consumer Affairs.

Signed:

Dated:

Fair Trading Act 1992

CODE OF PRACTICE

Bodyguard Industry

EXPLANATORY NOTES

PART I : PRELIMINARY

Clause 1 : Objectives

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

Clause 2 : Interpretation

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

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

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

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

Clause 3

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

Clause 4

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

PART II : PRINCIPAL'S OBLIGATIONS

Clause 5

Clause 5 sets out obligations for principals.

Registration

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

Subclause (4) regulates who is to be registered and makes registration automatic where a principal satisfies certain criteria. The subclause aims to prevent any person, who has a specified conviction, operating as a principal, unless that person has been certified by the Director. The Director has the discretion to certify persons under subclause 18(2). The convictions specified in subclauses 5(4)(b)(ii), 5(4)(c)(iii) and, in the case of employees, subclause 10(2)(c) are intended to be convictions for which, at the time of conviction, a custodial sentence was prescribed under the law creating the offence, whether or not the person applying for certification was actually given a custodial sentence. The registration criteria amount to continuing requirements as deregistration, dealt with in clause 18, may occur where a principal subsequently fails to satisfy a registration requirement.

Other Obligations

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

Clause 6

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

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

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

Clause 7

Paragraph (a) is intended to ensure that those who provide bodyguard services do not abuse their position. Public safety is a particular concern, because those providing the services self-assess when physical force or other action is appropriate. In the co-regulatory scheme created by the Code, it is anticipated that industry will determine appropriate ethical standards.

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

Clause 8

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

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

PART III : STANDARDS

Clause 9

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

PART IV : STAFF

Clause 10

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

Registration

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

Capability

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

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

The Continuing Nature of the Requirements

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

A Principal who Personally Provides a Service.

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

PART V : ADMINISTRATION

Clause 11

As the bodyguard industry in the ACT is relatively small, it is considered that the establishment of a separate Code Administration Committee for the bodyguard industry is not warranted. Instead, this clause is intended to place the Code Administration Committee established under the Guard and Patrol Services Industry Code of Practice into the position of Code Administration Committee for the Code.

Clause 12

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

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

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

Clause 13

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

The panel of persons eligible for appointment to the Complaints Resolution Committee is intended to include at least two persons for each of the positions on the Committee. The Code Administration Committee may determine a standing member

for each position. The Director shall appoint the panel member specified as the standing member unless that member is unavailable or disqualified. If the panel is convened by the Director and a member becomes unavailable or disqualified, the Director has the power to appoint an alternate person under subclause 13(9).

Clause 14

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

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

Clause 15

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

Clause 16

Clause 16 requires the Code Administration Committee to submit a report to the Minister on the operation of the Code. This clause should be read as authorising the free flow of all information that subclause (3) specifies to the Code Administration Committee, whoever holds that information.

Clause 17

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

Clause 18

Certification

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

Charging Fees

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

Deregistration

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

Clause 19

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

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

Clause 20

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

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

SCHEDULE

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

***Attachment to Explanatory Memorandum
to Fair Trading Regulations***

Fair Trading Act 1992

**Cash Transit Industry
CODE OF PRACTICE**

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Code of Practice Fair Trading Act

Cash Transit Industry

PART I: PRELIMINARY

Objectives

1. The objectives of this code of practice are:

- (a) to ensure appropriate standards of trading are maintained by those who provide cash transit services;
- (b) to promote consumer and community confidence in those who provide cash transit services;
- (c) to ensure that those who provide cash transit services and their employees provide services in a safe, ethical and professional manner;
- (d) to support and promote those who provide cash transit services; and
- (e) to establish adequate procedures to resolve complaints.

Interpretation

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

ACTSPIC: ACT Security Protection Industry and Investigation Council Incorporated;

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

Cash Transit service: any service whereby a person regularly transports cash, precious stones or similar, by hardskinned or softskinned motor vehicle and includes:

- (a) an escort service whereby such property is safeguarded in the course of such transportation; and
- (b) the provision of management, secretarial or administrative support in respect of such a service.

Cash Transit Industry: a service industry encompassing principals within the meaning of this code.

Code: this Code of Practice;

Consumer: a person who is provided with a cash transit service or who is making enquires about a cash transit service;

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

Employ: includes any engagement whether or not for remuneration;

Employee: includes any person engaged by a principal to provide a cash transit service, whether or not for remuneration;

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

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

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

Principal: A person, wherever located, who:

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

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

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

Application of Code

3. This Code applies to a Principal.

Exemptions from Code

4. (1) A principal may apply to the Minister for an exemption from the application of all or any of the provisions of this Code.

(2) An application to the Minister under subclause (1) shall be in writing setting out the grounds on which the principal seeks the exemption.

(3) Where the Minister receives an application in accordance with subclause (1), the Minister shall seek advice from the Code Administration Committee.

- (4) The Minister may:
- (a) after considering advice from the Code Administration Committee; and
 - (b) if satisfied that there will be no substantial detriment caused to consumers;
- grant to a principal:
- (c) an unconditional exemption; or
 - (d) an exemption subject to conditions.
- (5) The Minister may, at any time, revoke an exemption.
- (6) If the Minister revokes an exemption, he or she shall give notice, in writing, to the principal.

PART II: PRINCIPAL'S OBLIGATIONS

Principal's obligations

5. (1) A principal shall not participate in the cash transit industry unless registered by the Director.
- (2) A principal shall ensure, in respect to the provision of a cash transit service, compliance with the obligations listed in the Schedule.
- (3) A principal is responsible for the good conduct of his or her employees in the course their employment.
- (4) For the purpose of subclause (1), the Director shall register a principal who:
- (a) has provided to the Director a notification in the form of Attachment "A";
 - (b) in the case of a natural person;
 - (i) has either previously had or has undertaken to have within a week of the notification above, a fingerprint check with the Australian Federal Police to be provided to the Director;
 - (ii) if convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, has been certified by the Director for employment in the industry on the ground that the principal is unlikely to reoffend; and
 - (iii) is at least 18 years of age;
 - (c) in the case of a body corporate,
 - (i) has either previously had or has undertaken to have within a week of the notification above, a criminal record check across Australian jurisdictions performed by the Australian Federal Police to be provided to the Director;
 - (ii) has provided to the Director such details of all relevant influential persons of the body corporate as requested by the Director; and

- (iii) if it has a relevant influential person who has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, that person has been certified by the Director for employment in the industry on the ground that the person is unlikely to reoffend; and
 - (d) has paid the registration fee, if any.
- (5) For the purpose of subparagraph (4)(c)(ii) and subclause (6), the Director may require a fingerprint check of any relevant influential person or request such details as he or she considers relevant.
- (6) The Director may, at any time, request a principal which is a body corporate to provide details of any relevant influential person.

Agreement for a cash transit service

6. (1) When a principal makes a written offer for the supply of a service, the principal shall provide to the prospective customer:
- (a) a copy of the Schedule to this Code endorsed by the principal, unless done so previously; and
 - (b) material that discloses information from which the price or value of the services being offered may be determined.
- (2) Subject to subclause (3), when a principal makes an oral offer for the supply of a service, the principal shall, unless that principal has done so previously, provide to the prospective customer a copy of the Schedule to this Code endorsed by the principal as soon as possible after the offer is made.
- (3) Subclause (2) has no application if the value of the services to be supplied is less than the amount set by the Minister, if any.

Service quality

7. A principal shall ensure that employees:
- (a) in providing a service, act in a safe, ethical and professional manner; and
 - (b) in attempting to sell a service, do not use unreasonable sales methods.

Confidentiality of personal information

8. (1) Subject to this clause, a principal shall not disclose, or cause to be disclosed, to any person information acquired by him or her from or for a consumer unless:
- (a) authorised by the consumer;
 - (b) required or permitted by law; or
 - (c) required by ACTSPIC, the Director, a Code Administration Committee or a Complaints Resolution Committee under the Code in respect of a complaint.

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

PART III: STANDARDS

Standard of Equipment

9. (1) A principal shall only supply equipment that:
- (a) conforms to safety standards established by the Australian Standards Association;
 - (b) is mechanically sound; and
 - (c) where so required under a contract, is serviced adequately, efficiently and regularly to ensure continued user safety.
- (2) A principal shall ensure that equipment used by an employee:
- (a) conforms to safety standards established by the Australian Standards Association;
 - (b) is mechanically sound; and
 - (c) where so required under a contract, is serviced adequately, efficiently and regularly to ensure continued user safety.

PART IV: STAFF

Staff

10. (1) A principal shall not employ or continue to employ a person to provide a cash transit service unless that person is:
- (a) registered by ACTSPIC; and
 - (b) capable of providing the particular cash transit service that he or she is to provide.
- (2) ACTSPIC shall, for the purpose of subclause (1), only register a person:
- (a) who has provided to ACTSPIC a notification in the form of Attachment "B";
 - (b) if a natural person, who has either previously had or has undertaken to have within a week of the notification above, a fingerprint check with the Australian Federal Police to be provided to ACTSPIC;
 - (c) if that person has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, who has been certified by ACTSPIC for employment in the industry on the ground that the person is unlikely to reoffend;
 - (d) who is at least 18 years; and
 - (e) who has paid the registration fee, if any.

(3) A principal shall not represent to a consumer that a person who is to provide a cash transit service is capable of providing the service if the person is not capable.

(4) For the purpose of this clause, if training under competency based industry standards has been approved in accordance with Commonwealth or Territory law, a person is deemed to be capable of providing a cash transit service if that person:

- (a) has successfully undertaken that training and provides the service at a level appropriate to that training; or
- (b) is licensed to provide the cash transit service under the law of another jurisdiction and provides the service at a level appropriate to that registration.

(5) A person who is gaining experience to provide a cash transit service shall be supervised by a person who is capable of providing the service at the appropriate level.

(6) Where a person cannot offer themselves for employment without the approval of a third person, the principal shall sight that approval and keep a copy of the approval.

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

Part V: ADMINISTRATION

Code Administration Committee

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

(2) The Code Administration Committee shall consist of:

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

(3) The person in paragraph (2)(c) shall be elected at an open meeting of principals in the cash transit industry. The person in paragraph (2)(d) shall be appointed by the Director. The person in paragraph (2)(e) shall be elected at an open meeting of employees in the cash transit industry convened by the Director.

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

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

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

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

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

(9) The Code Administration Committee shall:

- (a) monitor compliance with the Code;
- (b) report to the Minister on the effectiveness of the Code;
- (c) monitor the operation and administration of the complaints handling procedures and the Complaints Resolution Committee;
- (d) develop policy and procedures to promote the Code within the industry and its recognition by consumers; and
- (e) conduct periodic reviews of the effectiveness of the Code and consider recommendations for amendments to the Code.

(10) A member, or former member, of a Code Administration Committee shall not disclose any confidential or sensitive information acquired by him or her as a consequence of his or her position.

(11) A member, or former member, of a Code Administration Committee shall not be liable for anything done or omitted to be done in good faith in or in connection with the exercise or purported exercise of any duties conferred on him or her under this Code.

(12) The appointment of a member of the Code Administration Committee is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment of the member.

Complaint resolution procedure

12. (1) A principal shall make every reasonable effort to resolve quickly and fairly any complaint made in relation to the provision of services offered under an agreement with that principal, whether or not the complainant is a party to that agreement.

(2) Where:

- (a) a complaint cannot be resolved between a principal and a consumer or other member of the public; or
- (b) a complaint is made by a principal against another principal,

the complainant may request, by writing to the Director, that the complaint be dealt with by the Complaints Resolution Committee.

(3) Where the Director receives a request under subclause (2), he or she shall, as soon as practicable, appoint a Complaints Resolution Committee and refer the complaint to it for determination.

(4) Where a complaint is referred to a Complaints Resolution Committee, the Committee shall, within 7 working days of the referral, hear the complaint.

(5) Where a Complaints Resolution Committee reaches a majority decision on a complaint the Committee shall, within 7 working days:

- (a) notify the parties to the complaint, of the decision in writing; and

- (b) provide a report to the Code Administration Committee specifying the decision and the reasons for that decision.

Complaints Resolution Committee

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

Sanctions

14. Where a Complaints Resolution Committee determines that a principal has breached the Code, the Committee shall notify the Director and may do one or more of the following:

- (a) require the principal to remove or change any offending material;
- (b) require the principal to publish a corrective statement in a manner and with wording approved by the Committee;
- (c) require the principal to have future advertising and promotional material monitored by the Director;
- (d) require the principal to refund to a consumer an amount determined by the Committee; or
- (e) make such recommendation to the Director as it considers appropriate.

Compliance

15. If a principal refuses to:

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

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

Administrative report

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

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

(3) The report shall include details of:

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

Review and evaluation of Code

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

Administration - Director

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

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

- (a) having considered the person's record;
- (b) having considered any material the person wishes the Director to take into account; and

the Director believes the person is unlikely to reoffend by reason of:

- (c) the efforts made by the person to reestablish a good character; and
- (d) the efflux of time.

(3) The Director may, in consultation with the Code Administration Committee, charge a fee for any registration, maintenance of registration or certification under the Code to the extent reasonably necessary to recover his or her administrative and operative costs associated with the Code.

(4) The Director shall deregister a principal where the principal has:

- (a) failed to pay a fee for the maintenance of registration;
- (b) failed an undertaking given under subparagraph 5(4)(b)(i) or subparagraph 5(4)(c)(i);
- (c) been convicted in this country or any other country of an offence referred to in subparagraph 5(4)(b)(ii) and has not obtained a certification under subclause (2) in relation to that offence;
- (d) a relevant influential person who has been convicted in this country or any other country of an offence referred to in subparagraph 5(4)(c)(iii) and has not obtained a certification under subclause (2) in relation to that offence; or
- (e) failed, within a reasonable time, to provide details requested by the Director under subclause 5(6).

(5) Where it appears to the Director, having made appropriate inquiry in accordance with the principles of natural justice, that a principal has committed persistent breaches or a serious breach of the Code, the Director may deregister a principal and impose conditions on that person obtaining future registration.

Administration - ACTSPIC

19. (1) ACTSPIC shall maintain a register in which it shall record details of employees.

(2) ACTSPIC may issue a certification for the purposes of paragraph 10(2)(c) if,

- (a) having considered the person's record;
- (b) having considered any material the person wishes ACTSPIC to take into account; and
- (c) having considered any material the person's employer or prospective employer wishes ACTSPIC to take into account;

ACTSPIC believes the person is unlikely to reoffend by reason of:

- (d) the efforts made by the person to reestablish a good character;
and
 - (e) the efflux of time.
- (3) ACTSPIC, by notice in writing to the Director, may convene or establish a subcommittee of ACTSPIC to discharge the duties referred to in subclause (2).
- (4) ACTSPIC may charge a fee, in consultation with the Code Administration Committee, for any registration, maintenance of registration or certification performed by ACTSPIC under the Code to the extent reasonably necessary to recover its administrative and operative costs associated with the Code.
- (5) ACTSPIC shall deregister a person where the person has:
- (a) failed to pay a fee for the maintenance of registration;
 - (b) failed an undertaking given under paragraph 10(2)(b); or
 - (c) been convicted in this country or any other country of an offence referred to in paragraph 10(2)(c) and has not obtained a certification under subclause (2) in relation to that offence.
- (6) A member or former member of ACTSPIC shall not be liable for anything done or omitted to be done in good faith in or in connection with the performance or purported performance of any function carried on by him or her under this Code.
- (7) ACTSPIC may enter into an arrangement with the Director under which the Director may perform, on behalf of ACTSPIC, any of ACTSPIC's registration functions under the Code, including the maintenance of the register under subclause (1) and the registration of persons under clause 10.

Transitional arrangements

20. A principal shall:

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

Schedule

clause 5

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

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

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

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

Endorsed:

Date:

Attachment A

Notification of Participation in the ACT Security (Protection) Industry: Principals

Warning: Before making this notification, please read the notification carefully. Failure to make the notification or making a misrepresentation in the disclosure could expose you to serious criminal sanction.

To the Director of Consumer Affairs

I [please enter full name and business address of the person or company]:

of [address]:

having date of birth:

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

- guard and patrol services industry
- crowd marshals industry
- body guard industry
- cash transit industry

I have not been convicted in this country or any other country of an offence involving dishonesty, violence, drugs or weapons. OR

I have been convicted in this country or any other country of an offence involving dishonesty, violence, drugs or weapons and I will make an application for certification by the Director of Consumer Affairs for participation in the industry as a principal on the ground that I am unlikely to reoffend.

If a natural person: I have (indicate when) or will (within 1 week of this notification) undertake a fingerprint check with the Australian Federal Police to be provided to the Director of Consumer Affairs.

If a company: I have (indicate when) or will (within 1 week of this notification) undertake a criminal record check with the Australian Federal Police to be provided to the Director of Consumer Affairs.

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

I note that I am entitled to become a member of ACTSPIC .

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

This notification is a public notification.

Signed:

Dated:

Attachment B

Notification of Participation in the ACT Security (Protection) Industry: Employee

Warning: Before making this notification, please read the notification carefully. Failure to make the notification or making a misrepresentation in the disclosure could expose you to exclusion from the industry.

To the ACT Security Protection and Investigation Industry Council Incorporated (ACTSPIC)

I [please enter full name]:

of [please enter full address]:

having date of birth:

propose to participate in the Security Protection Industry as an employee in the [please mark as appropriate:]

- guard and patrol service industry
- crowd marshals industry
- body guard industry
- cash transit industry

I have not been convicted in this country or any other country of an offence involving dishonesty, violence, drugs or weapons. OR

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

I have (indicate when) or will (within 1 week of this notification) undertake a fingerprint check with the Australian Federal Police to be provided to my current employer or (if no current employer) my prospective employer or (if no current nor prospective employer) ACTSPIC.

I understand that the effect of having a fingerprint check is that, in addition to disclosing any existing convictions, if I am subsequently convicted of an offence, details of the offence shall be provided to the Director of Consumer Affairs and ACTSPIC who will provide it to my employer or to another principal in the industry.

My current employer is:

My prospective employer is:

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

- my name will be publically available; and
- my address to be made available to a registered principal or the Director of Consumer Affairs.

Signed:

Dated:

Fair Trading Act 1992

CODE OF PRACTICE

Cash Transit Industry

EXPLANATORY NOTES

PART I : PRELIMINARY

Clause 1 : Objectives

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

Clause 2 : Interpretation

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

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

The definition of “**cash transit service**” is designed to cover guard services which involve the transportation of certain valuables.

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

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

Clause 3

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

Clause 4

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

PART II : PRINCIPAL'S OBLIGATIONS

Clause 5

Clause 5 sets out obligations for principals.

Registration

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

Subclause (4) regulates who is to be registered and makes registration automatic where a principal satisfies certain criteria. The subclause aims to prevent any person, who has a specified conviction, operating as a principal, unless that person has been certified by the Director. The Director has the discretion to certify persons under subclause 18(2). The convictions specified in subparagraphs 5(4)(b)(ii), 5(4)(c)(iii) and, in the case of employees, paragraph 10(2)(c) are intended to be convictions for which, at the time of conviction, a custodial sentence was prescribed under the law creating the offence, whether or not the person applying for certification was actually given a custodial sentence. The registration criteria amount to continuing requirements as deregistration, dealt with in clause 18, may occur where a principal subsequently fails to satisfy a registration requirement.

Other Obligations

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

Clause 6

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

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

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

Clause 7

Paragraph (a) is intended to ensure that those who provide cash transit services do not abuse their position. Public safety is a particular concern, because those providing the services self-assess when physical force or other action is appropriate. In the co-regulatory scheme created by the Code; it is anticipated that industry will determine appropriate ethical standards.

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

Clause 8

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

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

PART III : STANDARDS

Clause 9

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

PART IV :STAFF

Clause 10

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

Registration

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

Capability

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

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

The Continuing Nature of the Requirements

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

A Principal who Personally Provides a Service.

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

PART V : ADMINISTRATION

Clause 11

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

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

Clause 12

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

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

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

Clause 13

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

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

Clause 14

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

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

Clause 15

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

Clause 16

Clause 16 requires the Code Administration Committee to submit a report to the Minister on the operation of the Code. This clause should be read as authorising the free flow of all information that subclause (3) specifies to the Code Administration Committee, whoever holds that information.

Clause 17

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

Clause 18

Certification

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

Charging Fees

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

Deregistration

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

Clause 19

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

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

Clause 20

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

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

SCHEDULE

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

***Attachment to Explanatory Memorandum
to Fair Trading Regulations***

Fair Trading Act 1992

**Guard and Patrol Services Industry
CODE OF PRACTICE**

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Code of Practice Fair Trading Act

Guard and Patrol Service Industry

PART I: PRELIMINARY

Objectives

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

Interpretation

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

ACTSPIC: ACT Security Protection Industry and Investigation Council Incorporated;

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

Code: this Code of Practice;

Consumer: a person who is provided with a guard and patrol service or who is making enquires about a guard and patrol service;

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

Employ: includes any engagement whether or not for remuneration;

Employee: includes any person engaged by a principal to provide a guard and patrol service, whether or not for remuneration;

Guard and patrol service: any service, other than a cash transit service within the meaning of the Cash Transit Industry Code of Practice, whereby a person:

- (a) monitors and safeguards property, employees or customers for and on behalf of the occupier of land or a person responsible for an event conducted in a public place; or
- (b) provides an escort service whereby property is safeguarded, and includes the provision of management, secretarial or administrative support in respect of such a service;

Guard and patrol service industry: a service industry encompassing principals within the meaning of this code;

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

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

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

Principal: A person, wherever located, who:

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

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

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

Application of Code

3. This Code applies to a Principal.

Exemptions from Code

4. (1) A principal may apply to the Minister for an exemption from the application of all or any of the provisions of this Code.

(2) An application to the Minister under subclause (1) shall be in writing setting out the grounds on which the principal seeks the exemption.

(3) Where the Minister receives an application in accordance with subclause (1), the Minister shall seek advice from the Code Administration Committee.

(4) The Minister may:

(a) after considering advice from the Code Administration Committee; and

(b) if satisfied that there will be no substantial detriment caused to consumers;

grant to a principal:

(c) an unconditional exemption; or

(d) an exemption subject to conditions.

(5) The Minister may, at any time, revoke an exemption.

(6) If the Minister revokes an exemption, he or she shall give notice, in writing, to the principal.

PART II: PRINCIPAL'S OBLIGATIONS

Principal's obligations

5. (1) A principal shall not participate in the guard and patrol service industry unless registered by the Director.

(2) A principal shall ensure, in respect to the provision of a guard and patrol service, compliance with the obligations listed in the Schedule.

(3) A principal is responsible for the good conduct of his or her employees in the course their employment.

(4) For the purpose of suclause (1), the Director shall register a principal who:

(a) has provided to the Director a notification in the form of Attachment "A";

(b) in the case of a natural person;

(i) has either previously had or has undertaken to have within a week of the notification above, a fingerprint check with the Australian Federal Police to be provided to the Director;

(ii) if convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, has been certified by the Director for employment in the industry on the ground that the principal is unlikely to reoffend; and

(iii) is at least 18 years of age;

(c) in the case of a body corporate,

(i) has either previously had or has undertaken to have within a week of the notification above, a criminal record check across Australian jurisdictions performed by the Australian Federal Police to be provided to the Director;

- (ii) has provided to the Director such details of all relevant influential persons of the body corporate as requested by the Director; and
 - (iii) if it has a relevant influential person who has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, that person has been certified by the Director for employment in the industry on the ground that the person is unlikely to reoffend; and
 - (d) has paid the registration fee, if any.
- (5) For the purpose of subparagraph (4)(c)(ii) and subclause (6), the Director may require a fingerprint check of any relevant influential person or request such details as he or she considers relevant.
- (6) The Director may, at any time, request a principal which is a body corporate to provide details of any relevant influential person.

Agreement for a guard and patrol service

6. (1) When a principal makes a written offer for the supply of a service, the principal shall provide to the prospective customer:
- (a) a copy of the Schedule to this Code endorsed by the principal, unless done so previously; and
 - (b) material that discloses information from which the price or value of the services being offered may be determined.
- (2) Subject to subclause (3), when a principal makes an oral offer for the supply of a service, the principal shall, unless that principal has done so previously, provide to the prospective customer a copy of the Schedule to this Code endorsed by the principal as soon as possible after the offer is made.
- (3) Subclause (2) has no application if the value of the services to be supplied is less than the amount set by the Minister, if any.

Service quality

7. A principal shall ensure that employees:
- (a) in providing a service, act in a safe, ethical and professional manner; and
 - (b) in attempting to sell a service, do not use unreasonable sales methods.

Confidentiality of personal information

8. (1) Subject to this clause, a principal shall not disclose, or cause to be disclosed, to any person information acquired by him or her from or for a consumer unless:
- (a) authorised by the consumer;
 - (b) required or permitted by law; or

- (c) required by ACTSPIC, the Director, a Code Administration Committee or a Complaints Resolution Committee under the Code in respect of a complaint.
- (2) Any principal or employee may divulge to a police officer or the Director any information that he or she may acquire as to any offence whether or not a lawful request has been made for such information.

PART III: STANDARDS

Standard of Equipment

9. (1) A principal shall only supply equipment that:
- (a) conforms to safety standards established by the Australian Standards Association;
 - (b) is mechanically sound; and
 - (c) where so required under a contract, is serviced adequately, efficiently and regularly to ensure continued user safety.
- (2) A principal shall ensure that equipment used by an employee:
- (a) conforms to safety standards established by the Australian Standards Association;
 - (b) is mechanically sound; and
 - (c) where so required under a contract, is serviced adequately, efficiently and regularly to ensure continued user safety.

PART IV: STAFF

Staff

10. (1) A principal shall not employ or continue to employ a person to provide a guard and patrol service unless that person is:
- (a) registered by ACTSPIC; and
 - (b) capable of providing the particular guard and patrol service that he or she is to provide.
- (2) ACTSPIC shall, for the purpose of subclause (1), only register a person:
- (a) who has provided to ACTSPIC a notification in the form of Attachment "B";
 - (b) if a natural person, who has either previously had or has undertaken to have within a week of the notification above, a fingerprint check with the Australian Federal Police to be provided to ACTSPIC;
 - (c) if that person has been convicted in this country or any other country of an offence for which imprisonment has been prescribed involving dishonesty, violence, drugs or weapons, who has been certified by ACTSPIC for employment in the industry on the ground that the person is unlikely to reoffend;

- (d) who is at least 18 years; and
 - (e) who has paid the registration fee, if any.
- (3) A principal shall not represent to a consumer that a person who is to provide a guard and patrol service is capable of providing the service if the person is not capable.
- (4) For the purpose of this clause, if training under competency based industry standards has been approved in accordance with Commonwealth or Territory law, a person is deemed to be capable of providing a guard and patrol service if that person:
- (a) has successfully undertaken that training and provides the service at a level appropriate to that training; or
 - (b) is licensed to provide the guard and patrol service under the law of another jurisdiction and provides the service at a level appropriate to that registration.
- (5) A person who is gaining experience to provide a guard and patrol service shall be supervised by a person who is capable of providing the service at the appropriate level.
- (6) Where a person cannot offer themselves for employment without the approval of a third person, the principal shall sight that approval and keep a copy of the approval.
- (7) Where a principal, or a relevant influential person, personally provides a guard and patrol service, he or she must be capable of providing the particular guard and patrol service that he or she is providing.

Part V: ADMINISTRATION

Code Administration Committee

11. (1) The Code shall be administered by the Code Administration Committee.
- (2) The Code Administration Committee shall consist of:
- (a) the Director;
 - (b) a representative of ACTSPIC;
 - (c) a representative of principals;
 - (d) a representative of a peak consumer organisation; and
 - (e) an employee representative.
- (3) The person in paragraph (2)(c) shall be elected at an open meeting of principals in the guard and patrol service industry. The person in paragraph (2)(d) shall be appointed by the Director. The person in paragraph (2)(e) shall be elected at an open meeting of employees in the guard and patrol industry convened by the Director.
- (4) The Chairperson of the Code Administration Committee shall be the Director.
- (5) The Consumer Affairs Bureau shall provide secretariat services to the Code Administration Committee.

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

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

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

(9) The Code Administration Committee shall:

- (a) monitor compliance with the Code;
- (b) report to the Minister on the effectiveness of the Code;
- (c) monitor the operation and administration of the complaints handling procedures and the Complaints Resolution Committee;
- (d) develop policy and procedures to promote the Code within the industry and its recognition by consumers; and
- (e) conduct periodic reviews of the effectiveness of the Code and consider recommendations for amendments to the Code.

(10) A member, or former member, of a Code Administration Committee shall not disclose any confidential or sensitive information acquired by him or her as a consequence of his or her position.

(11) A member, or former member, of a Code Administration Committee shall not be liable for anything done or omitted to be done in good faith in or in connection with the exercise or purported exercise of any duties conferred on him or her under this Code.

(12) The appointment of a member of the Code Administration Committee is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment of the member.

Complaint resolution procedure

12. (1) A principal shall make every reasonable effort to resolve quickly and fairly any complaint made in relation to the provision of services offered under an agreement with that principal, whether or not the complainant is a party to that agreement.

(2) Where:

- (a) a complaint cannot be resolved between a principal and a consumer or other member of the public; or
 - (b) a complaint is made by a principal against another principal,
- the complainant may request, by writing to the Director, that the complaint be dealt with by the Complaints Resolution Committee.

(3) Where the Director receives a request under subclause (2), he or she shall, as soon as practicable, appoint a Complaints Resolution Committee and refer the complaint to it for determination.

(4) Where a complaint is referred to a Complaints Resolution Committee, the Committee shall, within 7 working days of the referral, hear the complaint.

- (5) Where a Complaints Resolution Committee reaches a majority decision on a complaint the Committee shall, within 7 working days:
- (a) notify the parties to the complaint, of the decision in writing; and
 - (b) provide a report to the Code Administration Committee specifying the decision and the reasons for that decision.

Complaints Resolution Committee

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

of a defect or irregularity in, or in connection with, the appointment of the member.

Sanctions

14. Where a Complaints Resolution Committee determines that a principal has breached the Code, the Committee shall notify the Director and may do one or more of the following:

- (a) require the principal to remove or change any offending material;
- (b) require the principal to publish a corrective statement in a manner and with wording approved by the Committee;
- (c) require the principal to have future advertising and promotional material monitored by the Director;
- (d) require the principal to refund to a consumer an amount determined by the Committee; or
- (e) make such recommendation to the Director as the Committee considers appropriate.

Compliance

15. If a principal refuses to:

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

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

Administrative report

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

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

(3) The report shall include details of:

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

Review and evaluation of Code

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

Administration - Director

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

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

- (a) having considered the person's record;
- (b) having considered any material the person wishes the Director to take into account; and

the Director believes the person is unlikely to reoffend by reason of:

- (c) the efforts made by the person to reestablish a good character; and
- (d) the efflux of time.

(3) The Director may, in consultation with the Code Administration Committee, charge a fee for any registration, maintenance of registration or certification under the Code to the extent reasonably necessary to recover his or her administrative and operative costs associated with the Code.

(4) The Director shall deregister a principal where the principal has:

- (a) failed to pay a fee for the maintenance of registration;
- (b) failed an undertaking given under subparagraph 5(4)(b)(i) or subparagraph 5(4)(c)(i);
- (c) been convicted in this country or any other country of an offence referred to in subparagraph 5(4)(b)(ii) and has not obtained a certification under subclause (2) in relation to that offence;
- (d) a relevant influential person who has been convicted in this country or any other country of an offence referred to in subparagraph 5(4)(c)(iii) and has not obtained a certification under subclause (2) in relation to that offence; or
- (e) failed, within a reasonable time, to provide details requested by the Director under subclause 5(6).

(5) Where it appears to the Director, having made appropriate inquiry in accordance with the principles of natural justice, that a principal has committed persistent breaches or a serious breach of the Code, the Director may deregister a principal and impose conditions on that person obtaining future registration.

Administration - ACTSPIC

19. (1) ACTSPIC shall maintain a register in which it shall record details of employees.

(2) ACTSPIC may issue a certification for the purposes of paragraph 10(2)(c) if,

- (a) having considered the person's record;
- (b) having considered any material the person wishes ACTSPIC to take into account; and
- (c) having considered any material the person's employer or prospective employer wishes ACTSPIC to take into account;

ACTSPIC believes the person is unlikely to reoffend by reason of:

- (d) the efforts made by the person to reestablish a good character; and
- (e) the efflux of time.

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

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

(5) ACTSPIC shall deregister a person where the person has:

- (a) failed to pay a fee for the maintenance of registration;
- (b) failed an undertaking given under paragraph 10(2)(b); or
- (c) been convicted in this country or any other country of an offence referred to in paragraph 10(2)(c) and has not obtained a certification under subclause (2) in relation to that offence.

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

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

Transitional arrangements

20. A principal shall:

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

Schedule

clause 5

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

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

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

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

Endorsed:

Date:

Attachment A

Notification of Participation in the ACT Security (Protection) Industry: Principals

Warning: Before making this notification, please read the notification carefully. Failure to make the notification or making a misrepresentation in the disclosure could expose you to serious criminal sanction.

To the Director of Consumer Affairs

I [please enter full name and business address of the person or company]:

of [address]:

having date of birth:

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

- guard and patrol services industry
- crowd marshals industry
- body guard industry
- cash transit industry

I have not been convicted in this country or any other country of an offence involving dishonesty, violence, drugs or weapons. OR

I have been convicted in this country or any other country of an offence involving dishonesty, violence, drugs or weapons and I will make an application for certification by the Director of Consumer Affairs for participation in the industry as a principal on the ground that I am unlikely to reoffend.

If a natural person: I have (indicate when) or will (within 1 week of this notification) undertake a fingerprint check with the Australian Federal Police to be provided to the Director of Consumer Affairs.

If a company: I have (indicate when) or will (within 1 week of this notification) undertake a criminal record check with the Australian Federal Police to be provided to the Director of Consumer Affairs.

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

I note that I am entitled to become a member of ACTSPIC .

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

This notification is a public notification.

Signed:

Dated:

Attachment B

Notification of Participation in the ACT Security (Protection) Industry: Employee

Warning: Before making this notification, please read the notification carefully. Failure to make the notification or making a misrepresentation in the disclosure could expose you to exclusion from the industry.

To the ACT Security Protection and Investigation Industry Council Incorporated
(ACTSPIC)

I [please enter full name]:

of [please enter full address]:

having date of birth:

propose to participate in the Security Protection Industry as an employee in the
[please mark as appropriate:]

- guard and patrol service industry
- crowd marshals industry
- body guard industry
- cash transit industry

I have not been convicted in this country or any other country of an offence involving dishonesty, violence, drugs or weapons. OR

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

I have (indicate when) or will (within 1 week of this notification) undertake a fingerprint check with the Australian Federal Police to be provided to my current employer or (if no current employer) my prospective employer or (if no current nor prospective employer) ACTSPIC.

I understand that the effect of having a fingerprint check is that, in addition to disclosing any existing convictions, if I am subsequently convicted of an offence, details of the offence shall be provided to the Director of Consumer Affairs and ACTSPIC who will provide it to my employer or to another principal in the industry.

My current employer is:

My prospective employer is:

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

- my name will be publically available; and
- my address to be made available to a registered principal or the Director of Consumer Affairs.

Signed:

Dated:

Fair Trading Act 1992

CODE OF PRACTICE

Guard and Patrol Services Industry

EXPLANATORY NOTES

PART I : PRELIMINARY

Clause 1 : Objectives

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

Clause 2 : Interpretation

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

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

The definition of "guard and patrol service" specifically excludes a service that falls within the Cash Transit Industry Code of Practice. The escort service in subclause (b) is intended to cover persons who escort property whether that property is in their possession or in the possession of another. The reference to "property" in this definition is intended to be interpreted broadly and includes, for example, cash.

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

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

Clause 3

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

Clause 4

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

PART II : PRINCIPAL'S OBLIGATIONS

Clause 5

Clause 5 sets out obligations for principals.

Registration

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

Subclause (4) regulates who is to be registered and makes registration automatic where a principal satisfies certain criteria. The subclause aims to prevent any person, who has a specified conviction, operating as a principal, unless that person has been certified by the Director. The Director has the discretion to certify persons under subclause 18(2). The convictions specified in subparagraphs 5(4)(b)(ii), 5(4)(c)(iii) and, in the case of employees, paragraph 10(2)(c) are intended to be convictions for which, at the time of conviction, a custodial sentence was prescribed under the law creating the offence, whether or not the person applying for certification was actually given a custodial sentence. The registration criteria amount to continuing requirements as deregistration, dealt with in clause 18, may occur where a principal subsequently fails to satisfy a registration requirement.

Other Obligations

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

Clause 6

Clause 6 aims to ensure that consumers of guard and patrol services are aware of the obligations that the Code places on Principals.

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

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

Clause 7

Paragraph (a) is intended to ensure that those who provide guard and patrol services do not abuse their position. Public safety is a particular concern, because those providing the services self-assess when physical force or other action is appropriate. In the co-regulatory scheme created by the Code, it is anticipated that industry will determine appropriate ethical standards.

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

Clause 8

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

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

PART III : STANDARDS

Clause 9

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

PART IV : STAFF

Clause 10

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

Registration

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

Capability

The onus is on the principal to ensure that those he or she engages are capable of providing a service. It is expected that the principal will make such assessments

based on any guidelines developed by ACTSPIC and having regard to the provisions of subclause (4).

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

The Continuing Nature of the Requirements

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

A Principal who Personally Provides a Service.

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

PART V : ADMINISTRATION

Clause 11

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

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

Clause 12

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

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

The next stage in the process is for the Director to send appropriate complaints on to the Complaint Resolution Committee that he or she appoints under subclause 12(3).

It is envisaged that the Complaints Resolution Committee shall reach a majority decision under subclause 12(5) but should that not occur in practice, the process is repeated by the Director referring the complaint to a new Complaints Resolution Committee appointed under subclause 12(3).

Clause 13

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

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

Clause 14

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

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

Clause 15

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

Clause 16

Clause 16 requires the Code Administration Committee to submit a report to the Minister on the operation of the Code. This clause should be read as authorising the free flow of all information that subclause (3) specifies to the Code Administration Committee, whoever holds that information.

Clause 17

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

Clause 18

Certification

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

Charging Fees

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

Deregistration

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

Clause 19

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

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

Clause 20

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

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

SCHEDULE

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