

2011

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

SECURITY INDUSTRY AMENDMENT BILL 2011

REVISED

EXPLANATORY STATEMENT

**Circulated by authority of the
Attorney-General
Mr Simon Corbell MLA**

Security Industry Amendment Bill 2011

Overview of bill

The Security Amendment Bill amends the *Security Industry Act 2003* (the Act) to implement the remaining requirements of phase 1 of the COAG agreed private security industry reforms. These reforms seek to improve the probity, competence and skills of security personnel and the mobility of security industry licences across jurisdictions.

The reforms included in this bill relate to:

- use of criminal intelligence in licensing decisions;
- mandatory fingerprinting;
- the ability of the regulator to consider whether an applicant has an unverifiable background (for example, where they have lived overseas for a period of time and are unable to establish their probity during that period);
- offences that exclude a person from holding a licence; and
- suspension and cancellation powers for the Commissioner for Fair Trading.

Human Rights Issues

This bill may engage the following rights under the Human Rights Act:

1. Section 8 - the right to recognition and equality before the law without discrimination of any kind;
2. Section 12 – the right to privacy and reputation;
3. Section 21 – the right to fair trial.

Each of these limitations is addressed below.

Section 8 - Right to recognition and equality before the law, without any discrimination of any kind

Section 8 of the Human Rights Act provides:

- (1) *Everyone has the right to recognition as a person before the law.*
- (2) *Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.*
- (3) *Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.*

Under s7 of the *Discrimination Act 1991*, spent criminal conviction, as defined by the *Spent Convictions Act 2000*, is a protected attribute on which it is unlawful to discriminate against a person. However, s 8 of the *Discrimination Act* provides that imposing a condition or requirement that is likely to disadvantage a person because of a protected attribute is not unlawful discrimination if the condition or requirement is reasonable in the circumstances.

The following provisions in the bill may limit the right in s 8 of the Human Rights Act:

- clause 10 - ability of the Commissioner to consider spent criminal convictions (clause 10) and mandatory exclusion from holding a licence

where the applicant has been convicted of serious crimes, as specified in s 21 of the bill (clause 10);

- clause 34 – amendments to the *Spent Convictions Act 2000* to exclude the application of the Spent Convictions Act in relation to applications for a security licence.

Clause 10 – new section 21(1A) and (1B) – Mandatory exclusions

This clause prescribes the categories of offences to which mandatory exclusions apply. The range of offences covered by clause 10 is limited to offences that are relevant to the suitability of a person to work in the private security industry, such as assault or theft. In addition, a mandatory exclusion period only applies where there is a penalty imposed of imprisonment, a fine of \$500 or more, or both.

Nature of the right affected

This clause may be considered discriminatory in that it excludes applicants with a particular type of criminal history, whether or not it would ordinarily be considered a spent conviction.

Importance of the purpose of the limitation

The private security industry is vulnerable to criminal influence and infiltration due to the industry's privileged access to a wide range of individuals, premises, events, weapons and money. Security licensees are often involved with vulnerable people and employed in positions of trust with the duty of ensuring the security of individuals and public places. This issue is discussed in further detail under the right to fair trial below.

Nature and extent of the limitation

The extent of the limitation is defined by the new s 21(1B) which defines the following categories of mandatory exclusions –

- a) an offence involving assault, violence against a person, dishonesty or theft;
- b) an offence relating to the possession, storage or use of a firearm or other weapon;
- c) an offence, other than possession, involving a controlled drug, controlled plant or controlled precursor;
- d) an offence involving robbery;
- e) a terrorism offence, including an offence committed outside the Territory involving terrorism that is an offence against the law of the place where it was committed.

The application of these categories is further restricted by the stated circumstances in the new s 21(3) which defines the term 'convicted' to circumstances where a penalty is imposed for the offence and the penalty is imprisonment, a fine of \$500 or more, or both.

Relationship between the limitation and its purpose

The Australian Crime Commission identified the “significant scope for misconduct and crime by organised crime individuals and groups who successfully infiltrate the

security sector” including in the areas of fraud, violence and associated malpractice, misuse of weapons, trade in illicit commodities and money laundering.¹

All mandatory exclusion categories relate to the inherent requirements of the role of the industry to provide protection to the community. The categories also reflect identified areas of misconduct that present a risk to the industry.

Any less restrictive means reasonably available to achieve the purpose

There is no less restrictive means reasonably available to achieve the purpose. There is a significant risk to the industry of employing people who are not suitable for the duties involved. These risks include significant threats to property and individuals. Given the position of trust held by security guards, their contact with vulnerable members of the community and the potential for criminal infiltration, it is imperative that licensees are suitable to hold such a position. This provision clearly links mandatory exclusion to the risks posed and imposes a limitation that is a proportionate and reasonable means to achieve the purpose of the provision. Further, the circumstances in which the mandatory exclusion applies is restricted to where a penalty of a minimum level has been imposed.

In terms of the Discrimination Act, the condition imposed is reasonable in the circumstances for the reasons outlined above.

Clause 34 – amendments to the *Spent Convictions Act 2000*

Nature of the right affected

The effect of this provision is to exclude the operation of the *Spent Convictions Act 2000* to allow the Commissioner to consider information that would not normally be available. That is, it removes the protection of not having to provide information about a spent criminal conviction to anyone. As discussed above, this engages the right to recognition and equality before the law, without discrimination of any kind and is potentially discriminatory under the Discrimination Act.

Importance of the purpose of the limitation

As discussed above, the private security industry is vulnerable to criminal infiltration that could seriously impact on the safety of people and property in our community. This limitation is necessary to ensure the probity of the security workforce and integrity of the industry.

Nature and extent of the limitation

The limitation is confined to certain circumstances relating to the making of an application for a licence under the *Security Industry Act 2003*; the giving of a police certificate under that Act; and the making of a decision about issuing a licence under that Act.

Relationship between the limitation and its purpose

The limitation is directly relevant to the purpose, which is to ensure that the Commissioner has access to all relevant information when deciding whether an applicant is suitable to hold a security licence.

¹ Australian Crime Commission, 2011, *Private Security Industry Criminal Infiltration*, viewed at <http://www.crimecommission.gov.au/publications/crime-profile-series/psi.htm>

Any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means reasonably available to achieve this purpose. This information is required to ensure that licensees meet the levels of probity required for the integrity of the industry.

Section 12 - Right to privacy

Section 12 provides that

Everyone has the right –

- (a) not to have his or her privacy ... interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

The following provisions of the bill may engage the right to privacy:

- Clause 4 – which inserts a new part 2A authorising the Chief Police Officer (CPO) to disclose information classified as criminal intelligence for the purpose of assessing an application for a security licence;
- Clause 5 – which introduces mandatory fingerprinting as part of the application process; and
- Clause 6 – which allows the Commissioner to request further information about an applicant’s criminal history overseas if the applicant has lived overseas for a certain period.

Clause 4 – New part 2A Criminal intelligence

Clause 4 inserts a new part into the Act which authorises the CPO to disclose to the Commissioner for Fair Trading, the Minister, or a court, information that is classified as criminal intelligence. Where an application for a licence is refused on the basis of criminal intelligence, the new s 9C provides that the Commissioner must not disclose any reason other than ‘public interest’.

Where an applicant seeks a review of a decision or where the Commissioner seeks occupational discipline based on criminal intelligence, the Commissioner or the CPO are required to apply to the ACAT for a determination about whether the information is criminal intelligence (new s 9D). The CPO or Commissioner may withdraw sensitive information if a court finds that it is not criminal intelligence.

These provisions engage the right to privacy and reputation as they involve the exchange and use of personal information of which the applicant is not aware.

Importance and purpose of limitation

The purpose of authorising the CPO to disclose criminal intelligence to the Commissioner for his or her consideration in making a licensing decision is to ensure that all relevant facts may be considered when determining the suitability of the applicant to hold a licence.

The ability to consider criminal information was one of the strategies agreed nationally to ensure the integrity of the national security industry. In 2009, the Australian Crime Commission found a number of examples, across all states and territories, of criminal influence and infiltration in the private security industry which the Commission identified as ‘a cause for concern’. The Commission identified that the industry was vulnerable to criminal infiltration through licensees’ access to firearms, licensed premises, major events, a range of public and private assets.

Opportunities for organised crime groups to infiltrate and exploit the private security industry also contribute to this vulnerability.

The Commission identified that there is “significant scope for misconduct and crime by organised crime individuals and groups who successfully infiltrate the security sector.” Involvement of serious and organised crime in the private security industry can have serious consequences such as fraud, corrupt practices, violence and associated malpractice, insider crime and misuse of weapons. It can also facilitate further criminality such as illicit commodity distribution, money laundering and suspect currency movements and property theft.²

The introduction of nationally consistent regulation for the private security industry will prevent jurisdiction shopping by applicants to take advantage of any less stringent requirements in other jurisdictions, as has happened in the past.

Nature and extent of the limitation

The extent to which privacy is limited and whether such interference is permissible depends on the context and whether there is an expectation of privacy. It is generally agreed that there is a diminished expectation of privacy during the course of regulated activities (*R v Jarvis* [2002] 3 SCR 757). As stated in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154 “The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should ... be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care.”

Participants in the security industry have a clear understanding that this is, and has long been, a regulated industry. In addition, participants are aware at the time of application of the information that criminal intelligence will be considered to determine their suitability for a licence.

Section 12 of the Human Rights Act includes a qualifier that privacy is not to be interfered with ‘unlawfully or arbitrarily’. The interference with privacy in this instance is in no way unlawful or arbitrary as the bill clearly defines the type of information that may constitute criminal intelligence; the circumstances in which the information may be provided – that is it must be relevant to the making of a decision about issuing a licence to an applicant; and provides that the information must be kept confidential to ensure the security of the information itself as well as the identity of the source of information.

Relationship between the limitation and its purpose

As discussed above, the security industry is one that is vulnerable to criminal infiltration. As the Australian Crimes Commission identified, while most private

²Australian Crime Commission, 2009, *Private Security Industry Criminal Infiltration*, The Commission, Canberra, http://www.crimecommission.gov.au/publications/crime-profile-series/_files/psi.pdf

security operators provide an excellent level of service, the industry is vulnerable to infiltration with potentially serious consequences.

The private security industry provides protective services to most areas of our community and across a wide range of functions. Services provided include protection of individuals by private security operators in their roles as body guards, protecting property through services such as alarm monitoring and controlling entry to premises, and ensuring the safety of transportation of cash.

The ability to provide and consider criminal intelligence is clearly necessary to ensure the ongoing fitness of licensees to work in the security industry and integrity of the industry as a whole.

Any less restrictive means available to achieve the purpose

There is no other, less restrictive way to achieve the required purpose. There are no other means available for determining the fitness of an applicant or current licensee to participate in the private security industry.

The bill contains a number of safeguards to minimise the limitations on privacy in relation to the use of criminal intelligence.

The definition of what constitutes criminal intelligence (new s 9A) is limited to information that could reasonably be expected to prejudice a criminal investigation; enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or endanger anyone's life or physical safety.

The bill limits the circumstances in which the information may be disclosed to the Commissioner to where the information is relevant to the making of a decision about issuing a licence to the applicant (new s 9B(2)).

The bill includes an external review mechanism of information provided as criminal intelligence. Where the applicant seeks a review of an adverse decision, the Commissioner or CPO must apply to the ACAT for a determination of whether the information is criminal intelligence and must therefore remain confidential (new s 9D). If the ACAT determines that information is not criminal intelligence, the Commissioner or CPO may withdraw the information, thereby removing it from the decision-making process (new s 9E).

Clause 5 – new section 17(3A) - mandatory fingerprinting

This clause requires applicants for a security licence to provide a police certificate that is verified by the applicant's fingerprints. This section only applies if a fingerprint-verified police certificate has not been provided previously.

The sole purpose of this requirement is to verify the identity of the individual applying for the security licence to enable assessment of any existing criminal history.

Nature of the right affected

In *S and Marper v United Kingdom* [2008] ECHR 30562/04 (4 December 2008) it was found that retention of fingerprints constitutes personal data as they relate to identified or identifiable individuals. However, in *Van der Velden v the Netherlands* no. 29514/05, 7 December 2006, the Court referred to fingerprints as 'neutral

identifying features’ and confined its comments to the “systematic retention of that [cellular material which] goes beyond the scope of neutral identifying features ...”.

As this bill prohibits the retention of fingerprints in any form, it is arguable that this provision does not limit the right to privacy. However, if it does, the provisions of the bill ensure the least possible limitation on the right.

Importance of the purpose of the limitation

As discussed above, the security industry faces particular risks of infiltration and criminal activity. The ability to correctly identify licensees or potential licensees is integral to assessing the suitability of applicants for the role, thereby protecting the industry’s integrity.

Nature and extent of the limitation

Any limitation on the right arises from the requirement to provide a set of fingerprints as a condition of receiving a licence. Fingerprints are regarded as containing unique biographical information.

To minimise any limitations on the right to privacy, clause 17 of the bill provides that the fingerprint image taken must be given to the applicant, that the image and any copy not given to the applicant must be destroyed and that the applicant be advised in writing that the copy has been destroyed. Fingerprints taken as part of the application process cannot be stored for any future purpose.

Any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means reasonably available to achieve this purpose. Fingerprints provide a unique personal identifier which is not able to be forged or altered. The protections included in the bill ensure the least possible restrictions on privacy.

Clause 6 – new section 18(1A) – request for further information

Clause 6 allows the Commissioner to request further information about an applicant’s criminal history overseas if the applicant has lived overseas for a continuous period of 1 year or more in the 5 years preceding their application.

Nature of the right affected

Clause 6 enables the Commissioner to request information from another jurisdiction about a person’s criminal record in the past 5 years. This is no more onerous than the existing requirements for applicants who have not resided overseas.

Importance of the purpose of the limitation

This provision enables the Commissioner to consider all relevant criminal conviction information to assess the suitability of the applicant to hold a licence, particularly in circumstances where an applicant is unable to satisfy the licensing authority of their probity during that absence.

Nature and extent of the limitation

This provision is no more onerous than the requirements for applicants who have not resided overseas.

Relationship between the limitation and its purpose

An offence committed overseas may be as relevant as a domestic offence when considering suitability of an applicant to hold a licence.

Any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means reasonably available to achieve this purpose. This information is required to ensure that licensees meet the levels of probity required for the integrity of the industry.

Section 21 - right to fair trial

Section 21 provides:

- (1) Everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The right to fair trial is engaged by the new part 2A which limits the disclosure of criminal intelligence and the reasons that may be given for a decision not to approve an application, based on that information. The bill prohibits the commissioner disclosing to the applicant any consideration of criminal intelligence.

Nature of the right affected

An element of a right to fair trial is equality before the court, or ‘equality of arms’ meaning that each party must have a reasonable opportunity to present their case in a way that doesn’t significantly disadvantage them.

The new part 2A allows the Commissioner to consider an application without disclosing to the applicant information provided by the CPO as criminal intelligence. It requires an entity to maintain the confidentiality of information classified as criminal intelligence. If the Commissioner makes an adverse finding based on criminal intelligence, the only reason that may be given is public interest (new s9C).

In addition, a court must not give any reason for making a finding in relation to the information, other than the public interest (new s9G).

Importance of the purpose of the limitation

The importance of the Commissioner being able to consider all relevant information in the public interest is discussed at length above.

In addition to ensuring the suitability of licensees, as reflected in the new s9A, these provisions protect information, the disclosure of which would prejudice a criminal investigation or enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger anyone’s life or physical safety.

Nature and extent of the limitation

The extent of any limitation to s 21 of the Human Rights Act must be considered against the measures contained in the bill to minimise the impact on the right to fair trial.

Such measures include:

- the ability of a court to review all information used in making a decision to refuse a licence, providing a safeguard against use of irrelevant information in decision-making;
- the ability of the ACAT to assess whether particular information meets the criteria for ‘criminal intelligence’ and, if it does not, the information must either be withdrawn from consideration or disclosed;
- the CPO is only authorised to disclose criminal intelligence where he or she believes on reasonable grounds that the information is relevant to the licensing decision or to a decision about whether to apply for an occupational discipline order.

One of the limitations imposed is the provision that ‘public interest’ is the only reason able to be given for an adverse decision based on criminal intelligence, either by the Commissioner or a court. While this precludes the court from delivering a reasoned decision to the applicant, upon which an appeal may be based, it does not preclude the court from coming to a reasoned decision based on all the available information.

Such a provision was considered by the High Court of Australia in *K-Generation Pty Limited v Liquor Licensing Court* [2009] HCA 4, a case involving similar provisions under the *Liquor Licensing Act 1997* (SA).

In *K-Generation*, it was held that “by limiting access to information, s 28A [relating to criminal intelligence] would place the applicant for a licence at a disadvantage and might prevent the Court from giving full reasons for its decision. While such departures from established rules of fairness were of concern, it remained the duty of the Court to assess the matter objectively and subject classified material to scrutiny as part of the process” (para 22).

It was also held that “The terms of s 28A(5) [relating to the reasons for an order] ... does not require [the court] to receive or act upon criminal intelligence classified as such by the Commissioner of Police. It does not deprive the Court of a discretion as to how confidentiality is to be maintained. Nor does it mandate a general exclusion in all circumstances of legal representative from access to the information (para 98).”

Relationship between the limitation and its purpose

The relationship between the limitation and its purpose is discussed in detail above.

Any less restrictive means reasonably available to achieve the purpose

To ensure the least restrictive means reasonably available to achieve this purpose, the bill incorporates a number of measures, including a narrow definition of what constitutes criminal intelligence, retention of the review power by the courts and the ability of the ACT to determine whether information provided is criminal intelligence. The CPO may only provide such information to the Commissioner when it is considered necessary to ensure the probity of individuals working in the security industry.

By limiting the scope of information able to be provided, the circumstances in which it can be provided and by including judicial safeguards, these provisions reflect the least restrictive means of achieving the purpose.

The provisions contain a number of important measures to safeguard the necessary confidentiality of criminal intelligence as well as providing appropriate external checks and balances against misuse of such information.

Security Industry Amendment Bill 2011

Outline of Provisions

PART 1 Preliminary

Clause 1 - Name of Act

This clause names the Act as the *Security Industry Amendment Act 2011*.

Clause 2 - Commencement

This clause notes that the Act will commence on the date decided by the Minister and notified in the Legislation Register and provides for 12 months delayed commencement rather than the default 6 months. This is to allow processes to be put into place to operate the new scheme.

Clause 3 - Legislation Amended

This clause sets out the Acts and Regulation amended.

PART 2 Security Industry Act 2003

Clause 4 - New part 2A

This clause inserts a new part into the *Security Industry Act 2003* authorising the Chief Police Officer to disclose criminal intelligence to the Commissioner for Fair Trading. Nothing in this part requires the Chief Police Officer to disclose this information. The clause also sets out when this information must be kept confidential and the powers of the tribunal and courts to determine whether the information is criminal intelligence and therefore must be kept confidential.

New s 9A defines criminal intelligence as information relating to actual or suspected criminal activity that would prejudice a criminal investigation, expose a confidential source of information or endanger a person's safety. If the information would not meet any of the 3 risks, then the information may be disclosed and the confidentiality provisions do not apply.

New s 9B provides that information classified as criminal intelligence can only be disclosed to the licensing authority if the information is relevant to a licensing decision.

New s 9C provides that the Commissioner may not disclose any reason for a decision involving criminal intelligence other than a reason specified in the section. For example, if the Commissioner refuses a licence based on criminal intelligence, the only reason the Commissioner can give is that the granting of the licence would not be in the public interest.

New s 9D requires that, if an applicant is refused a licence using criminal intelligence and the applicant seeks a review of the licensing decision or the Commissioner seeks occupational discipline based on criminal intelligence, the Commissioner or Chief

Police Officer must apply to ACAT for a determination about whether the information is criminal intelligence.

New s 9E allows the Commissioner or Chief Police Officer to withdraw the sensitive information from the proceedings if it is decided that it does not fit the definition of criminal intelligence. This will mean the licensing decision will be reviewed on the other grounds for the decision and the criminal intelligence can no longer be a basis for the decision.

New sections 9F and 9G set out when and how the information must remain confidential.

The new s 9H allows the Chief Police Officer to delegate functions under part 2A to a senior police officer.

The inclusion of independent judicial determination of all aspects of the decision and the narrow definition of criminal intelligence minimises the adverse impacts of the use of information about which the applicant is not aware.

This clause limits s 12 and s 21 of the Human Rights Act - the right to privacy and reputation and the right to fair trial. For the reasons set out above, these limitations are reasonable and proportionate given the purpose of ensuring the integrity of the security industry and the nature of the information being protected.

This clause also raises issues of procedural fairness. Where criminal intelligence is considered by the decision-maker, either in making a decision to grant a licence or to initiate proceedings for an occupational discipline order, the applicant or licensee will not be aware of the information used. An applicant or licensee is also precluded from being given full reasons for a decision.

Applicants have a right of review to the ACAT, which is also empowered to determine whether information comes within the definition of criminal intelligence. As stated in *K-Generation*, “[i]t leaves open to the courts to decide whether to accept or reject such material and to decide what if any weight shall be placed upon it” (at para 10).

Clause 5 - Application for licence

Section 17 (3) (a) and (b)

This clause inserts the requirement that an application must be accompanied by a police certificate that is verified by the provision of fingerprints if one has not already been provided to the Commissioner for Fair Trading and requires the applicant to provide information sufficient for a 100 point check.

This clause may limit s 12 of the Human Rights Act - the right to privacy and reputation. Any limitation on this right is minimal as fingerprints are not retained and may only be used for the purpose of identification in relation to a security industry application. As discussed above, any limitation on the right to privacy and reputation is reasonable and proportionate given the purpose of ensuring the integrity of the security industry.

Clause 6 - Request for further information

New section 18 (1A)

This clause inserts a new provision that enables the Commissioner for Fair Trading to request a copy of the applicant's criminal history from another country if that person has lived outside Australia 1 year or more in the last 5 years.

As discussed above, this clause may limit s 12 of the Human Rights Act - the right to privacy and reputation and the right to fair trial. For the reasons set out above, these limitations are reasonable and proportionate give the purpose of ensuring the integrity of the security industry.

Clause 7 - New Section 18 (3)

This clause inserts a new definition to be used in conjunction with the new provision inserted by clause 6.

New provisions inserted by clauses 6 and 7 enable the Commissioner to refuse a licence to any applicant who is ordinarily a resident in Australia but has been absent from Australia for 12 months or more within the previous five years and is unable to satisfy the licensing authority of their probity during that absence.

Clause 8 - Request for fingerprints

Section 19

This clause removes the section giving the power of the Commissioner to require a person to have their fingerprints taken as it is no longer necessary.

Clause 9 - General suitability criteria

Section 21 (1) (a)

This clause inserts a new criterion into the suitability criteria regarding the Commissioner being satisfied as to the applicant's identify and also includes criteria for temporary licences.

Clause 10 - New section 21 (1A) and (1B)

This section inserts a list of offences that prevent a person from holding a licence if there is a conviction recorded against them in the last 10 years or a finding of guilt has been recorded in the last 5 years. Spent convictions will be able to be considered, see clause 34.

This clause limits s 8 and s 12 of the Human Rights Act - the right to recognition and equality before the law without discrimination of any kind and the right to privacy and reputation. As discussed above, this provision clearly links mandatory exclusion to risks associated with the industry and imposes relevant limitations that are reasonable and proportionate.

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

This clause inserts a new definition which specifies a minimum penalty level at which convictions are considered for the new suitability criteria set out in the new s 21(1B). The effect of this is that, for the categories of offences set out in the new s 21(1B)(a) – (c), a mandatory exclusion period only applies where there is a penalty imposed of

imprisonment, a fine of \$500 or more, or both. Where no conviction is recorded, there is no mandatory exclusion period in relation to these categories of offences.

Clause 12 - Review of workplace information criterion - Section 21A (1)

This clause renumbers s 21A (1).

Clause 13 - Section 23

This clause amends the definition of public interest to reflect these amendments.

Clause 14 - Temporary licences Section 26 (1) (b) (ii)

This clause renumbers s 26 (1) (b).

Clause 15 - Term of licence Section 29

This clause enables the Commissioner to issue licences for up to 3 years. This amendment will minimise the burden of the extra requirements on applicants and the regulator.

Clause 16 - New division 3.7A

This clause inserts a provision which requires the Commissioner to cancel a licence if a licensee is convicted or found guilty of an offence that excludes them from holding a licence. This decision is subject to review by ACAT.

This clause inserts new clause 29A which links the cancellation of a licence to those criteria that would exclude a person from obtaining a licence in the first place. If a person has been convicted of certain offences within the last 10 years or has been found guilty without a conviction being recorded in the last 5 years, they are unable to obtain a licence. If a person commits one of these exclusionary offences, then the Commissioner must cancel the licence.

Under existing s 36A, the Commissioner must notify the licensee that their licence has been cancelled, informing the person of their right of review and requiring that the licence be returned to the Commissioner within 5 working days.

An automatic statutory cancellation was considered for this provision instead of requiring the Commissioner to cancel the licence, however, the positive obligation on the Commissioner to notify the licensee of the cancellation, the obligation to return their licence and their review rights protects the individual from inadvertently committing an offence under the Act by not returning their licence within the prescribed timeframes and ensures that they are fully informed in writing of their rights of review.

This clause also inserts a new s 29B that allows the Commissioner to suspend a licence if the Commissioner applies, or intends to apply, to ACAT for occupational discipline and there is a threat to public safety that means it is warranted to suspend the licence immediately. This suspension lasts for 30 days or until an occupational discipline order is made, whichever is earlier. The suspension of a licence is also a reviewable decision and, under new s 29B (3) the licensee must be given the notice for the suspension to take effect.

These amendments will enable the Commissioner to be able to respond promptly to any adverse event that comes to his attention through the power to cancel or suspend a licence.

Clause 17 - New section 49A

This clause inserts a new provision that requires the destruction of any image of the fingerprints not given to the applicant.

Clause 18 - New part 8

This clause inserts new s 80 that clarifies that the requirement for the Commissioner to cancel a licence applies to existing licensee only if the conviction or finding of guilt occurs after the commencement of this section. This means the Commissioner will not have to suddenly cancel a licence for something that was already disclosed and was taken into account in the granting of the licence.

This clause also inserts provisions allowing the Executive to make transitional regulations for these amendments.

Clause 19 - Schedule 1, new items 5A and 5B

This clause inserts a provision that creates the automatic cancellation and immediate suspension as reviewable decisions.

Clause 20 - Dictionary, note 2

This clause inserts the terms foreign country and public servant into note 2 of the dictionary to make it clear that the *Legislation Act 2001* defines these terms.

Clause 21 - Dictionary, new definitions of *criminal intelligence* and *maintain*

This clause inserts the new definitions from the amendments into the dictionary.

Clause 22 - Dictionary, definition of *police certificate* and note

This clause inserts a definition of police certificate.

Clause 23 - Dictionary, definition of *relevant offence*

This clause updates the definition of relevant offence to reflect the other changes in the act.

Clause 24 - Dictionary, definition of *workplace information*

This clause renumbers the definition of workplace information.

PART 3 Security Industry Regulation 2003

Clause 25 - Exempt people-Act, s 9

Section 6 (2) (a)

This clause renumbers s 6 (2) (a).

Clause 26 - Section 7A heading

This section replaces the heading of s 7A so that it reflects the correct numbering in the Act.

Clause 27 - Section 8 heading

This section replaces the heading of s 8 so that it reflects the correct numbering in the Act.

Clause 28 - Table 8, item 1, column 3

This clause inserts the requirement for a current first aid certificate into the training requirements for this licence.

Clause 29 - Table 8, item 5, column 3

This clause inserts the requirement for a current first aid certificate into the training requirements for this licence.

Clause 30 - Table 8, items 6 to 10, column 3

This clause inserts the requirement for a current first aid certificate into the training requirements for these licences.

Clause 31 - Section 9 heading

This section replaces the heading of s 9 so that it reflects the correct numbering in the Act.

Clause 32 - Section 9A heading

This section replaces the heading of s 9A so that it reflects the correct numbering in the Act.

Clause 33 - Section 9B heading

This section replaces the heading of s 9B so that it reflects the correct numbering in the Act.

PART 4 Spent Convictions Act 2000

Clause 34 - Exclusions

New section 19 (8A)

This clause amends the *Spent Convictions Act 2000* to ensure the Commissioner can consider spent convictions in a licensing decision. The Commissioner cannot consider quashed or pardoned convictions.

This clause may engage s 8 of the Human Rights Act – recognition and equality before the law, without discrimination of any kind. As discussed above, this limitation is necessary to ensure the probity of the security workforce and integrity of the industry.