

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SECURITY INDUSTRY REGULATIONS 2003

SUBORDINATE LAW SL2003-30

EXPLANATORY STATEMENT

Circulated by authority of the
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Outline

The *Security Industry Act 2003* (the Act) regulates the ACT security industry, including security guards, alarm installers and crowd controllers. The Act replaces the five codes of practice for the security industry.

The Act is based on the New South Wales *Security Industry Act 1997*, and it replaces the existing ACT codes of practice. The Act provides for applications for licences, specific licence requirements, including training, and a range of offences.

The objectives of the legislation are:

- to enhance compliance activities, primarily through the introduction of offences, including offences for unlicensed principals and employees in the industry;
- to bring the ACT into line with other Australian jurisdictions;
- to clearly outline and monitor standards;
- to impose mandatory training;
- to clarify the provisions for dealing with breaches of standards; and
- to prevent persons from commencing employment prior to the outcome of a criminal record check.

The *Security Industry Regulations 2003* (the Regulations) exempt a number of people from the requirement to be licensed, including, police and correctional officers, internal security advisers for a business that is not in the security industry and internal people installing, maintaining, repairing or servicing internal security equipment for a business that is not in the security industry.

The Regulations also set out the information to be included in an application for a licence and the training requirements for each licence. The training requirements are based on new national training standards that have been developed by the Australian National Training Authority in consultation with the security industry.

The Regulations clarify that people selling or installing security doors and windows, security garage doors and security lighting are covered by the Act.

In addition, the Regulations contain some of the provisions of the codes of practice currently applying to the security industry, such as the requirement for an incident register to be kept for the crowd control industry and that equipment must conform to safety standards established by Standards Australia.

Clause Notes

Regulation 1 – Name of regulations – provides that the regulations are the Security Industry Regulations 2003.

Regulation 2 – Commencement – provides that the regulations commence on the later of either 3 September 2003 or the day after the regulations are notified on the Legislation Register.

Regulation 3 – Notes – provides that the notes included in the regulations are explanatory and do not form part of the regulations.

Regulation 4 – Prescribed security activity – Act, s7(1)(e) – provides that acting as a security consultant, selling security equipment and the carrying out of surveys and inspections of security inspections are included in the definition of ‘security activity’ for the purposes of the Act.

Regulation 5 – Prescribed security equipment – Act, s8(1), def *security equipment*, par (c) – provides that security screen doors, security windows that have built-in locks and security garage doors that cannot be opened with keys are included in the definition of ‘security equipment’ for the purposes of the Act.

Regulation 6 – Exempt people – Act, s9 – provides that particular people are exempt from the application of the Act. Most of these exemptions are based on exemptions in New South Wales. The people exempted include: custodial officers, police officers, sheriffs, members of the fire brigade and bushfire brigade and people who in the course of employment gives advice in relation to security affecting the employer’s business, or who installs maintains, monitors, repairs or services security equipment in relation to the employer’s business, if that person does not carry on any other security activity and the employer does not carry on a security business.

The regulations also exempt people who carry on a security activity in relation to an information system. These people are primarily computer consultants who carry on a security activity in relation to information system, such as installing computer firewalls. These people do not traditionally fit within the security industry and are not covered by the New South Wales legislation.

Regulation 6 also provides that particular people are exempt from the requirement to hold a trainer licence. These include people who provide a training course that is not a training course prescribed by the regulations and a suitably qualified person who provides a first aid training course as part of a training course prescribed by the regulations.

Regulation 7 – Prescribed information for licence application – Act, s17(3) – provides that an application for a master licence (for a person who is not a locksmith) must be accompanied by evidence of membership of an industry association approved by the Commissioner for Fair Trading. An approval granted by the Commissioner for Fair Trading is a notifiable instrument.

This requirement is identical to the requirement in New South Wales and it brings an element of co-regulation to the security industry. In New South Wales there are approximately ten approved industry associations, most of which will apply for approval in the Territory.

While other regulatory schemes require businesses to hold membership of industry associations (eg NSW security industry, legal profession and accountants), arguably this amounts to an intrusion into the rights of those businesses (when constituted by natural persons) to freedom of association. In this case the rights of freedom of association are met by countervailing public benefits: membership will ensure consumers have access to low cost industry sponsored settling mechanisms, while members have access to a greater range of services (of particular value within a security-based industry).

In particular, the security industry associations ensure that master licensees, who are not required to have any qualifications to enter the industry, are given information and training on their relevant sector of the industry. The associations also assist in monitoring compliance with the legislation, including cross-jurisdictional compliance, dispute resolution and work to improve standards within the different sectors of the industry.

Masters in the locksmithing sector have been exempted from this requirement, as most of these master licensees also hold an employee licence and therefore have the relevant qualifications.

Regulation 8 – Prescribed training courses for employee licences – Act, s 21(1)(a)(ii) – prescribes training courses that need to be completed in order for a licence to be issued. The prescribed courses must be provided by a licensed trainer, and are new qualifications developed by the Australian National Training Authority, to be implemented in all Australian jurisdictions.

Regulation 9 – Prescribed training courses for trainer licences – Act, s 21(1)(a)(ii) – provides that the prescribed training courses for trainer licences are the course that the applicant wishes to instruct in (or a course that the Commissioner for Fair Trading is satisfied leads to a higher qualification than the course that the applicant wishes to instruct) and Certificate IV in Assessment and Workplace Training.

Regulation 10 – Definitions for pt 4 – provides a sign post definition for the terms ‘crowd controller’ and ‘identification number’ and defines the term ‘provides’ people as including employing people.

Regulation 11 – Application of pt 4 – provides that part 4 of the regulations applies each time a master licensee provides people to act as a crowd controller.

Regulation 12 – Identification – provides that a master licensee who provides people to act as crowd controllers must allocate a unique identification number to each person acting as a crowd controller and ensure that each crowd controller provided by the master licensee wear the identification number so that it is clearly visible when the person is acting as a crowd controller. Regulation 11(2) obliges a crowd controller to wear the identification number while acting as a crowd controller so that it is clearly visible. This requirement is drawn from the existing industry code of practice, replaced by the Act and regulations.

Regulation 13 – General Records – provides that a master licensee who provides people to act as crowd controllers must keep a written record of details of crowd control services provided and keep records so made for a period of three years. The master licensee must record:

- the name and address of the entity for whom the services are provided;
- the address of the place where the services are provided;
- the date the services are provided;
- details of the services provided;
- the name, address, licence number and identification number of each crowd controller;

- the supervisor; and
- the time that each crowd controller starts and finishes providing the services.

The master licensee must ensure that each crowd controller records the time that he or she starts and finishes providing services. Regulation 12(3) obliges a crowd controller to record the time he or she starts and finishes providing services. These requirements are drawn from the existing industry code of practice, replaced by the Act and regulations.

Regulation 14 – Records of incidents – provides that when a master licensee provides people to act as crowd controllers and a crowd controller makes forceable physical contact with or physically restrains someone, ejects someone from the place where services are provided or witnesses a physical assault, then in respect of that incident the master licensee must keep a written record of:

- the date and time it occurred;
- the name and addresses of each person involved
- for each crowd controller involved the crowd controllers licence and identification number;
- details of the incident;
- whether the police were contacted and if they attended; and
- details of any injuries sustained.

The record must kept for a period of three years and be made by a crowd controller involved in the incident, nominated by the master licensee. The nominated crowd controller is obliged to make the record. These requirements are drawn from the existing industry code of practice, replaced by the Act and regulations.

Regulation 15 – Accreditation of trainers – provides that a licensed trainer must be employed or engaged by a registered training organization, as required by the *Vocational Education and Training Act 1995* and from 1 November 2003 the *Tertiary Accreditation and Registration Act 2003*.

Regulation 16 – Confidentiality of personal information – provides that master licensees must comply with the national privacy principle 2 under the *Privacy Act 1988* (Cth). This privacy principle deals with the use and disclosure of personal information. These requirements are drawn from the existing industry code of practice, replaced by the Act and regulations.

Regulation 17 – Equipment standards – provides that licensees who install security equipment must comply with the relevant safety standards set by Standards Australia or set jointly by Standards Australia and Standards New Zealand. These requirements are drawn from the existing industry code of practice, replaced by the Act and regulations.