

Private Security Amendment Act 2010

No. 61 of 2010

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Victoria

Private Security Amendment Act 2010[†]

No. 61 of 2010

[Assented to 14 September 2010]

The Parliament of Victoria enacts:

1 Purpose

The purpose of this Act is to amend the **Private Security Act 2004** to implement a nationally consistent approach to the regulation of the private security industry.

2 Commencement

- (1) This Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 4 July 2011, it comes into operation on that day.

3 Principal Act

In this Act, the **Private Security Act 2004** is called the Principal Act.

See:
Act No.
33/2004.
Reprint No. 1
as at
26 September
2007
and
amending
Act Nos
4/2008,
13/2008,
1/2010 and
6/2010.
LawToday:
www.
legislation.
vic.gov.au

4 Definitions

In section 3 of the Principal Act—

- (a) in paragraph (d) of the definition of *class A security activity*, after "guard;" **insert** "or";
- (b) after paragraph (d) of the definition of *class A security activity* **insert**—
 - "(e) acting as a private security trainer;"
- (c) in paragraph (a) of the definition of *officer*, for "section 82A" **substitute** "section 83";
- (d) in the definition of *private security business licence*, after "14" **insert** "(1)";
- (e) in the definition of *private security individual operator licence*, after "15" **insert** "(1)";
- (f) for the definition of *security guard* **substitute**—

security guard means a person who is employed or retained to protect, watch or guard any property by any means, which may involve one or more of the following—

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- (a) the protecting, guarding or watching of any property by patrolling the property in person—
- (i) while exercising control over a dog; or
 - (ii) while armed with a firearm; or
 - (iii) while unarmed; or
 - (iv) being the collecting, transferring or delivering cash or other valuables while armed with a firearm;
- (b) the protecting, guarding or watching of any property by monitoring the property by operating a security system that utilises closed circuit television, a closed monitoring system, radio or other similar device—
- (i) where the person may be requested to attend an activity; or
 - (ii) where the person cannot or does not attend an activity;"
- (g) in the definition of *specified identification method*, for "Transactions" substitute "Transaction";
- (h) in the definition of *trustee company* for "1984." substitute "1984;"
- (i) **insert** the following definitions—
- "armed guard* means a security guard to whom paragraph (a)(ii) of the definition of *security guard* applies;
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cash-in-transit guard means a security guard to whom paragraph (a)(iv) of the definition of ***security guard*** applies;

control room operator means a security guard to whom paragraph (b)(i) of the definition of ***security guard*** applies;

guard with a dog means a security guard to whom paragraph (a)(i) of the definition of ***security guard*** applies;

monitoring centre operator means a security guard to whom paragraph (b)(ii) of the definition of ***security guard*** applies;

private security business (security guard) licence means a private security business licence that authorises the holder to carry on the business of providing the services of persons to carry on the activity of acting as a security guard;

private security trainer means—

- (a) a person engaged by a registered education and training organisation to provide or assess private security training; or
- (b) a registered education and training organisation that provides or assesses private security training;

private security training means—

- (a) training as an investigator, a bodyguard, a crowd controller or a security guard; or
- (b) training required for any other licensable activity, as determined by the Chief Commissioner;

protected information means any intelligence information, document or thing the production or inspection of which—

- (a) is likely to—
- (i) reveal the identity of the member of the police force who provided information on the basis of which a decision of the Chief Commissioner not to issue or to cancel a private security licence was made, or put that member's safety at risk; or
 - (ii) reveal the identity of a person who has provided a member of the police force with information on the basis of which a decision of the Chief Commissioner not to issue or to cancel a private security licence was made, or put that person's safety at risk; or
 - (iii) reveal the identity of a person whose name appears in any evidence given or information provided to a member of the police force relating to an investigation, or put that person's safety at risk; or
 - (iv) reveal the identity of a person who is or has been the subject of an investigation by a member of
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the police force, or put that person's safety at risk; or

- (b) places at risk an ongoing investigation by a member of the police force; or
- (c) risks the disclosure of any investigative method used by members of the police force; or
- (d) is otherwise not in the public interest;

registered education and training

organisation has the same meaning as in the **Education and Training Reform Act 2006**;

special counsel means a person appointed under section 150B(1);

specified security guard activity means any one of the following activities—

- (a) acting as an armed guard;
- (b) acting as an unarmed guard;
- (c) acting as a guard with a dog;
- (d) acting as a cash-in-transit guard;
- (e) acting as a control room operator;
- (f) acting as a monitoring centre operator;

unarmed guard means a security guard to whom paragraph (a)(iii) of the definition of ***security guard*** applies."

5 Offence to carry on the business of providing certain private security services without a private security business licence

- (1) In section 5 of the Principal Act—
- (a) in paragraph (d), for "guard—" **substitute** "guard; or";
 - (b) after paragraph (d) **insert—**
"(e) acting as a private security trainer—".

- (2) At the end of section 5 of the Principal Act **insert—**

"(2) A person must not under a private security business licence provide the services of persons to carry on any specified security guard activity unless the licence is a private security business (security guard) licence that authorises the person to provide the services of persons to carry on that activity.

Penalty: 120 penalty units in the case of a natural person;

240 penalty units in the case of a body corporate."

6 Holding out offence—private security business licence

- (1) In section 6 of the Principal Act—
- (a) in paragraph (d), for "guard—" **substitute** "guard; or";
 - (b) after paragraph (d) **insert—**
"(e) acting as a private security trainer—".

- (2) At the end of section 6 of the Principal Act
insert—

"(2) A person must not in any way indicate that the person carries on or is willing to carry on the business of providing the services of persons to carry out any specified security guard activity unless the person is the holder of a private security business (security guard) licence that authorises the person to provide the services of persons to carry on that activity.

Penalty: 120 penalty units in the case of a natural person;
240 penalty units in the case of a body corporate."

7 Offence to carry on certain activities without a private security individual operator licence

- (1) In section 7 of the Principal Act—

(a) in paragraph (d), for "guard—" **substitute** "guard; or";

(b) after paragraph (d) **insert—**

"(e) acting as a private security trainer—".

- (2) At the end of section 7 of the Principal Act
insert—

"(2) A person must not under a private security individual operator licence carry on any specified security guard activity unless that licence authorises the person to carry on that activity.

Penalty: 120 penalty units."

8 Holding out offence—private security individual operator licence

- (1) In section 8 of the Principal Act—
- (a) in paragraph (d), for "guard—" **substitute** "guard; or";
 - (b) after paragraph (d) **insert—**
"(e) acting as a private security trainer—".
- (2) At the end of section 8 of the Principal Act **insert—**
- "(2) A person must not in any way indicate that the person carries on or is willing to carry on any specified security guard activity unless the person is the holder of a private security individual operator licence that authorises the person to carry on that activity.
Penalty: 120 penalty units."

9 New section 13 substituted

For section 13 of the Principal Act **substitute—**

"13 Definitions

- (1) In this Part—
- disqualifying offence* means any offence—
- (a) against Part 5 of the **Drugs, Poisons and Controlled Substances Act 1981** involving—
 - (i) trafficking in a drug of dependence; or
 - (ii) cultivation of narcotic plants in any commercial quantity—
- within the meaning of that Act;

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- (b) committed outside Victoria that would, if it were committed in Victoria, be an offence against Part 5 of the **Drugs, Poisons and Controlled Substances Act 1981** involving—
- (i) trafficking in a drug of dependence; or
 - (ii) cultivation of narcotic plants in any commercial quantity—
- within the meaning of that Act;
- (c) involving assault or violence against the person;
- (d) involving dishonesty or theft;
- (e) against the **Control of Weapons Act 1990**, involving a controlled weapon or a prohibited weapon within the meaning of that Act;
- (f) committed outside Victoria that would, if it were committed in Victoria, be an offence involving a controlled weapon or a prohibited weapon within the meaning of the **Control of Weapons Act 1990**;
- (g) involving a firearm within the meaning of the **Firearms Act 1996**;
- (h) against section 75 or 75A of the **Crimes Act 1958** or an equivalent provision in another State or a Territory;
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- (i) against Part 5.3 of the Criminal Code of the Commonwealth;
 - (j) against the **Terrorism (Community Protection) Act 2003**;
 - (k) committed outside Victoria that would, if it were committed in Victoria, be an offence against the **Terrorism (Community Protection) Act 2003**.
- (2) Subject to subsection (3), in this Part *prohibited person* means—
- (a) a person in relation to whom not more than 10 years have expired since that person was convicted of a disqualifying offence; or
 - (b) a person in relation to whom not more than 5 years have expired since that person has been found guilty of a disqualifying offence without a conviction being recorded.
- (3) A person is not a prohibited person merely because that person was, in respect of an offence referred to in paragraph (c), (d), (e), (f) or (g) of the definition of *disqualifying offence*, convicted of a disqualifying offence or found guilty of a disqualifying offence without a conviction being recorded, and one of the following applies—
- (a) no penalty was imposed; or
 - (b) the penalty imposed was a fine of less than the equivalent of 5 penalty units; or
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- (c) a penalty other than a fine or a custodial penalty was imposed.
- (4) In this section, *custodial penalty* includes being in government custody within the meaning of the **Sex Offenders Registration Act 2004**.

10 Grant of private security business licence

- (1) In section 14(1) of the Principal Act—
 - (a) in paragraph (d), for "guard." **substitute** "guard; or";
 - (b) after paragraph (d) **insert**—
"(e) acting as a private security trainer."
- (2) After section 14(2) of the Principal Act **insert**—
 - "(3) Without limiting subsection (2), in granting a private security business (security guard) licence under subsection (1)(d), the Chief Commissioner may specify that the holder of the licence is authorised to carry on any one or more of the activities specified in the following paragraphs—
 - (a) acting as an armed guard;
 - (b) acting as an unarmed guard;
 - (c) acting as a guard with a dog;
 - (d) acting as a cash-in-transit guard;
 - (e) acting as a control room operator;
 - (f) acting as a monitoring centre operator."

11 Grant of private security individual operator licence

(1) In section 15(1) of the Principal Act—

(a) in paragraph (d), for "guard." **substitute**
"guard; or";

(b) after paragraph (d) **insert**—

"(e) acting as a private security trainer."

(2) After section 15(2) of the Principal Act **insert**—

"(3) Without limiting subsection (2), in granting a licence under subsection (1)(d), the Chief Commissioner may specify that the holder of the licence is authorised to carry on any one or more of the activities specified in the following paragraphs—

(a) acting as an armed guard;

(b) acting as an unarmed guard;

(c) acting as a guard with a dog;

(d) acting as a cash-in-transit guard;

(e) acting as a control room operator;

(f) acting as a monitoring centre operator."

12 Additional particular requirements for licence applications

(1) In section 17 of the Principal Act—

(a) for subsection (1)(a) **substitute**—

"(a) proof of identity of the applicant,
being—

(i) a full set of fingerprints; and

(ii) if the Chief Commissioner so requires, proof by way of the specified identification method;
and";

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- (b) in subsection (2)—
- (i) for paragraph (a)(i) **substitute**—
 - "(i) proof of identity of the applicant, being—
 - (A) a full set of fingerprints; and
 - (B) if the Chief Commissioner so requires, proof by way of the specified identification method; and";
 - (ii) for paragraph (b)(ii) **substitute**—
 - "(ii) in the case of a person referred to in subparagraph (i)(A) or (B), a full set of fingerprints; and
 - (iia) in the case of a person referred to in subparagraph (i)(C), a full set of fingerprints, if the Chief Commissioner so requires; and
 - (iib) proof of identity of each person named in the statement by way of the specified identification method, if the Chief Commissioner so requires; and".
- (2) After section 17(2) of the Principal Act **insert**—
- "(3) The Chief Commissioner must destroy or cause to be destroyed any fingerprints provided under this section and any record, copy or photograph of them as soon as the Chief Commissioner has no further use for them.
 - (4) For the purposes of subsection (3), the Chief Commissioner is to be considered to have no further use for fingerprints when—
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- (a) they were obtained in connection with an application for a private security licence and the application is refused; or
 - (b) the private security licence with which they were obtained is cancelled or not renewed."

13 Particular powers of Chief Commissioner relating to fingerprinting

Section 22 of the Principal Act is **repealed**.

14 Circumstances in which the Chief Commissioner must refuse to grant a private security individual operator licence

In section 25(2)(e)(i) and (ii) and (f)(i) of the Principal Act, for "a particular indictable" **substitute** "any".

15 Circumstances in which the Chief Commissioner must refuse to grant a private security business licence

In section 26 of the Principal Act—

- (a) in subsection (2)(e)(i) and (ii) and (f)(i), for "a particular indictable" **substitute** "any";
- (b) in subsection (4), for "*in relation to an application*" **substitute** "*in relation to the application*".

16 New section 29A inserted

After section 29 of the Principal Act **insert**—

"29A Refusal of private security licence on grounds of protected information

- (1) If the Chief Commissioner makes a decision not to grant a licence under section 25(1)(a) or 26(1)(a) wholly or partly on the basis of protected information, to the extent that the

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- Chief Commissioner's reasons for that decision relate to that protected information—
- (a) sections 27, 28 and 29 do not apply; and
 - (b) the applicant is not entitled to be provided with those reasons.
- (2) If a person is not entitled to some or all of the reasons for a decision under subsection (1), the Chief Commissioner must—
- (a) notify the applicant that the application has been denied because the applicant or each relevant person in relation to the application has failed to meet the probity requirements; and
 - (b) create a written record of the reasons; and
 - (c) inform the applicant that—
 - (i) the Chief Commissioner has created a written record of those reasons; and
 - (ii) those reasons are not able to be disclosed to the applicant; and
 - (iii) he or she is entitled to seek review of the Chief Commissioner's decision by VCAT; and
 - (d) if the applicant seeks review of the decision by VCAT, provide VCAT with those reasons.
- (3) In this section, *relevant person in relation to the application* has the same meaning as in section 26.
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- (4) Section 8 of the **Administrative Law Act 1978** does not apply to a decision to which this section applies."

17 Section 38 amended

- (1) In the heading to section 38 of the Principal Act, after "**Sections**" **insert "17 and"**.
- (2) In section 38 of the Principal Act, after "Sections" **insert "17 and"**.

18 Immediate cancellation of private security licence

- (1) After section 47(1)(a) of the Principal Act **insert—**
- "(ab) a close associate of the holder of a private security licence; or".
- (2) After section 47(1) of the Principal Act **insert—**
- "(1A) Immediately upon becoming aware, on the basis of protected information, that the holder of a private security individual operator licence does not meet the requirements set out in section 25(2), the Chief Commissioner must cancel the licence.
- (1B) Immediately upon becoming aware, on the basis of protected information, that a relevant person in relation to a private security business licence does not meet the requirements set out in section 26(2), the Chief Commissioner must cancel the licence."
- (3) After section 47(2) of the Principal Act **insert—**
- "(3) In this section *relevant person in relation to a private security business licence* means—
- (a) in the case of a private security business licence held by a natural person, the holder of the licence and any close associate of the holder;

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- (b) in the case of a private security business licence held by a body corporate, each of the following—
- (i) the nominated person for the body corporate;
 - (ii) any officer of the body corporate;
 - (iii) any close associate of the body corporate."

19 Court may cancel or suspend licence

In section 61(a)(i) of the Principal Act, for "a particular indictable" **substitute** "any".

20 Procedure for applications for permits

In section 68(5) of the Principal Act, for "22(3) and (4)" **substitute** "17(3) and (4)".

21 Registered address

In section 129(4) of the Principal Act, for "subsection (1)" **substitute** "subsection (3)".

22 Review by VCAT

After section 150(1)(e) of the Principal Act **insert—**

- "(ea) a decision of the Chief Commissioner to cancel a private security licence under section 47(1A) or (1B); or"

23 New sections 150A to 150E inserted

After section 150 of the Principal Act **insert—**

"150A VCAT must ask Chief Commissioner about protected information on receiving certain applications for review

If VCAT receives an application for review under section 150(1)(a), (c) or (ea), VCAT must ask the Chief Commissioner whether

the grounds for the refusal or cancellation were based on any protected information.

150B Appointment of special counsel if review involves protected information

- (1) If, in response to a request under section 150A, the Chief Commissioner informs VCAT in writing that the decision was based on protected information, VCAT must appoint a special counsel to represent the interests of the applicant.
- (2) A special counsel must be a barrister within the meaning of the **Legal Profession Act 2004** who, in the opinion of VCAT, has the appropriate skills and ability to represent the interests of the party at the hearing.
- (3) At any time before the special counsel attends the hearing or obtains any confidential affidavit in relation to the application, the special counsel may communicate with the party whose interests he or she is representing, or any representative of that party, for the purpose of obtaining information or instructions from the party or representative in relation to the proceeding.
- (4) Subject to section 150D(3)(b), at any time after the special counsel commences to attend the hearing or obtains any confidential affidavit in relation to the application, the special counsel—
 - (a) must not take instructions from the party whose interests he or she is representing, or from any representative of that party; and

- (b) must not communicate any other information in relation to the hearing to that party or a representative of that party without leave of VCAT, except to communicate any order made by VCAT at or in relation to the hearing.
- (5) A special counsel may be required to sign a confidentiality undertaking to VCAT.

150C Hearing where protected information involved

- (1) If, in response to a request under section 150A, the Chief Commissioner informs VCAT in writing that the decision was based on protected information, VCAT must at the hearing of the application first determine whether or not the information is protected information.
- (2) For the purposes of making a determination under subsection (1), VCAT may determine that a hearing or any part of it be held in private.
- (3) The following provisions apply to a closed session under subsection (2)—
 - (a) only the Chief Commissioner and the special counsel are entitled to be present; and
 - (b) each party that is entitled to be present has a right to make submissions as to—
 - (i) whether evidence supporting the grounds for refusal or cancellation amounts to protected information;
 - (ii) the weight that should be given to that evidence;

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- (iii) the character of the applicant, being evidence indicating whether the applicant is a fit and proper person to hold a private security licence;
 - (iv) whether, in all the circumstances, the licence should be granted to the applicant.
 - (4) After hearing the evidence of the Chief Commissioner and the special counsel under subsection (3), VCAT must decide whether or not any of the evidence adduced amounts to protected information.
 - (5) If VCAT decides that none of the evidence adduced under subsection (3) amounts to protected information, VCAT must admit the applicant to the proceeding and the provisions of subsection (3) cease to apply to the conduct of the hearing.

150D Decision where protected information is involved

- (1) Without limiting any other power of VCAT conferred by or under this or any other Act, if VCAT decides that any of the evidence adduced under section 150C(3) is protected information, the provisions of that subsection continue to apply to the hearing of the proceeding to the extent that it relates to that protected information.
- (2) In making a determination in a proceeding to which subsection (1) applies, VCAT must decide—
 - (a) what weight to give the protected information and any other evidence adduced; and

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- (b) whether, in all the circumstances, the licence should be granted to the applicant or reinstated (as the case may be).
- (3) If VCAT decides that any of the evidence adduced under section 150C(3) forms protected information—
- (a) VCAT must take all steps and precautions to prevent release of that information; and
- (b) if the special counsel wishes to seek further instructions from the applicant on one or more occasions in relation to that protected information, the special counsel may do so only by submitting written questions for the approval of VCAT after hearing any submissions from the Chief Commissioner on their content.
- (4) Despite section 117 of the **Victorian Civil and Administrative Tribunal Act 1998**, any order issued by VCAT in relation to a decision under this section must only state—
- (a) whether the decision of the Chief Commissioner is upheld or overturned; and
- (b) if the licence is not granted or not reinstated (as the case may be), that the applicant or each relevant person in relation to the application has failed to meet the probity requirements.
- (5) For the avoidance of doubt, VCAT may publish reasons for its decision to the extent that those reasons do not relate to protected information.
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150E General provisions for hearing matters involving protected information

- (1) For the purposes of a hearing to which section 150C or 150D applies, VCAT must be constituted by a presidential member.
- (2) At any time before a final determination has been made by VCAT on a matter to which section 150C or 150D applies—
 - (a) the Chief Commissioner may change the Chief Commissioner's decision and grant the licence; and
 - (b) if the licence is granted or reinstated (as the case may be), the proceeding terminates immediately.
- (3) The following provisions do not apply to a proceeding for so long as section 150C or 150D applies—
 - (a) Subdivision 1 of Division 3 of Part 3 and sections 49 and 101 of the **Victorian Civil and Administrative Tribunal Act 1998**;
 - (b) section 8 of the **Administrative Law Act 1978**.
- (4) For the avoidance of doubt, subsection (3) does not apply to any extent that the proceedings do not involve protected information."

24 Chief Commissioner may approve training requirements etc.

In section 172 of the Principal Act—

- (a) subsection (1)(b) is **repealed**;
- (b) in subsection (2), after "vary" **insert** ", suspend".

25 Requirement to notify Chief Commissioner of criminal charges

In section 176(1) of the Principal Act, for "a particular indictable" **substitute** "any".

26 Repeal of amending Act

This Act is **repealed** on 4 July 2012.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 29 July 2010

Legislative Council: 12 August 2010

The long title for the Bill for this Act was "A Bill for an Act to amend the **Private Security Act 2004** and for other purposes."