

SECURITY (PROTECTION) INDUSTRY ACT, 1985, No. 52

NEW SOUTH WALES



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SECURITY (PROTECTION) INDUSTRY ACT, 1985, No. 52

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 52, 1985.

An Act to provide for the licensing and regulation of persons carrying on, or employed in, the business of providing security and protection for persons or property. [Assented to, 9th May, 1985.]

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Security (Protection) Industry Act, 1985".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Commissioner" means the person for the time being holding or acting in the office of the Commissioner of Police appointed under the Police Regulation Act, 1899;

"licence" means a licence under this Act;

"property" includes money;

"regulation" means a regulation made under this Act;

"security activity" means any of the activities referred to in section 8 (2), (3) or (4).

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty;

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- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty; and
- (c) a reference to a variation of a licence is a reference to a variation—
 - (i) of the kind of security activities authorised by the licence;
or
 - (ii) of the conditions or restrictions specified in the licence,
or both.

Persons excluded from application of Act.

4. (1) The provisions of this Act do not apply to or in relation to any person employed in the capacity of—

- (a) a member of the Australian Federal Police;
- (b) a member of the police force of any State of the Commonwealth;
- (c) a member of the Commonwealth Defence Forces;
- (d) a member of the public service of the Commonwealth; or
- (e) a special constable appointed under Part IV of the Police Offences Act, 1901, and employed in the Police Department,

while, and to the extent that, the person is performing official duties in that capacity.

(2) The Governor may by regulation—

- (a) exempt to the extent prescribed any class of persons from the operation of this Act; and
- (b) specify the provisions, if any, of this Act and the regulations which, with such modifications as are specified in the regulations, shall apply to any class of persons so exempted.

(3) Regulations made for the purposes of subsection (2) may prescribe offences in relation to any failure to comply with a condition prescribed in relation to an exemption.

Act binds Crown.

5. Except to the extent provided by or under section 4, this Act binds not only the Crown in right of the State but also, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART II.**GENERAL ADMINISTRATION.****Administration.**

6. The Commissioner, in the exercise of the Commissioner's functions under this Act (except in relation to the contents of a report made by the Commissioner to the Minister), shall be subject to the direction and control of the Minister.

Delegation.

7. (1) The Commissioner may, by instrument in writing, delegate to any member of the police force or any prescribed person the exercise of such of the functions of the Commissioner under this Act (other than this power of delegation or the duty of the Commissioner under section 26) as are specified in the instrument.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time by the delegate in accordance with the terms of the delegation.

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation under this section, the Commissioner may continue to exercise any function delegated.

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(5) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the Commissioner and shall be deemed to have been done or suffered by the Commissioner.

(6) The Commissioner may, by instrument in writing, revoke wholly or in part any delegation under this section.

(7) An instrument purporting to have been signed by a person in his or her capacity as a delegate of the Commissioner shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Commissioner and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Commissioner.

PART III.**LICENSING PROCEDURES AND REQUIREMENTS.****Classes of licences.**

8. (1) A licence may be a Class 1 licence, a Class 2 licence or a Class 3 licence.

(2) A person (not being a person intending to carry on a business as referred to in subsection (3)) intending to carry on the business of, or to be employed in—

- (a) installing, maintaining or repairing safes or vaults or any mechanical, electronic, acoustic or other equipment designed or adapted to provide or enhance security or for the protection or watching of any property;
- (b) acting as a bodyguard;
- (c) patrolling, protecting, watching or guarding any property; or
- (d) performing any prescribed activity, or any activity of a prescribed class or description, in connection with security or the protection of persons or property,

may apply for a Class 1 licence.

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(3) A person intending to carry on the business of providing persons to carry on any activity referred to in subsection (2) may apply for a Class 2 licence.

(4) A person intending to carry on the business of furnishing advice (otherwise than in the course of, or incidentally to, the carrying on of an activity under the authority of a Class 1 licence or a Class 2 licence) in relation to security mechanisms, devices, equipment, methods or principles may apply for a Class 3 licence.

(5) The regulations may for any purpose designate, and distinguish between, categories of licences of any class.

(6) A licence shall not be varied so as to change it from a licence of one class into a licence of another class.

(7) A licence authorises the carrying on by the licensee of the security activities specified therein, subject to any conditions or restrictions specified by the Commissioner in the licence or prescribed in relation to licences of the class or category that includes the licence.

Application for grant, renewal or variation of licence.

9. (1) An application for the grant, renewal or variation of a licence shall be made in the prescribed manner and form to the Commissioner and shall be accompanied by the prescribed fee.

(2) Any particulars, in the prescribed form of application, relating to any of the matters set forth in section 10 (1) or (2) shall be supported by such evidence as the Commissioner may reasonably require, or as may be prescribed in the form or otherwise, and shall, where the regulations so require, be verified by statutory declaration.

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Grant, renewal or variation of licence.

10. (1) Upon receipt of an application for the grant, renewal or variation of a licence, the Commissioner, if satisfied that the applicant and, where the applicant is a corporation, each of the directors of the corporation—

- (a) is a fit and proper person to hold a licence of the kind sought by the applicant;
- (b) being an individual, has attained the age of 18 years;
- (c) has the prescribed qualifications or experience or, where the regulations so require, the prescribed qualifications and experience, to hold such a licence; and
- (d) has not, during the period of 10 years immediately preceding the lodgment of the application, been convicted of—
 - (i) any indictable offence; or
 - (ii) any offence against this Act or the regulations,of such a kind as warrants, in the opinion of the Commissioner, the refusal of the application,

shall grant the application but, if not so satisfied, shall refuse to grant the application.

(2) Without limiting the generality of subsection (1), the Commissioner may refuse to grant an application seeking a licence authorising the carrying on of any particular security activity if—

- (a) the Commissioner is not satisfied that the applicant is competent to carry on that activity;
- (b) the Commissioner is not satisfied as to the adequacy of any security equipment, methods or practices to be employed in the carrying on of that activity;
- (c) the carrying on of that activity would involve the use, carrying or possession of a pistol or any other firearm by the licensee or by any person employed by the licensee and the applicant—
 - (i) being an applicant for a Class 1 licence—is not the holder of a pistol licence in respect of the pistol or a shooter's licence in respect of the other firearm, as the case may be, issued and in force under the Firearms and Dangerous Weapons Act, 1973; or

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- (ii) being an applicant for a Class 2 licence—is not the holder of a permit issued and in force under the regulations made under that Act, where those regulations require the holder of the licence to hold the permit; or
- (d) the Commissioner is not satisfied that the applicant (or, where the applicant is a corporation, each of the directors of the corporation) is of good fame and character.

(3) Where the Commissioner proposes not to grant an application for the issue, renewal or variation of a licence or proposes to grant any such application by furnishing the applicant with a licence that is subject to any condition or restriction (other than a condition or restriction to which the applicant has consented), the Commissioner shall notify the applicant in writing setting forth the reasons for the Commissioner's decision.

Review of applications.

11. (1) An applicant for the grant, renewal or variation of a licence may—

- (a) within 21 days of receipt of a notice under section 10 (3); or
- (b) within 60 days after lodgment of the applicant's application, where—
 - (i) no such notice has been received; and
 - (ii) the application has not been granted,

notify the Commissioner in writing that the applicant desires the matter to be dealt with by a court.

(2) Upon being notified under subsection (1) by an applicant, the Commissioner shall refer the application to a Local Court held at a place convenient to the applicant's home or place of business.

(3) The Clerk of the Local Court to which the matter is referred shall fix a time and date for the hearing of the application and notify the Commissioner and the applicant of the time, date and place fixed for that purpose.

Determination by court.

12. (1) A Local Court constituted by a Magistrate sitting alone has jurisdiction to hear and determine applications referred by the Commissioner under section 11.

(2) The Commissioner shall be a party to, and shall be entitled to make submissions at, the hearing of an application referred to in subsection (1).

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(3) A Local Court in determining an application referred to in subsection (1)—

- (a) shall have and may exercise the functions and discretions of the Commissioner under section 10; and
- (b) may determine whether a licence shall or shall not be granted, renewed or varied as requested by the applicant and the conditions or restrictions, if any, to be specified by the Commissioner in any such licence.

(4) The Local Court's determination shall be final and binding on the applicant and the Commissioner.

Duration of licence.

13. Subject to this Act, a licence shall be in force for 1 year commencing on the day therein specified and may be renewed from time to time for a period of 1 year.

Cancellation or suspension of licence.

14. (1) Where it appears to the Commissioner that there exist in respect of a licensee circumstances which would, if the licensee's licence were the subject of an application for renewal, constitute grounds for refusal of that application, the Commissioner may, by notice in writing served on the licensee—

- (a) cancel; or
- (b) suspend, for a period specified in the notice,

the licensee's licence and order that the licence be delivered, at a place and within a time specified in the notice, to the Commissioner or a member of the police force.

(2) A notice under subsection (1) shall specify the reason for cancellation or suspension, as the case may be, of the licence.

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- (3) A decision of the Commissioner notified under this section—
- (a) except as provided by paragraph (b), shall have effect on and from the expiration of the time limited by section 15 (2) for appeal against the decision; or
 - (b) shall, where an appeal is duly lodged under section 15 against the decision, have no effect unless a Local Court, in determining the appeal, confirms the decision or the appeal is withdrawn.

Appeals against cancellation or suspension.

15. (1) A person aggrieved by a decision of the Commissioner notified to the person under section 14 may appeal against the decision to a Local Court constituted by a Magistrate sitting alone.

(2) Notice of any such appeal specifying the grounds of the appeal shall be lodged with the Clerk of the Local Court to which the appeal is being made not later than 21 days after the date on which the appellant was notified under section 14 of the decision appealed against.

(3) The Clerk of the Local Court shall give notice of the time and place of the hearing of any such appeal to the Commissioner and to the appellant, and in the notice to the Commissioner shall notify the Commissioner as to the grounds of the appeal.

(4) The hearing of an appeal may proceed notwithstanding any omission or error in a notice under subsection (3) or the failure to give any such notice if the court is satisfied that the appellant and the Commissioner had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.

(5) A Local Court shall hear and determine an appeal made to it under this section and may confirm (with or without variation) or disallow the decision appealed against, or make such other order in the circumstances as to the court seems just.

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(6) For the purposes of varying under subsection (5) a decision of the Commissioner, a Local Court may exercise only such powers as the Commissioner could have exercised under this Act when making that decision.

(7) The decision of a Local Court in respect of an appeal made under this section shall be final and binding on the appellant and the Commissioner.

Returns by Clerk of Local Court.

16. The Clerk of a Local Court shall at the times and in the manner prescribed forward to the Commissioner returns, in the prescribed form, of—

- (a) determinations, under section 12, of applications for the grant, renewal or variation of licences; and
- (b) appeals, under section 15, against the cancellation or suspension of licences.

Power of court to order licence to be surrendered.

17. (1) Where—

- (a) in any proceedings before any court in which a licensee is convicted of an indictable offence; or
- (b) in any proceedings before any court in which a licensee gives evidence or is convicted of an offence against this Act or the regulations,

the court is of opinion on the evidence before it, whether that evidence is given by the licensee or any other person, that the licensee's licence should be cancelled or suspended, the court may order that the licence be suspended for a period not exceeding 28 days and that the licence be delivered up to the court.

(2) Where a licence is delivered up to a court in accordance with an order under subsection (1), the licence and a copy of the order shall be transmitted forthwith by the Clerk or other proper officer of the court to the Commissioner.

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(3) The Commissioner, upon receipt of a licence transmitted under subsection (2), shall, unless the Commissioner takes action under section 14 to cancel or suspend the licence, cause the licence to be returned to the licensee.

Unlicensed persons.

18. (1) A person who, for fee or reward, carries on any security activity is guilty of an offence against this Act unless the person is the holder of a licence authorising the carrying on of that activity.

(2) A person who advertises, notifies or states that the person carries on or is willing to carry on any security activity is guilty of an offence against this Act unless the person is the holder of a licence authorising the carrying on of a security activity of the kind referred to in the advertisement, notice or statement, as the case may be.

(3) A person convicted of an offence under this section is liable—

- (a) in the case of a corporation—to a penalty not exceeding \$5,000;
or
- (b) in the case of an individual—to a penalty not exceeding \$500
or to imprisonment for a term not exceeding 6 months, or both.

(4) No fee or other money shall be chargeable by any person, and if charged shall not be sued for, recovered or retained, in relation to the performance of any function, the supply of any service or the carrying on of any business, as the case may be, consisting of the carrying on of any security activities, if the person by or on whose behalf that money is charged or sought to be recovered or retained is not, or was not, at the material time, the holder of a licence authorising the carrying on of those activities.

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PART IV.

OFFENCES IN CONNECTION WITH LICENCES.

Misrepresentation and like offences.

19. (1) A licensee who by any false, misleading or deceptive statement, representation or promise or by any wilful concealment of a material fact induces or attempts to induce any person to enter into an agreement or contract in connection with the carrying on of any security activity is guilty of an offence against this Act.

(2) A person who—

- (a) in relation to any application for the purposes of this Act or the regulations; or
- (b) in relation to any information which the person is required to furnish under this Act or the regulations,

makes any representation or statement which the person knows is false or misleading in a material particular is guilty of an offence against this Act.

Licence not to confer additional powers.

20. (1) A licensee shall not, by virtue of being licensed, have any power or authority which the person would not have if this Act had not been enacted.

(2) A person who in any way—

- (a) suggests or implies that by virtue of the person's licence the person may exercise any power or authority which the person could not exercise if this Act had not been enacted; or

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(b) uses or attempts to use his or her licence to exercise any such power or authority,
is guilty of an offence against this Act.

Licence to be produced on demand.

21. A licensee who fails on demand to produce the licensee's licence for inspection—

(a) to a member of the police force; or

(b) to any person with whom the licensee has dealings when carrying on any security activity,

is guilty of an offence against this Act.

Licensee not to sell or dispose of licence.

22. A licensee who sells, disposes of, delivers, lets out, hires or rents the licence to any other person or permits any other person to use the licence is guilty of an offence against this Act.

Prohibition of delegation of functions.

23. A licensee who delegates the carrying on of any security activity to a person other than the holder of a licence authorising the carrying on of that activity is guilty of an offence against this Act.

Licensee not to employ persons in respect of whom a licence is refused, suspended or cancelled.

24. A licensee, being the holder of a Class 2 licence, who knowingly employs in any capacity whatever in the licensee's business a person who has been refused a licence under this Act or whose licence has been suspended or cancelled (unless the licence has subsequently been granted or restored) is guilty of an offence against this Act and liable to a penalty not exceeding \$500.

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Contravention of condition or restriction.

25. A licensee who contravenes a condition or restriction for the time being in force in relation to the licence is guilty of an offence against this Act.

PART V.**MISCELLANEOUS.****Annual report.**

26. (1) As soon as practicable after 30th June, but on or before 31st December, in each year, the Commissioner shall prepare and forward to the Minister a report of the Commissioner's work and activities in pursuance of this Act for the 12 months ending on 30th June in that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Register.

27. (1) The Commissioner shall keep a register in the prescribed form of all licences.

(2) Particulars of every condition and restriction imposed in relation to a licence, and of every cancellation or suspension of a licence, shall be specified in the register.

(3) The Commissioner shall—

- (a) upon payment by a person of the prescribed fee in respect thereof, make the register available to the person for inspection; and
- (b) upon payment by a person of the prescribed fee in respect thereof, furnish the person with a certificate in the prescribed form as to any of the contents of the register.

(4) A certificate under the hand of the Commissioner or the Commissioner's delegate as to any matter contained in the register shall, in the absence of proof to the contrary, be taken as proof of the matter so certified.

Evidence.

28. (1) A court, in dealing with any application referred under section 11 or in any proceedings under section 15—

- (a) may receive and admit on production, as evidence, the judgment and findings of any court (whether civil or criminal), the verdict or findings of a jury or a certificate of the conviction of any person, in any case where any such judgment, findings, verdict or certificate is or are, in the opinion of the court, relevant to the application or proceedings; and
- (b) may receive and admit on production, as evidence, a transcript of the depositions or of any record, duly certified as correct, of the evidence of witnesses taken in any court in any case where, in the opinion of the court, the evidence is relevant to the application or proceedings.

(2) In any prosecution for an offence against this Act or the regulations—

- (a) it is not necessary to prove the appointment of the Commissioner or of a delegate of the Commissioner or the authority of either;
- (b) a signature purporting to be that of the Commissioner shall be taken to be the signature of the Commissioner until the contrary is proved; and
- (c) a statement signed by the Commissioner that at a time, or during a period, specified in the statement a person so specified was (or, as the case may be, was not) the holder of a licence of a specified class or category, or as to the date of issue or renewal or variation of and the particulars contained in any such licence or the conditions or restrictions imposed thereon, is prima facie evidence of the matters specified in the statement.

General penalty.

29. A person convicted of an offence against this Act is liable, where no other penalty is expressly provided for the offence, to a penalty not exceeding \$2,000.

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Offences by corporations.

30. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the knowledge of the person;
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

Proceedings for offences.

31. Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone.

Regulations.

32. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) security equipment, methods and practices, including—
 - (i) the carrying or display, by licensees, of means of identification and the production or surrender thereof;

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- (ii) the wearing by licensees of uniforms and the character or design of any uniforms so worn;
 - (iii) the markings that may be made upon, and the design of any features of, a vehicle used by any person in or in connection with the carrying on of any security activity; and
 - (iv) the preparation, keeping and maintenance, by licensees, of records and accounts, and the audit of any accounts, in respect of the carrying on by the licensee of any business requiring a licence and the production and inspection of any such records;
- (b) the procedure on any application or proceedings under this Act; **and**
- (c) the surrender of licences, the particulars to be endorsed on licences and the notification by the licensee of any change in those particulars.

(2) A regulation may impose a penalty not exceeding—

- (a) \$200, in the case of an individual; or
- (b) \$1,000, in the case of a corporation,

for any contravention thereof.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; **or**
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

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Savings and transitional provisions.

33. (1) The regulations may contain provisions of a savings or transitional nature consequential upon the enactment of this Act or the Commercial Agents and Private Inquiry Agents (Amendment) Act, 1985.

(2) Without limiting the generality of subsection (1), a regulation made under that subsection may—

- (a) deem a license under the Commercial Agents and Private Inquiry Agents Act, 1963, of a specified class to be a licence under this Act of a specified class or category and to be subject to specified conditions and restrictions; and
- (b) provide that specified provisions of this Act shall apply to and in respect of any such licence with such modifications as may be prescribed by the regulation.

(3) A provision made under subsection (1) may take effect on and from the date of commencement of this section or a later date.

(4) To the extent to which a provision made under subsection (1) takes effect on and from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—

- (a) to affect, in a manner prejudicial to any person (other than the State or a public authority), the rights of that person existing before that day of publication; or
- (b) to impose a liability on any person (other than the State or a public authority) in respect of anything done or omitted to be done before that day of publication.

(5) Nothing in this section limits the power of the Governor to make regulations for the purposes of section 4 (2).
