



New South Wales

Security Industry Amendment Act 2002 No 107

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New South Wales

Security Industry Amendment Act 2002 No 107

Act No 107, 2002

An Act to amend the *Security Industry Act 1997* to make further provision for the licensing and regulation of persons in the security industry; and for other purposes. [Assented to 29 November 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Security Industry Amendment Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Security Industry Act 1997 No 157

The *Security Industry Act 1997* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Security Industry Act 1997

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

armed security guard means a person who:

- (a) is employed to carry on a security activity referred to in section 4 (b), and
- (b) is the holder of a class 1A licence, and
- (c) in carrying out the activities authorised by that licence, is authorised by a licence under the *Firearms Act 1996* to use and possess firearms.

licensee means the holder of a licence.

master licensee means the holder of a master licence.

permanent Australian resident means a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

[2] Section 15 Restrictions on granting licence—general suitability criteria

Insert at the end of section 15 (1) (d):

, or

- (e) is not an Australian citizen or a permanent Australian resident.

[3] Section 15 (6) and (7)

Insert after section 15 (5):

- (6) For the purpose of determining whether an applicant is a fit and proper person to hold the class of licence sought by the applicant, the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the applicant that:

- (a) is relevant to the activities carried out under the class of licence sought by the applicant, or

- (b) causes the Commissioner to conclude that improper conduct is likely to occur if the applicant were granted the licence, or
 - (c) causes the Commissioner not to have confidence that improper conduct will not occur if the applicant were granted the licence.
- (7) The Commissioner is not, under this or any other Act or law, required to give any reasons for not granting a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information as referred to in subsection (6).

[4] Section 18 Investigation of licence application

Omit section 18 (2)–(5). Insert instead:

- (2) The Commissioner:
 - (a) may require an applicant for a licence to consent to having his or her fingerprints taken by an authorised officer in order to confirm the applicant's identity, and
 - (b) must refuse to grant the licence unless the applicant has been fingerprinted in accordance with any such requirement.
- (3) The Commissioner:
 - (a) may require an applicant for a licence to provide the Commissioner with a photograph of the applicant or consent to having his or her photograph taken by an authorised officer in order to confirm the applicant's identity, and
 - (b) must refuse to grant the licence unless the applicant has provided a photograph or been photographed in accordance with any such requirement.
- (4) Any fingerprint or photograph obtained in accordance with this section may be used by the Commissioner for any purpose as the Commissioner sees fit.
- (5) A person who formerly held a licence, but is not currently a licensee, or who was an applicant for, but was never granted, a licence, may apply to the Commissioner to have the following destroyed:

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- (a) the person's fingerprints obtained in accordance with a requirement under subsection (2) and any copies of them,
 - (b) the person's photograph obtained in accordance with a requirement under subsection (3) and any copies of it.
 - (6) The Commissioner may grant or refuse the application as the Commissioner sees fit.
 - (7) In this section, *authorised officer* means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this section:
 - (a) a police officer or any other member of NSW Police,
 - (b) a member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*,
 - (c) any other person prescribed by the regulations.

[5] Section 21 Grant of licence

Insert "as are set out in this Act or" after "other conditions" in section 21 (3).

[6] Section 23 Master licence—condition relating to certain employees

Omit "Without limiting the conditions to which a master licence may be subject, any such licence is subject to the condition" from section 23 (1).

Insert instead "It is a condition of every master licence".

[7] Section 23A

Insert after section 23:

23A Special conditions—uniforms must be worn when carrying firearms

- (1) It is a condition of every class 1A licence that, if the licensee is an armed security guard, the licensee must not carry a firearm unless the licensee is wearing a recognisable security guard's uniform.
- (2) It is a condition of every master licence that, if the master licensee employs a person as an armed security guard, the master licensee must not allow any firearm in the master

licensee's possession (including those firearms that have been acquired by the master licensee in connection with the master licensee's business) to be carried by an armed security guard who is not wearing a recognisable security guard's uniform.

- (3) It is a condition of every master licence that, if the master licensee employs a person as an armed security guard, the master licensee must not allow any person employed by the master licensee to carry a firearm while carrying on security activities for the master licensee unless the person is an armed security guard who is wearing a recognisable security guard's uniform.
- (4) If a police officer discovers an armed security guard carrying a firearm while the armed security guard is not wearing a recognisable security guard's uniform, the police officer may seize the firearm.
- (5) If an armed security guard carries a firearm while the armed security guard is not wearing a recognisable security guard's uniform, the Commissioner must:
 - (a) suspend, in accordance with section 25, the armed security guard's class 1A licence, and
 - (b) serve a notice on the master licensee who employs the armed security guard (or, if the security guard is self-employed and holds a master licence, serve a notice on the armed security guard as holder of a master licence), personally or by post:
 - (i) stating that the armed security guard's class 1A licence has been suspended and the reasons for suspending it, and
 - (ii) requesting that the master licensee provide the Commissioner with reasons why the master licence should not be revoked.
- (6) The Commissioner may, if the Commissioner is satisfied there is a genuine reason, authorise in writing a person employed as an armed security guard to carry a firearm while not wearing a recognisable security guard's uniform.
- (7) An authorisation under subsection (6) remains in force for such time as is specified in the authorisation unless it is sooner revoked by the Commissioner.

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- (8) The conditions set out in subsections (1)–(3) do not apply in relation to an armed security guard authorised under subsection (6), but only while the armed security guard is carrying the Commissioner’s written authorisation.

[8] Section 26 Revocation of licence

Omit section 26 (1) (a).

[9] Section 26 (1A)

Insert after section 26 (1):

- (1A) The Commissioner must revoke a licence where the Commissioner is satisfied that, if the licensee were applying for a new licence, the application would be required by this Act to be refused.

[10] Section 39A

Insert after section 39:

39A Master licensee to submit any firearms for ballistics tests

- (1) If a master licensee is authorised under the *Firearms Act 1996* to possess any firearms by reason of holding the master licence, the master licensee must, on request by the Commissioner, submit all the master licensee’s firearms to a police officer for ballistics testing.

Maximum penalty: 50 penalty units or 2 years imprisonment, or both.

- (2) If, after a master licensee’s firearms have been tested in accordance with subsection (1), a firearm so tested has been modified in a manner that would change the characteristics of the firearm’s firing (such as any alteration, modification or change to the barrel, chamber, firing pin, extractor, ejector or bolt action of a firearm that may affect the forensic identifying features of that firearm), the master licensee must notify the Commissioner of that modification and on request by the Commissioner submit the firearm to a police officer for further ballistics testing.

Maximum penalty: 50 penalty units or 2 years imprisonment, or both.

- (3) The Commissioner may keep the records of the results of any ballistics tests undertaken in accordance with this section and may use those records for any purpose as the Commissioner sees fit.

[11] Section 42A

Insert after section 42:

42A Further powers of inspection and seizure

- (1) In the exercise of any power to enter the premises of a master licensee under this or any other Act, a police officer may, if the police officer considers it necessary to do so for the purposes of obtaining evidence of the commission of an offence, seize any registers, books, records or other documents relating to the business being carried on under the authority of the master licence.
- (2) A police officer may, if the police officer considers it necessary to do so for the purposes of obtaining evidence of the commission of an offence, require any person to answer any question relating to any registers, books, records or other documents or any other relevant matter required to be kept by a licensee by or under this Act.
- (3) If a police officer is authorised under this or any other Act to make copies of entries in the registers, books, records or other documents of any person, the police officer may take those registers, books, records or other documents from the premises for the purpose of copying them and must return them after that copying is completed.
- (4) A person must not:
- (a) obstruct, hinder, prevent or interfere with a police officer in the exercise of a power under this section, or
 - (b) fail without reasonable excuse to answer any question relating to any register, book, record or other document or any other relevant matter when required to do so by a police officer in accordance with subsection (2).

Maximum penalty (subsection (4)): 50 penalty units.

[12] Section 45 Proceedings for offences

Insert at the end of the section:

- (2) Proceedings referred to in subsection (1) must be commenced not later than 3 years from when the offence was alleged to have been committed.

[13] Section 45A

Insert after section 45:

45A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, *authorised officer* means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this section:
 - (a) a police officer or any other member of the NSW Police,
 - (b) a member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*,
 - (c) any other person prescribed by the regulations.

[14] Schedule 2 Savings and transitional provisions

Omit “of this Act.” from clause 1 (1).

Insert instead:

of the following:

this Act

Security Industry Amendment Act 2002

[15] Schedule 2, clause 1 (2)

Omit “this Act”. Insert instead “the Act concerned”.

[16] Schedule 2, Part 3

Insert after clause 7:

Part 3 Provisions consequent on enactment of Security Industry Amendment Act 2002

8 Requirement as to Australian citizenship or residence not to apply to current licences

- (1) Sections 15 (1) (e) and 26 (1A), as inserted by the *Security Industry Amendment Act 2002*, do not operate to require the

Commissioner to revoke a licence that is in force on the commencement of those provisions.

- (2) Section 15 (1) (e) extends to an application for a new licence that was made but not determined before the commencement of that paragraph.
- (3) For the avoidance of doubt, an application for a new licence includes an application for a new licence by a person who holds, or has previously held, a licence.

9 Fingerprints held by Commissioner

Section 18 (4)–(6), as inserted by the *Security Industry Amendment Act 2002*, extend to fingerprints that were obtained from the person in accordance with a requirement under section 18 (2), and any copies of them, and kept by the Commissioner on the commencement of those subsections.

10 Proceedings for offences

Section 45 (2), as inserted by the *Security Industry Amendment Act 2002*, does not apply to an offence committed before the commencement of that subsection.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in appropriate order:

Security Industry Act 1997, section 45A

2.2 Firearms Act 1996 No 46

[1] Section 24 Revocation of licence

Insert after section 24 (1):

- (1A) The Commissioner must revoke a licence that is held for the purpose of employment as an armed security guard (within the meaning of the *Security Industry Act 1997*) if the licensee has failed to undertake any firearm safety training required under this Act or the regulations.

[2] Section 42A

Insert after section 42:

42A Inspections of storage of firearms held by security guard employers

- (1) A police officer may, at any time of the day or night, enter the premises of a master licensee under the *Security Industry Act 1997* who is licensed under this Act to possess firearms for the conduct of a security business and inspect that master licensee's firearms and the security and safe storage of those firearms.
- (2) A police officer conducting an inspection under this section is authorised to enter any part of the premises where firearms are being stored (including a part of a building used for residential purposes) and any part of the premises required to give access to those areas.
- (3) A person must not obstruct, hinder, prevent or interfere with a police officer in the exercise of a power under this section.

Maximum penalty (subsection (3)): 50 penalty units.

[3] Section 80 Disposal of surrendered or seized firearms

Insert “or section 23A (4) of the *Security Industry Act 1997*” after “this Act” in section 80 (1).

2.3 Road Transport (Driver Licensing) Act 1998 No 99

[1] Section 39 Photographs to which this Part applies

Omit section 39 (c). Insert instead:

- (c) photographs in the possession of the Authority that were taken or provided for the purpose of applications for the issue or renewal by the Commissioner of Police of a licence under the *Firearms Act 1996* or the *Security Industry Act 1997*.

[2] Section 41 Release of photographs prohibited

Insert after section 41 (2):

- (3) Despite this section, photographs to which this Part applies, and any photographic image or other matter contained in any database of such photographs, must be provided to the Commissioner of Police on request if the request relates to the administration of the *Security Industry Act 1997*.

[Second reading speech made in—

Legislative Assembly on 12 November 2002

Legislative Council on 21 November 2002]

BY AUTHORITY