



New South Wales

Security Industry Amendment (Private Investigators) Act 2016 No 40

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New South Wales

Security Industry Amendment (Private Investigators) Act 2016 No 40

Act No 40, 2016

An Act to amend the *Security Industry Act 1997* to provide for private investigators to be licensed under that Act and to make consequential amendments to the *Commercial Agents and Private Inquiry Agents Act 2004* and other Acts. [Assented to 21 September 2016]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Security Industry Amendment (Private Investigators) Act 2016*.

2 Commencement

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

Schedule 1 Amendment of Security Industry Act 1997 No 157

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

private investigator is defined in section 4.

[2] Section 4 Carrying on a “security activity”

Insert after section 4 (1) (c):

(c1) acting as a private investigator or acting in a similar capacity,

[3] Section 4 (2)

Insert in alphabetical order:

private investigator means a person who is employed or engaged for the purposes of either or both of the following:

- (a) the *investigation of persons*, being any activity carried out by a person on behalf of a second person (not being his or her employer) that involves finding a third person or investigating a third person’s business or personal affairs,
- (b) the *surveillance of persons*, being any activity carried out by a person on behalf of a second person (not being his or her employer) that involves the surveillance of a third person.

[4] Section 12 Class 2 licences

Insert after section 12 (1) (d):

(d1) class 2E—authorises the licensee to act as a private investigator or act in a similar capacity,

[5] Schedule 2 Savings and transitional provisions

Insert after clause 35:

Part 9 Provisions consequent on enactment of Security Industry Amendment (Private Investigators) Act 2016

36 Definitions

In this Part:

commencement day means the day on which this clause commences.

existing licence means the following licences under the *Commercial Agents and Private Inquiry Agents Act 2004*:

- (a) master licence for surveillance of persons,
- (b) master licence for investigation of persons,
- (c) operator licence for surveillance of persons,
- (d) operator licence for investigation of persons.

37 Saving of existing licences

- (1) Subject to the regulations, an existing licence that is in force immediately before the commencement day:
 - (a) is taken to be a licence of the corresponding kind (as prescribed by the regulations) granted under this Act, and
 - (b) continues, unless it is sooner surrendered by the holder or suspended or revoked under this Act, in force for the unexpired portion of its term, and
 - (c) cannot be renewed.
- (2) The conditions to which an existing licence is subject are, subject to the regulations, taken to be conditions imposed by the Commissioner under this Act and any such condition may be varied or revoked in accordance with this Act.

38 Pending applications

- (1) An application for an existing licence that was made under the *Commercial Agents and Private Inquiry Agents Act 2004* and that was not determined before the commencement day is taken to be an application for a licence of the corresponding kind (as determined under clause 37) under this Act and is to be dealt with accordingly subject to the other provisions of this clause.
- (2) The Commissioner may, in determining an application under this clause, treat the application as an application under section 27 of this Act for a variation to a licence if the Commissioner considers it appropriate to do so.
- (3) An application for an existing licence that would, because of this clause, become an application for a licence under this Act that is already held by the applicant is taken to be withdrawn by the applicant and any application fee paid is to be refunded.
- (4) Any fee paid under the *Commercial Agents and Private Inquiry Agents Act 2004* in relation to the application for the existing licence is taken to have been paid towards the application that is taken to have been made under this Act and any difference between the fee paid and the appropriate fee required to be paid under this Act is to be addressed by requiring the applicant to pay the balance of any underpayment or refunding to the applicant the balance of any overpayment.

39 Appeals and reviews

Any appeal made, or review commenced, in relation to an existing licence (or an application for an existing licence) that has not been determined before the commencement day is to be determined as if the amendments made to the *Commercial Agents and Private Inquiry Agents Act 2004* by Schedule 2 to the *Security Industry Amendment (Private Investigators) Act 2016* had not been made.

40 Records including fingerprints and photographs

Any records (including photographs and fingerprints) taken or kept by the Commissioner under, or for the purposes of, the *Commercial Agents and Private Inquiry Agents Act 2004* may be kept and used by the Commissioner for the purposes of this Act or for any other purpose as the Commissioner sees fit.

Schedule 2 Amendment of Commercial Agents and Private Inquiry Agents Act 2004 No 70

- [1] **Long title**
Omit “and private inquiry agents”.
- [2] **Section 1 Name of Act**
Omit “*and Private Inquiry Agents*”.
- [3] **Section 3 Objects**
Omit “and private inquiry agent” wherever occurring.
- [4] **Section 3 (a)**
Omit “, repossession of goods, surveillance of persons and investigation of persons”.
Insert instead “and repossession of goods”.
- [5] **Section 4 Definitions**
Omit “or private inquiry agent activities” from paragraph (b) of the definition of *disqualified individual* in section 4 (1).
- [6] **Section 4 (1)**
Omit the definitions of *investigation of persons*, *private inquiry agent*, *private inquiry agent activity* and *surveillance of persons*.
- [7] **Part 2, heading**
Omit “and private inquiry”. Insert instead “agent”.
- [8] **Sections 5 (1), 11 (1), 24 (1) and 26**
Omit “or private inquiry agent activity” wherever occurring.
- [9] **Sections 6 (1) (d) and (e) and 12 (1) (d) and (e)**
Omit the paragraphs.
- [10] **Section 25 Harassment**
Omit “or private inquiry agent” where firstly occurring in section 25 (1) (a).
- [11] **Section 25 (1) (a)**
Omit “or private inquiry agent activities”.
- [12] **Section 25 (1) (b)**
Omit “or private inquiry agent”.
- [13] **Section 39 Regulations**
Omit “and private inquiry agent activities” wherever occurring in section 39 (2) (a) and (b).

Schedule 3 Amendment of other Acts

3.1 Civil and Administrative Tribunal Act 2013 No 2

Schedule 5 Occupational Division

Omit “*Commercial Agents and Private Inquiry Agents Act 2004*” from clause 4 (1).

Insert instead “*Commercial Agents Act 2004*”.

3.2 Crimes (Criminal Organisations Control) Act 2012 No 9

Section 27 Prohibition on carrying on of certain activities when interim control order or control order takes effect

Omit paragraph (d) of the definition of *prescribed activity* in section 27 (6). Insert instead:

- (d) carrying on business as a commercial agent within the meaning of the *Commercial Agents Act 2004*,

3.3 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit “*Commercial Agents and Private Inquiry Agents Act 2004*”.

Insert instead “*Commercial Agents Act 2004*”.

3.4 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit “*Commercial Agents and Private Inquiry Agents Act 2004*”.

Insert instead “*Commercial Agents Act 2004*”.

3.5 Licensing and Registration (Uniform Procedures) Act 2002 No 28

Schedule 1 Licences to which Part 2 of Act applies

Omit the matter relating to the *Commercial Agents and Private Inquiry Agents Act 2004*.

Insert instead:

Commercial Agents Act 2004

section 6 (1) (a), master licence for process serving

section 6 (1) (b), master licence for debt collection

section 6 (1) (c), master licence for repossession of goods

section 12 (1) (a), operator licence for process serving

section 12 (1) (b), operator licence for debt collection

section 12 (1) (c), operator licence for repossession of goods

3.6 Road Transport Act 2013 No 18

Sections 55 (d), 56 (1) (a) (iv) and 57 (1) (d) (ii)

Omit “*Commercial Agents and Private Inquiry Agents Act 2004*” wherever occurring.

Insert instead “*Commercial Agents Act 2004*”.

3.7 Sheriff Act 2005 No 6

Section 14 Process serving

Omit “*Commercial Agents and Private Inquiry Agents Act 2004*”.

Insert instead “*Commercial Agents Act 2004*”.

[Second reading speech made in—
Legislative Assembly on 4 August 2016
Legislative Council on 13 September 2016]