



New South Wales

Security Industry Amendment Act 2017 No 16

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New South Wales

Security Industry Amendment Act 2017 No 16

Act No 16, 2017

An Act to amend the *Security Industry Act 1997* to make further provision in relation to the licensing and regulation of persons in the security industry; and for other purposes. [Assented to 9 May 2017]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Security Industry Amendment Act 2017*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Security Industry Act 1997 No 157

- [1] **Sections 6 (2B) and 12 (3)**
Insert “, assessment” after “training” wherever occurring.
- [2] **Section 15 Restrictions on granting licence—general suitability criteria**
Omit “requisite training, assessment and instruction” from section 15 (1) (d).
Insert instead “training, assessment and instruction that is approved”.
- [3] **Section 15 (2)–(2B)**
Omit the subsections.
- [4] **Section 15 (6)**
Insert “or whether the grant of the licence would be contrary to the public interest” after “the applicant” where firstly occurring.
- [5] **Section 17 Renewal of licence**
Omit “may refuse” from section 17 (4). Insert instead “must refuse”.
- [6] **Section 17 (7)**
Omit “any requisite training, assessment or instruction”.
Insert instead “such approved training, assessment and instruction as may be”.
- [7] **Section 17 (8)**
Omit the subsection.
- [8] **Section 18 Investigation of licence and renewal applications**
Omit section 18 (7) (b). Insert instead:
(b) a Public Service employee,
- [9] **Sections 21A (1) and 23E**
Insert “approved” before “training” wherever occurring.
- [10] **Section 23 Special conditions—master licences**
Insert at the end of the section:
(2) It is a condition of every master licence that the master licensee must not provide persons to carry on a security activity with a dog except with the approval of the Commissioner.
- [11] **Section 23D Special conditions—dog handling security services**
Omit the section.
- [12] **Section 23F Special conditions—class 1A, 1B, 1C, 1E or 1F licensee not to use dog**
Omit the section.
- [13] **Section 25 Suspension of licence**
Omit section 25 (1). Insert instead:
(1) The Commissioner may, if satisfied that there may be grounds for revoking a licence, suspend the licence, by notice served on the licensee, for a period of

not more than 60 days specified in the notice, commencing on service of the notice.

- (1A) The notice is:
- (a) to state that the licence is suspended and the reasons for suspending it, and
 - (b) to request that the licensee provide the Commissioner with reasons why the licence should not be revoked.
- (1B) The Commissioner is not required to give a licensee an opportunity to be heard before suspending the licence under this section.
- (1C) The Commissioner may, by further notice served on a licensee during the period in which the licence is suspended under this section, extend the period of suspension of the licence for a further period of not more than 60 days specified in the notice.

[14] Section 26 Revocation of licence

Omit “For the purpose of determining whether a licence should be revoked under subsection (1A)” from section 26 (5).

Insert instead “For the purposes of subsection (1A)”.

[15] Section 27A

Insert after section 27:

27A Provision of approved training, assessment and instruction

- (1) The Commissioner may approve persons or organisations to provide, for the purposes of sections 15 (1) (d), 17 (7), 21A and 23E, training, assessment and instruction that is of a kind approved, and to a standard required, by the Commissioner.
- (2) The approval of any such person or organisation by the Commissioner:
 - (a) is subject to such conditions with respect to the provision of training, assessment and instruction by the person or organisation as may be imposed by the Commissioner, and
 - (b) may be suspended or revoked at any time by the Commissioner.
- (3) A person or organisation approved by the Commissioner under this section must comply with any conditions imposed by the Commissioner under subsection (2).

Maximum penalty:

 - (a) in the case of a corporation—100 penalty units, or
 - (b) in the case of an individual—50 penalty units.

[16] Section 29 Right to seek administrative review from Civil and Administrative Tribunal

Omit “any decision to refuse to grant a licence, to renew a licence or to revoke a licence that was made on the ground of the applicant not being a fit and proper person” from section 29 (3).

Insert instead “a decision referred to in subsection (1)”.

[17] Section 29 (3) (a)

Omit “referred to in section 15 (6), 17 (5) or 26 (5)”.

[18] Section 29 (4) and (5)

Insert after section 29 (3) (following the note):

- (4) If the Tribunal considers that information contained in a criminal intelligence report or comprising other criminal information has not been properly identified as such, the Tribunal must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration by the Tribunal in its determination of an application.
- (5) Information that is withdrawn by the Commissioner must not be:
 - (a) disclosed to any person, or
 - (b) taken into consideration by the Tribunal in determining an application.

[19] Section 33 Misrepresentation and related offences

Insert “, records” after “information” in section 33 (2) (b).

[20] Section 39L Obstruction etc

Omit section 39L (2).

[21] Section 39Q Power of enforcement officers to require answers and record evidence

Omit “if attendance at that place is reasonably required in order that the questions can be properly put and answered” from section 39Q (3).

[22] Section 39Q (4)

Omit the subsection.

[23] Part 3B, Division 3

Insert after Division 2:

Division 3 General

39R Provisions relating to requirements to furnish records or information or answer questions

(1) Warning to be given on each occasion

A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

(2) Self-incrimination not an excuse

A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

(3) Information or answer not admissible if objection made

However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 33 (2) (b) or 39L (1) (b)) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or

- (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

(4) **Records admissible**

Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

(5) **Further information**

Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:

- (a) that the record or information had to be furnished or the answer had to be given, or
- (b) that the record or information furnished or answer given might incriminate the person.

[24] Section 40 Power of court to suspend licence

Insert “under section 25 or 26” after “take action” in section 40 (3) (b).

[25] Section 43 Delegation by Commissioner

Omit section 43 (3) (b). Insert instead:

- (b) a Public Service employee, or

[26] Section 45A

Omit the section. Insert instead:

45A Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the authorised officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations.
- (5) 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.
- (6) 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 Force,
 - (b) a Public Service employee,
 - (c) any other person prescribed by the regulations.

[27] Section 46

Omit the section. Insert instead:

46 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
 - (a) in the case of an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,
 - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
 - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
 - (e) by email to an email address specified by the person for the service of documents of that kind or by facsimile transmission to the facsimile number of the person,
 - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, *serve* includes give or send.

[28] Section 47 Certificate and other evidence

Insert after section 47 (1) (i):

- (j) that a specified person or organisation was or was not, on a day or during a specified period, approved under section 27A,
- (k) that specified conditions were or were not, on a day or during a specified period, imposed under section 27A with respect to the provision of training, assessment and instruction by a person or organisation approved under that section,

[29] Schedule 2 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Security Industry Amendment Act 2017

Existing approvals to provide training, assessment and instruction

- (1) Any training, assessment and instruction approved by the Commissioner under section 15 (2) (a) is, if the approval was in force immediately before the repeal of section 15 (2) by the amending Act, taken to be approved under section 27A.
- (2) Any person or organisation approved by the Commissioner under section 15 (2) (b) to provide training, assessment and instruction is, if the approval was in force immediately before the repeal of section 15 (2) by the

amending Act, taken to be approved under section 27A to provide that training, assessment and instruction.

- (3) Any condition imposed under section 15 (2A) by the Commissioner with respect to the provision of training, assessment and instruction by a person or organisation is, if the condition was in force immediately before the repeal of that subsection by the amending Act, taken to be a condition imposed under section 27A.
- (4) In this clause, **amending Act** means the *Security Industry Amendment Act 2017*.

Schedule 2 Amendment of Security Industry Regulation 2016

[1] Clause 25 Revocation of licence—additional reasons: section 26 (1) (d)

Omit “is not in”. Insert instead “would be contrary to”.

[2] Clause 25 (2) and (3)

Insert at the end of clause 25:

- (2) For the purpose of determining whether it would be contrary to the public interest for a person to continue to hold a licence, the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the person that:
 - (a) is relevant to the activities carried on under the class of licence held by the person, or
 - (b) causes the Commissioner to conclude that improper conduct is likely to occur if the person continues to hold the licence, or
 - (c) causes the Commissioner not to have confidence that improper conduct will not occur if the person continues to hold the licence.
- (3) The Commissioner is not, under the Act or any other Act or law, required to give any reasons for revoking a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information referred to in subclause (2).

[3] Clause 43 Approval of persons or organisations providing approved training, assessment and instruction

Omit “section 15” from clause 43 (1). Insert instead “section 27A”.

[4] Schedule 3 Penalty notice offences

Omit “Section 15 (2B)” wherever occurring. Insert instead “Section 27A (3)”.

[Second reading speech made in—
Legislative Assembly on 30 March 2017
Legislative Council on 3 May 2017]