



New South Wales

Security Industry Amendment (Private Investigators) Regulation 2022

under the

Security Industry Act 1997

His Honour the Administrator, with the advice of the Executive Council, has made the following Regulation under the *Security Industry Act 1997*.

PAUL TOOLE, MP
Minister for Police

Explanatory note

The *Security Industry Amendment (Private Investigators) Act 2016* repeals provisions that license private inquiry agents, to be known as private investigators, under the *Commercial Agents and Private Inquiry Agents Act 2004* and instead provides for the licensing of private investigators under the *Security Industry Act 1997*.

The objects of this Regulation are as follows—

- (a) to prescribe offences that prevent a person being licensed to act as a private investigator,
- (b) to prescribe persons who may act as private investigators without the need for a licence,
- (c) to make savings and transitional arrangements for licences under the *Commercial Agents and Private Inquiry Agents Act 2004* that related to private inquiry agents.

This Regulation also makes amendments to correct incorrect cross references.

This Regulation is made under the *Security Industry Act 1997*, including section 48 (the general regulation-making power) and Schedule 2.

Security Industry Amendment (Private Investigators) Regulation 2022

under the

Security Industry Act 1997

1 Name of Regulation

This Regulation is the *Security Industry Amendment (Private Investigators) Regulation 2022*.

2 Commencement

This Regulation commences on the commencement of the *Security Industry Amendment (Private Investigators) Act 2016*, Schedule 1[1].

Schedule 1 Amendment of Security Industry Regulation 2016

[1] Clause 3 Definitions

Insert in clause 3(1) in alphabetical order—

acts as a private investigator, for Schedule 1, includes acts in a similar capacity to a private investigator.

[2] Clause 5 Security activities

Omit “clause 2C” from clause 5(c). Insert instead “class 2C”.

[3] Clause 7

Omit the clause. Insert instead—

7 Exemptions—the Act, s 6(3)

For the Act, section 6(3), the persons specified in Schedule 1 are exempt from the operation of the Act to the extent specified.

[4] Clause 12 Information and particulars supporting licence application

Omit “clause 30” wherever occurring in clause 12(3)(i), (4)(j) and (5)(i).

Insert instead “clause 31”.

[5] Clause 15 Offences and civil penalties that disqualify applicants

Insert before clause 15(2)—

(1B) Offences affecting private investigators only

For the Act, section 16(1)(a) and (b), the following offences are prescribed offences, whether or not committed in New South Wales, only in relation to a class 2E licence—

- (a) an offence under the *Surveillance Devices Act 2007*, Part 2, or a similar offence under the law of another Australian jurisdiction,
- (b) an offence under the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth.

[6] Clause 34 Incident registers

Omit “clause 31” from clause 34(6). Insert instead “clause 32”.

[7] Schedule 1 Exempt persons

Omit “(Clause 6)”. Insert instead “clause 7”.

[8] Schedule 1

Insert after item 31—

- 32 A member of staff or employee of the Public Service or a public authority of New South Wales, another State or Territory or the Commonwealth to the extent the person, in that capacity, acts as a private investigator.
- 33 A law practice or an Australian legal practitioner or a person undertaking practical legal training under the supervision of an Australian legal practitioner to the extent the person, in that capacity, acts as a private investigator.

- 34** A registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth to the extent the person, in that capacity, acts as a private investigator.
- 35** A general insurer within the meaning of the *Insurance Act 1973* of the Commonwealth, a person carrying on the business of an insurance loss adjuster on behalf of a general insurer (a **loss adjuster**), or an employee of a general insurer or loss adjuster to the extent the person, in that capacity, acts as a private investigator.
- 36** An officer or employee of an authorised deposit-taking institution to the extent the person, in that capacity, acts as a private investigator.
- 37** A person conducting an investigation in relation to employees or staff on behalf of a government sector agency within the meaning of the *Government Sector Employment Act 2013*, to the extent the person, in that capacity, acts as a private investigator.
- 38** A person providing employment placement services within the meaning of the *Fair Trading Act 1987*, section 48, to the extent the person, in that capacity, acts as a private investigator.

[9] Schedule 4

Insert after Schedule 3—

Schedule 4 Savings and transitional provisions

Part 1 Provisions consequent on enactment of Security Industry Amendment (Private Investigators) Act 2016

Division 1 Preliminary

1 Definitions

In this Schedule—

commencement day means the day on which this Schedule commences.

converted licence means an existing licence taken to be a licence under the Act in accordance with this Schedule, clause 2.

existing application means an application for a master licence or operator licence under the *Commercial Agents and Private Inquiry Agents Act 2004*.

existing licence means—

- (a) an existing master licence, or
- (b) an existing operator licence.

existing master licence means the following licences issued under the *Commercial Agents and Private Inquiry Agents Act 2004* and in force immediately before the commencement day—

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

existing operator licence means the following licences issued under the *Commercial Agents and Private Inquiry Agents Act 2004* and in force immediately before the commencement day—

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

Division 2 Conversion of existing licences

2 Saving of licences under Commercial Agents and Private Inquiry Agents Act 2004

- (1) On the commencement day, an existing operator licence is taken to be a class 2E licence issued under the Act.
- (2) On the commencement day, an existing master licence is taken to be the following issued under the Act—
 - (a) for a licensee employing no licensed operators—a class MA master licence,
 - (b) for a licensee employing 1 to 10 licensed operators—a class MC master licence,
 - (c) for a licensee employing more than 10 licensed operators—a class ME master licence.
- (3) A converted licence—
 - (a) continues in force for the unexpired part of the term of the relevant existing licence unless sooner—
 - (i) surrendered by the licence holder, or
 - (ii) suspended or revoked under the Act, and
 - (b) may be renewed in accordance with the Act.
- (4) The conditions to which an existing licence is subject—
 - (a) are taken to be conditions imposed on the relevant converted licence by the Commissioner under the Act, and
 - (b) may be varied or revoked in accordance with the Act.
- (5) This clause does not apply to an existing licence to which this Schedule, clause 3 or 4 applies.

3 Amendment of class 1 or class 2 licences held by existing licence holders

- (1) This clause applies to a person (the *licence holder*) who, immediately before the commencement day, holds—
 - (a) an existing operator licence, and
 - (b) a class 1 or class 2 licence.
- (2) On the commencement day—
 - (a) the class 1 or class 2 licence of the licence holder is taken to be amended to add a class 2E licence, and
 - (b) the existing operator licence ceases to have effect.

4 Certain existing licence holders may apply for amendment of master licence

- (1) This clause applies to a person (the *licence holder*) who, immediately before the commencement day, holds—
 - (a) an existing master licence, and
 - (b) a master licence under the Act.

- (2) On the commencement day, the existing master licence of the licence holder ceases to have effect.
- (3) If the licence holder provides more licensed operators than are authorised to be provided to carry on security activities under the master licence, the licence holder may, within 2 months after the commencement day, apply to the Commissioner to vary the subclass of the master licence.
- (4) Despite clause 21(2), no fee is payable for an application made under this clause.
- (5) The Act, section 7(1)(b) does not apply to the licence holder until—
 - (a) the day occurring 2 months after the commencement day, or
 - (b) if the licence holder makes an application in accordance with subclause (3) before that day—the application is finally determined.

5 Refund of certain fees

- (1) This clause applies to a licence that ceases to have effect under this Schedule, clause 3(2)(b).
- (2) The Commissioner must refund to the licence holder the part of the licence fee paid for the licence that is equivalent to the remaining period for which the licence would have been in force had the licence not ceased to have effect.
- (3) Subclause (2) does not apply to part of a fee declared to be a processing fee for the purposes of the *Licensing and Registration (Uniform Procedures) Act 2002*, Part 2.

Division 3 Miscellaneous

6 Pending applications

- (1) Subject to subclause (4), an existing application, not yet determined before the commencement day, is taken to be an application for the corresponding licence.
- (2) A fee paid for the existing application is taken to have been paid for the application for the corresponding licence.
- (3) If there is a difference between the fee paid for the existing application and the fee required to be paid under the Act—
 - (a) the applicant must pay the balance of an underpayment, and
 - (b) the balance of an overpayment must be refunded to the applicant.
- (4) An existing application is taken to be withdrawn and a fee paid for the existing application must be refunded if—
 - (a) the existing application relates to a master licence under the *Commercial Agents and Private Inquiry Agents Act 2004*, and
 - (b) the applicant holds a master licence under the Act.
- (5) In this clause—

application licence means the licence being applied for in the existing application.

corresponding licence means the licence to which the application licence would be converted under this Schedule, clause 2 if the applicant held the application licence immediately before the commencement day.

7 Reviews commenced in relation to existing licences

- (1) This clause applies to the following, not yet determined before the commencement day—
 - (a) an internal review applied for under the *Administrative Decisions Review Act 1997*, section 53 in relation to an existing licence,
 - (b) a review applied for under the *Commercial Agents and Private Inquiry Agents Act 2004*, section 20 in relation to an existing licence.
- (2) The review must be determined under the Act as if the existing licence was, immediately before the commencement of the review, taken to be a licence under the Act in accordance with this Schedule.
- (3) In this clause—
existing licence includes an existing application.

8 Records including fingerprints and photographs

- (1) A record taken or kept by the Commissioner under the *Commercial Agents and Private Inquiry Agents Act 2004* may be kept and used by the Commissioner for the purposes of the Act and other purposes the Commissioner considers appropriate.
- (2) In this clause—
record includes a photograph and fingerprint.