

Passed by both Houses



New South Wales

# Security Industry Amendment Bill 2005

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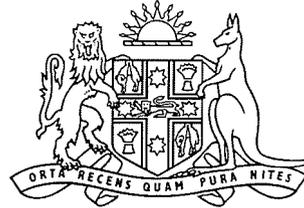
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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2005*



New South Wales

## **Security Industry Amendment Bill 2005**

Act No , 2005

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An Act to amend the *Security Industry Act 1997* to make further provision with respect to the licensing and regulation of persons in the security industry; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Security Industry Amendment Act 2005*.

**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 Firearms Act 1996 No 46**

The *Firearms Act 1996* is amended by omitting section 24 (1A) and by inserting instead the following subsection:

- (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:
- (a) the licensee has failed to undertake any firearm safety training required under this Act or the regulations, or
  - (b) in the case of a licensee who holds a class P1F licence under the *Security Industry Act 1997*—the P1F licence is revoked under that Act or the licensee contravenes any condition of the firearms licence under this Act.

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## Schedule 1    **Amendment of Security Industry Act 1997**

(Section 3)

**[1] Section 3 Definitions**

Omit “section 4 (b)” from paragraph (a) of the definition of *armed security guard* in section 3 (1).

Insert instead “section 4 (c)”.

**[2] Section 3 (1), definition of “armed security guard”**

Omit “class 1A” from paragraph (b) of the definition.

Insert instead “class 1F or P1F”.

**[3] Section 3 (1), definition of “employ”**

Omit the definition. Insert instead:

*employ* does not include subcontract or arrange by contract, franchise or otherwise with another person for the purpose of that other person employing or providing persons.

**[4] Section 4**

Omit the section. Insert instead:

**4 Carrying on a “security activity”**

(1) For the purposes of this Act, a person carries on a *security activity* if the person carries on any one or more of the following activities in the course of conducting a business or in the course of the person’s employment:

- (a) acting as a bodyguard or providing close personal protection, or acting in a similar capacity,
- (b) acting as a crowd controller, venue controller or bouncer, or acting in a similar capacity, by physical or electronic means,
- (c) patrolling, protecting, watching or guarding any property, by physical means (which may involve the use of patrol dogs or the possession or use of firearms) or by electronic means, in any one or more of the following circumstances:
  - (i) carrying on control room operations,
  - (ii) carrying on monitoring centre operations,
  - (iii) carrying on retail loss prevention,

- (iv) patrolling, protecting, watching or guarding cash (including cash in transit) or other valuables,
- (v) patrolling, protecting, watching or guarding an airport or any other infrastructure,
- (d) installing, maintaining, repairing or servicing, by physical or electronic means:
  - (i) any security equipment, or
  - (ii) any mechanical, electronic, acoustic or other equipment that the person installing, maintaining, repairing or servicing the equipment purports to be equipment that is designed or adapted to provide or enhance security or for the protection or watching of any property,
- (e) selling:
  - (i) any security equipment (other than basic household or automotive security items at approved classes of retail outlets), or
  - (ii) any mechanical, electronic, acoustic or other equipment that the person selling the equipment purports to be equipment that is designed or adapted to provide or enhance security or for the protection or watching of any property,
- (f) selling security methods or principles,
- (g) selling the services of persons to carry on any security activity referred to in this section,
- (h) providing advice in relation to security equipment (other than basic household or automotive security items at approved classes of retail outlets), including:
  - (i) providing product advice in relation to security equipment, or
  - (ii) identifying and analysing security risks and providing solutions or management strategies to minimise security risks,
- (i) providing advice in relation to any other mechanical, electronic, acoustic or other equipment (other than basic household or automotive security items at approved classes of retail outlets) that the person providing the advice purports to be equipment that is designed or adapted to provide or enhance security or for the protection or watching of any property,

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- (j) providing training or instruction in relation to any security activity referred to in this section,
  - (k) assessing another person's training, instruction or competencies in relation to any security activity referred to in this section,
  - (l) supervising or monitoring, for fee or reward, any person who is carrying on a security activity authorised by a provisional licence,
  - (m) employing or providing persons, or arranging by contract, franchise or other arrangement with another person for the purpose of that other person employing or providing persons, to carry on any security activity referred to in this section,
  - (n) acting as an agent for, or otherwise obtaining contracts for:
    - (i) the supply of persons to carry on any security activity referred to in this section, or
    - (ii) the supply of any security equipment (other than basic household or automotive security items at approved classes of retail outlets), or
    - (iii) the supply of any security activity referred to in this section,
  - (o) brokering any security activity referred to in this section, by acting or purporting to act as an intermediary to negotiate and obtain any such activity for a person (other than the person's employer or a principal who is not a client of the person) in return for a commission or financial benefit,
  - (p) any other activity, or class of activities, that is connected with security or the protection of persons or property, whether by physical or electronic means, and that is prescribed by the regulations for the purposes of this section.
- (2) For the purposes of this section, *basic household or automotive security item* has the meaning given by the regulations.

**[5] Section 6 Application of Act**

Omit "to the extent provided by subsection (2)" from section 6 (1).

Insert instead "as provided by this section".

**[6] Section 6 (2) (a)**

Insert "or other member of NSW Police" after "officer".

**[7] Section 6 (2)**

Insert “or in the course of that employment” after “that capacity”.

**[8] Section 6 (2A)–(2C)**

Insert after section 6 (2):

(2A) This Act does not apply to or in respect of any person who is employed by or in:

- (a) the New South Wales Crime Commission, or
- (b) the Australian Crime Commission, or
- (c) the Police Integrity Commission, or
- (d) the Independent Commission Against Corruption, or
- (e) the Department of Corrective Services as a correctional officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), or
- (f) the Department of Juvenile Justice, or
- (g) any other agency responsible for the enforcement of criminal laws of the State, of the Commonwealth or of another State or Territory,

while, and to the extent that, the person is performing official duties in the course of that employment.

(2B) The Commissioner may, on application by a person who provides training or instruction in relation to a security activity of a kind authorised by a class 2 licence, exempt the person from the requirement under section 7 (2) to be licensed to provide that training or instruction.

(2C) An exemption under subsection (2B):

- (a) is to be specified in a written notice given to the person concerned, and
- (b) is subject to such terms and conditions as the Commissioner may specify in the notice, and
- (c) may be revoked at any time by the Commissioner.

**[9] Section 7**

Omit the section. Insert instead:

**7 Offence of carrying on unauthorised security activities**

- (1) A person must not employ or provide persons to carry on security activities unless:

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- (a) the person is the holder of a master licence, and
  - (b) the person employs or provides no more than the number of persons authorised by the master licence, and
  - (c) each of the persons employed or provided is the holder of a class 1 licence, class 2 licence or provisional licence.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units, or
  - (b) in the case of an individual—500 penalty units or imprisonment for 2 years, or both.
- (2) A person must not carry on a security activity (other than employing or providing persons to carry on security activities) unless the person is the holder of a class 1 licence, class 2 licence or provisional licence that authorises the person to carry on the security activity.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

**[10] Section 9 Classes of licences**

Insert after section 9 (c):

- (d) a provisional licence.

**[11] Section 9 (2)**

Insert at the end of section 9:

- (2) A class of licence may, in accordance with the regulations, be combined with another class of licence into a composite licence that authorises the licensee to carry on more than one kind of security activity.

**[12] Section 10 Master licences**

Omit section 10 (1) and (2). Insert instead:

- (1) Master licences are to be classified into subclasses. Those subclasses, and the authority they confer, are as follows:
- (a) class MA—authorises the holder (who is self-employed and who holds a class 1 or class 2 licence, or both) to provide his or her services to carry on security activities,
  - (b) class MB—authorises the holder to employ or provide no more than 10 persons to carry on security activities, each of whom must be the holder of a class 1 licence, class 2 licence or provisional licence,

- (c) class MC—authorises the holder to employ or provide between 11 and 50 persons to carry on security activities, each of whom must be the holder of a class 1 licence, class 2 licence or provisional licence,
- (d) class MD—authorises the holder to employ or provide more than 50 persons to carry on security activities, each of whom must be the holder of a class 1 licence, class 2 licence or provisional licence.

**[13] Section 11 Class 1 licences**

Omit section 11 (1). Insert instead:

- (1) Class 1 licences are to be classified into subclasses. Those subclasses, and the authority they confer, are as follows:
  - (a) class 1A—authorises the licensee to patrol, protect, watch or guard any property while unarmed (and whether while static or mobile),
  - (b) class 1B—authorises the licensee to act as a bodyguard or to provide close personal protection or to act in a similar capacity,
  - (c) class 1C—authorises the licensee to act as a crowd controller, venue controller or bouncer or to act in a similar capacity,
  - (d) class 1D—authorises the licensee to patrol, protect, watch or guard any property with a dog,
  - (e) class 1E—authorises the licensee to patrol, protect, watch or guard any property while carrying on monitoring centre operations,
  - (f) class 1F—authorises the licensee to patrol, protect, watch or guard approved classes of property while armed (but only under the authority of a licence or permit to use or possess firearms under the *Firearms Act 1996*),
  - (g) class 1G—authorises the licensee to patrol, protect, watch or guard any property while carrying on retail loss prevention,
  - (h) any other class prescribed by the regulations—authorises the licensee to carry on the security activity prescribed by the regulations in relation to the prescribed class of licence concerned.

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**[14] Section 12 Class 2 licences**

Omit section 12 (1). Insert instead:

- (1) Class 2 licences are to be classified into subclasses. Those subclasses, and the authority they confer, are as follows:
  - (a) class 2A—authorises the licensee to act as a consultant by identifying and analysing security risks and providing solutions and management strategies to minimise those security risks,
  - (b) class 2B—authorises the licensee to sell, and provide advice in relation to, security equipment and to sell the services of persons to carry on any security activity,
  - (c) class 2C—authorises the licensee to act as a locksmith, including installing, maintaining, repairing and servicing, and providing advice in relation to, security equipment (including barrier equipment),
  - (d) class 2D—authorises the licensee to provide training, assessment or instruction in relation to any security activity,
  - (e) class 2E—authorises the licensee to protect assets or other property by installing, maintaining, repairing and servicing, and providing advice in relation to, barrier equipment,
  - (f) class 2F—authorises the licensee to install, maintain, repair and service, and provide advice in relation to, electronic security equipment,
  - (g) any other class prescribed by the regulations—authorises the licensee to carry on the security activity prescribed by the regulations in relation to the prescribed class of licence concerned.

**[15] Section 12 (4)**

Omit the subsection.

**[16] Section 12A**

Insert after section 12:

**12A Provisional licences**

- (1) Provisional licences are to be classified into subclasses. Those subclasses, and the authority they confer, are as follows:
  - (a) class P1A—authorises the licensee to patrol, protect, watch or guard any property while unarmed (and whether

while static or mobile), but only while being supervised as required by section 29A,

- (b) class P1B—authorises the licensee to act as a bodyguard or provide close personal protection, or to act in a similar capacity, but only while being supervised as required by section 29A,
- (c) class P1C—authorises the licensee to act as a crowd controller, venue controller or bouncer, or to act in a similar capacity, but only while being supervised as required by section 29A,
- (d) class P1D—authorises the licensee to patrol, protect, watch or guard any property with a dog, but only while being supervised as required by section 29A,
- (e) class P1E—authorises the licensee to patrol, protect, watch or guard any property while carrying on monitoring centre operations, but only while being supervised as required by section 29A,
- (f) class P1F—authorises the licensee to patrol, protect, watch or guard approved classes of property while armed, but only under the authority of a licence or permit to use or possess firearms under the *Firearms Act 1996* and only while being supervised as required by section 29A,
- (g) class P1G—authorises the licensee to patrol, protect, watch or guard any property while carrying on retail loss prevention, but only while being supervised as required by section 29A,
- (h) any other class prescribed by the regulations (being a class that corresponds to any additional class prescribed by the regulations under section 11 (1) (h))—authorises the licensee to carry on the security activity prescribed by the regulations in relation to the prescribed class of licence concerned, but only while being supervised as required by section 29A.

- (2) The relevant subclass is to be endorsed on each provisional licence. More than one such subclass may be endorsed on a provisional licence.

**[17] Section 13 Persons who may hold class 1 and class 2 licences**

Omit the section.

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**[18] Section 14 Application for licence**

Omit “or class 2 licence” from section 14 (3).

Insert instead “, class 2 or provisional licence”.

**[19] Section 14 (3) (a)**

Omit the paragraph. Insert instead:

- (a) if the applicant is employed, specify the name and business address of the applicant’s employer, and

**[20] Section 14 (4) and (5)**

Insert after section 14 (3):

- (4) In the case of an application for a class 1 licence by an applicant who has previously held a class 1 licence or a provisional licence, the applicant must also:
  - (a) supply proof of the person’s employment in carrying on an authorised security activity during the term of the previous licence (for example, by providing the names of employers during that term and providing records indicating the type of security activity carried out), and
  - (b) supply evidence to the Commissioner’s satisfaction that the person has been engaged in the security activity proposed to be authorised by the licence for a significant period of the previous licence and has demonstrated continuing knowledge and competency in relation to that security activity.
- (5) In the case of an application for a class P1F licence, the application must be made on behalf of the applicant by the applicant’s employer (being an approved master licensee providing uniformed cash in transit security services).

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

Omit “does not hold the qualifications” from section 15 (1) (c).

Insert instead “in the case of application for a licence other than a provisional licence—does not have the competencies”.

**[22] Section 15 (2)**

Omit the subsection. Insert instead:

- (2) The Commissioner may refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:
  - (a) in the case of an application for a class 1 licence:

- (i) has not, for at least 12 months, held a provisional licence authorising the applicant to carry on the security activity to which the proposed licence relates, or
- (ii) has not previously been authorised by a licence (other than a provisional licence) to carry on the security activity to which the proposed licence relates, or
- (b) in the case of an application for a provisional licence—has not completed, to the satisfaction of the Commissioner, an approved security industry training course that is relevant to the class of licence sought, or
- (c) in the case of an application for a class 1 licence where the applicant has previously been authorised by a licence to carry on the security activity to which the proposed licence relates:
  - (i) has failed to demonstrate active participation or employment in the security industry for a significant period of the previous licence, after taking into account any actual experience or offered work or contracts, or
  - (ii) has not been engaged in the security activity authorised by the previous licence for a significant period, or
  - (iii) has failed to demonstrate continuing knowledge and competency in relation to the security activity authorised by the previous licence.

**[23] Section 15 (5)**

Omit “A”. Insert instead “Except as provided by the regulations, a”.

**[24] Section 16 Restrictions on granting licence—criminal and other related history**

Insert “in relation to the class of licence sought” after “regulations” wherever occurring in section 16 (1) (a) and (b).

**[25] Section 16 (1) (c) and (d)**

Omit section 16 (1) (c). Insert instead:

- (c) has, within the period of 5 years before the application for the licence was made, had a civil penalty imposed on the applicant by a court or tribunal in New South Wales or elsewhere, being a civil penalty prescribed by the regulations in relation to the class of licence sought, or

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- (d) has, within the period of 10 years before the application for the licence was made, been removed or dismissed from NSW Police or from the police force of any other jurisdiction (whether in Australia or overseas) on the ground of the applicant's integrity as a police officer.

**[26] Section 16 (2)**

Omit the subsection.

**[27] Section 16 (4A)**

Insert after section 16 (4):

- (4A) The Commissioner may refuse to grant an application for a licence if, within the period of 10 years before the application for the licence was made, the applicant has been removed from NSW Police under section 181D of the *Police Act 1990* on grounds other than the applicant's integrity as a police officer.

**[28] Section 16 (5)**

Omit "(2) or (3)". Insert instead "(3), (4) or (4A)".

**[29] Section 16A**

Insert after section 16:

**16A Restrictions on granting licence—conflict of interest for police officers**

- (1) The Commissioner must refuse to grant an application for a licence to a police officer or other member of NSW Police if the Commissioner considers that the grant of the licence, or the carrying on of the security activities authorised by the licence, would create a conflict of interest between the proper performance of the officer's or member's duties as an officer or member and the officer's or member's private interests.
- (2) However, the Commissioner may grant an application for a licence to a police officer or other member of NSW Police subject to the condition that the person may not be employed by specified persons, if to do so would avoid a conflict of interest of the kind described in subsection (1). This subsection does not limit the other conditions to which a licence may be subject.

**[30] Section 17 Training requirements—class 1 or class 2 licence**

Omit the section.

**[31] Section 18 Investigation of licence application**

Insert after section 18 (6):

- (6A) A reference in this section to an applicant or a licensee includes, in the case of an application for a master licence, or in the case of a former licensee, a reference to each close associate of the applicant or former licensee.

**[32] Section 19 Applications by serving and former police officers**

Omit “who was at any time”. Insert instead “who is, or who was at any time,”.

**[33] Section 19**

Omit “Internal Affairs Branch of the Police Service of New South Wales”.

Insert instead “Special Crime and Internal Affairs Branch of NSW Police”.

**[34] Section 19**

Insert “or the suitability of the applicant being employed by any specified master licensee” after “licence” where secondly occurring.

**[35] Section 20 Commissioner may require further information**

Insert after section 20 (1) (b):

- (b1) in the case of an application for a class 1 licence by an applicant who has previously held a class 1 licence or a provisional licence—to provide, in accordance with directions in the notice, statements from previous employers specifying the duration of the applicant’s employment and the security activities carried on by the applicant during the applicant’s employment (but only if that employment included time during the term of that previous licence),

**[36] Section 20 (1) (c)**

Omit “or (b)”. Insert instead “, (b) or (b1)”.

**[37] Section 20 (8)**

Insert after section 20 (7):

- (8) A certificate signed by the Commissioner (or by a person holding an office prescribed by the regulations) certifying the reasonable costs incurred by the Commissioner in investigating and inquiring into an application for a licence is admissible in any proceedings for the recovery of an amount payable under this section and is prima facie evidence of the amount so specified.

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**[38] Section 21 Grant and conditions of licence**

Omit section 21 (3). Insert instead:

- (3) A licence is subject:
  - (a) to such conditions as may be imposed by the Commissioner (whether at the time the licence is granted or at any later time), and
  - (b) to such other conditions as are imposed by this Act or prescribed by the regulations.

**[39] Section 23 Master licence—condition relating to certain employees and others**

Insert “or provide” after “employ”.

**[40] Section 23AA**

Insert after section 23:

**23AA Special conditions—authority to carry firearms**

- (1) It is a condition of every class 1F or P1F licence that the licensee must not carry on the security activity authorised by the licence unless the licensee is authorised by a licence or permit under the *Firearms Act 1996* to possess or use a firearm.
- (2) If the holder of a class 1F or P1F licence is found guilty of an offence under the *Firearms Act 1996* in relation to the unauthorised possession or use of a firearm, the person cannot be found guilty of an offence under section 30 of this Act of failing to comply with the condition imposed by this section in respect of that unauthorised possession or use.

**[41] Section 23A Special conditions—uniforms must be worn when carrying firearms**

Omit “class 1A” wherever occurring in section 23A (1) and (5) (a) and (b) (i).

Insert instead “class 1F or P1F”.

**[42] Sections 23B and 23C**

Insert after section 23A:

**23B Special conditions—storage of firearms in certain residential premises**

- (1) It is a condition of every class 1F or P1F licence that, if the licensee is an armed security guard, the licensee must not store a firearm at any prohibited premises.

- (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 cause or permit 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 stored at any prohibited premises.
- (3) If a police officer discovers that a firearm is stored at prohibited premises, the police officer may seize the firearm.
- (4) If an armed security guard stores a firearm at any prohibited premises, the Commissioner:
  - (a) must suspend, in accordance with section 25, the armed security guard's class 1F or P1F licence, and
  - (b) must 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 the holder of a master licence), personally or by post:
    - (i) stating that the armed security guard's class 1F or P1F 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.
- (5) In this section:

*prohibited premises* means any premises that are regularly used as a principal or temporary place of residence by a person who has been found guilty of a criminal offence, being an offence that would disqualify the person from holding a licence because of section 16 (1) (a) (if the person has been convicted) or section 16 (1) (b) (whether or not the person has been convicted).

**23C Special conditions—class P1F licences**

- (1) It is a condition of every P1F licence that the licensee must, before carrying on any security activity authorised by the licence, successfully complete approved training provided by the licensee's employer (being an approved master licensee providing uniformed cash in transit security services).
- (2) It is a condition of every class P1F licence that the licensee remains employed by the approved master licensee who, in accordance with section 14 (5), applied for the P1F licence on the licensee's behalf.

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- (3) It is a condition of every class P1F licence that the licensee must:
- (a) within 3 months of being granted the licence, successfully complete such further training as is determined by the Commissioner, and
  - (b) successfully complete such other training as may be required by the Commissioner during the term of the licence.
- (4) The Commissioner must revoke a class P1F licence if the Commissioner is satisfied that the licensee has failed to comply with a condition under this section.

**[43] Section 26 Revocation of licence**

Insert after section 26 (1) (b) (iii):

- (iv) fails to collect the licence from the place nominated by the Commissioner within 60 days after being notified of the granting of the licence, or

**[44] Section 27 Variation of licence**

Omit “or class 2” from section 27 (1). Insert instead “, class 2 or provisional”.

**[45] Section 28 Application for new licence**

Omit the section.

**[46] Section 29 Right to seek review from Administrative Decisions Tribunal**

Insert “(other than revocation by operation of section 26 (1) (b) (iv))” after “person” in section 29 (1) (c).

**[47] Section 29 (3)**

Insert after the note to the section:

- (3) In determining an application for a review of any decision to refuse to grant a licence or to revoke a licence that was made on the ground of the applicant not being a fit and proper person, the Administrative Decisions Tribunal:
- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information referred to in section 15 (6) without the approval of the Commissioner, and
  - (b) in order to prevent the disclosure of any such report or other criminal information, is to receive evidence and hear argument in the absence of the public, the applicant for

review, the applicant's representative and any other interested party, unless the Commissioner approves otherwise.

**Note.** Section 15 (7) of this Act provides that 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 referred to in section 15 (6). Accordingly, Part 2 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997* does not apply to any decision to refuse to grant a licence based on such information to the extent that it would require disclosure of the existence or content of any criminal intelligence report or other criminal information.

**[48] Sections 29A and 29B**

Insert before section 30:

**29A Offence of permitting employee who is provisional licensee to carry on unsupervised security activity**

The person who is for the time being the person nominated to the Commissioner as the employer of a person who is the holder of a provisional licence (either in the application for a licence or at some subsequent time) is guilty of an offence if the holder of the provisional licence carries on a security activity authorised by that licence otherwise than under the direct supervision (as determined in accordance with the regulations) of a person who holds a class 1 licence that authorises the carrying on of the security activity to which the provisional licence relates.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units.

**29B Certain licensees must be employed by other licensees**

- (1) A person who is the holder of a class 1 or class 2 licence must not carry on a security activity authorised by the licence unless the person:

- (a) is employed by a master licensee, or
- (b) is self-employed and is the holder of a master licence.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

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- (2) A person who is the holder of a provisional licence must not carry on a security activity authorised by the licence unless the person is employed by a master licensee.  
Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

**[49] Section 30 Contravention of licence conditions**

Omit “Maximum penalty: 40 penalty units.”. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

**[50] Section 31 Surrender of suspended or revoked licence**

Insert “otherwise than by operation of section 26 (1) (b) (iv)” after “revoked”.

**[51] Section 31**

Omit “Maximum penalty: 20 penalty units.”. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

**[52] Section 32 Advertising**

Omit “40 penalty units” from section 32 (1) and (2) wherever occurring.

Insert instead “200 penalty units”.

**[53] Section 32 (1) and (2)**

Omit “20 penalty units” wherever occurring.

Insert instead “100 penalty units or imprisonment for 6 months, or both”.

**[54] Section 32 (2A)**

Insert after section 32 (2):

- (2A) A person who is the holder of a provisional licence must not advertise that the person carries on or is willing to carry on any security activity.  
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

**[55] Section 33 Misrepresentation and related offences**

Omit “Maximum penalty: 20 penalty units.” from section 33 (1).

Insert instead:

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

**[56] Section 33 (2)**

Omit “20 penalty units”. Insert instead “50 penalty units”.

**[57] Section 34 Abuse of authority conferred by licence**

Omit “40 penalty units”. Insert instead “50 penalty units”.

**[58] Section 35 Licence to be produced on demand**

Omit “the Police Service” from section 35 (a). Insert instead “NSW Police”.

**[59] Section 35**

Omit “20 penalty units”. Insert instead “50 penalty units”.

**[60] Section 36 Licence to be worn by licensee**

Omit section 36 (1). Insert instead:

- (1) The holder of a class 1, class 2 or provisional licence must, at all times while carrying on a security activity, wear on his or her person so as to be clearly visible his or her licence, being an original and not a photocopy or other copy.  
Maximum penalty: 50 penalty units.

**[61] Section 36 (1A)**

Insert after section 36 (1):

- (1A) For the purposes of this section, a licence is worn by a person so as to be *clearly visible* only if:
  - (a) the licence is attached to the person’s outer clothing, and
  - (b) the licence is attached at or above the level of the person’s waist, and
  - (c) the licence is attached at the front or side of the person’s body, and

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- (d) the licence is attached with the front face of the licence clearly visible to a person standing in front of the person, and
  - (e) there is no material adhering to the licence that obscures any part of the licence from the view of such a person, and
  - (f) any other requirements prescribed by the regulations are complied with.

**[62] Section 37 Licensee not to sell or dispose of licence**

Omit “Maximum penalty: 20 penalty units.”. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

**[63] Section 38 Prohibition of delegation of functions**

Insert “authorising the person to carry on the same security activity” after “licence”.

**[64] Section 38 (2)**

Insert at the end of section 38:

- (2) A person who is the holder of a provisional licence must not delegate the carrying on of any security activity authorised by the licence to any other person.  
Maximum penalty: 40 penalty units.

**[65] Sections 38A–38C**

Insert after section 38:

**38A Prohibition on unauthorised subcontracting**

- (1) This section applies if:
  - (a) a master licensee (*the principal*) is engaged by a person (*the client*) for the provision of any security activity other than the provision of a restricted security keying system, and
  - (b) the principal delegates any of the principal’s functions under the contract to another master licensee (*the subcontractor*).

- (2) The principal must ensure that the contract for service between the principal and the subcontractor is co-signed and approved by the client before any security activity is provided under the contract.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

- (3) If the subcontractor further subcontracts any of the security activities under the contract for service to another person (*the further subcontractor*), the subcontractor must ensure that the contract for service between the subcontractor and the further subcontractor is co-signed and approved by the client and the principal before any security activity is provided under the contract.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

- (4) Compliance with this section does not excuse non-compliance with section 38.

**38B Supervising or monitoring licensees**

- (1) A person (*the relevant person*) must not, for fee or reward, supervise or monitor the performance of a person who holds a provisional licence unless the relevant person is the holder of a class 1 licence authorising the relevant person to carry on the security activity to which the provisional licence relates.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (2) A person (*the relevant person*) must not, for fee or reward, supervise or monitor the performance of a person who holds a class 1 or class 2 licence unless the relevant person is the holder of:

- (a) a master licence, or
- (b) a licence authorising the relevant person to carry on the security activity to which the class 1 or class 2 licence relates.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

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**38C Rostering or scheduling of licensed persons to carry on security activities**

A person (*the relevant person*) must not, for fee or reward, roster or schedule the carrying on of any security activity by a person who holds a class 1 licence, class 2 licence or provisional licence if the relevant person is not eligible to hold a licence because of section 16.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

**[66] Section 39 Master licensee not to employ unlicensed persons**

Omit “knowingly”.

**[67] Section 39**

Omit “Maximum penalty: 40 penalty units.”. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

**[68] Section 39 (2)**

Insert at the end of section 39:

- (2) It is a defence in proceedings for an offence under this section if the master licensee satisfies the court that the master licensee did not know, and could not reasonably have been expected to know, that the person employed by the master licensee was unlicensed.

**[69] Section 39A Master licensee to submit any firearms for ballistics tests**

Omit “50 penalty units” wherever occurring in section 39A (1) and (2).

Insert instead “100 penalty units”.

**[70] Section 39B**

Insert after section 39A:

**39B Master licensee to have “fitness for work” policy**

A master licensee must not employ or provide any person to carry on a security activity unless the master licensee has prepared and implemented a fitness for work policy that covers the use of alcohol and other drugs by persons employed or provided by the licensee to carry on security activities.

Maximum penalty:

- (a) in the case of a corporation—20 penalty units, or
- (b) in the case of an individual—10 penalty units.

**[71] Section 40 Power of court to suspend licence**

Insert at the end of section 40 (1) (b):

or

- (c) in any proceedings before a court in which a licensee is found to be liable to a civil penalty of a kind prescribed by the regulations,

**[72] Section 42A Further powers of inspection and seizure**

Insert after section 42A (1):

- (1A) 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:
  - (a) make a copy on the premises of any registers, books, records or other documents relating to the business being carried on under the authority of the master licence and retain that copy, or
  - (b) require any person to make a copy on the premises of any registers, books, records or other documents relating to the business being carried on under the authority of the master licence and give that copy to the police officer to retain.

**[73] Section 42A (4) (a1)**

Insert after section 42A (4) (a):

- (a1) fail without reasonable excuse to assist a police officer to copy any registers, books, records or other documents, when required to do so by a police officer in accordance with subsection (1A) (b), or

**[74] Section 42A (4)**

Omit “50 penalty units”. Insert instead “100 penalty units”.

**[75] Section 43 Delegation by Commissioner**

Omit “the Police Service” from section 43 (3) (a).

Insert instead “NSW Police”.

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**[76] Section 43 (3) (b)**

Omit “public servant”.

Insert instead “member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*”.

**[77] Section 43A**

Insert after section 43:

**43A Security Industry Council**

- (1) The Minister may establish a Security Industry Council.
- (2) The members of the Security Industry Council are to be appointed by the Minister in accordance with the regulations.
- (3) The functions of the Security Industry Council are as follows:
  - (a) to advise the Minister on any matter that is referred to it by the Minister,
  - (b) to monitor and advise on the regulation of the security industry,
  - (c) to establish and promote industry standards for the security industry,
  - (d) to conduct industry research into security industry statistics and trends,
  - (e) to review this Act and the regulations under this Act and to make recommendations to the Minister,
  - (f) to make recommendations to the Minister on licence fees,
  - (g) to monitor the performance and obligations of approved security industry associations against performance agreements,
  - (h) to arrange independent audits of approved security industry associations,
  - (i) to facilitate consistent complaints management processes by approved security industry associations,
  - (j) to advise the Minister on any other matter it considers relevant to the security industry.

**[78] Section 44 Offences by corporations**

Omit section 44 (1). Insert instead:

- (1) If 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 is taken to have contravened the same provision, unless the person satisfies the court that:

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

**[79] Section 45 Proceedings for offences**

Omit “constituted by a Magistrate sitting alone” from section 45 (1).

**[80] Section 45A Penalty notices**

Omit “the NSW Police” from section 45A (9) (a).

Insert instead “NSW Police”.

**[81] Section 46 Service of notices**

Insert at the end of the section:

- (2) Any such notice or other instrument is taken to have been served at the time it would have been delivered in the ordinary course of post.

**[82] Section 47 Certificate and other evidence**

Insert after section 47 (b):

- (c) that a specified person was or was not nominated as an employer in relation to the holder of a provisional licence (either in the application for a licence or at some subsequent time),
- (d) that a specified person had or had not previously applied for a licence and been refused,
- (e) that the Commissioner has or has not authorised a specified person not to wear a uniform when carrying a firearm pursuant to section 23A (6), and if the authorisation was subject to specified conditions,
- (f) that the Commissioner has authorised a specified person not to wear a licence pursuant to section 36 (2), and if the authorisation was subject to specified conditions,

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- (g) that a specified person had or had not previously contravened a licence condition and been found guilty of doing so,
  - (h) that a penalty notice had been issued in respect of a licence and that the amount of penalty had or had not been paid in the time specified by the penalty notice,
  - (i) that the licence of a specified person was or was not suspended, revoked or had or had not otherwise ceased to be in force during a specified period,

**[83] Section 47 (2)**

Insert at the end of section 47:

- (2) In proceedings under this Act:
  - (a) a document purporting to be a copy of a direction, notice, authorisation, order, requirement or decision given or made under this Act is evidence of the direction, notice, authorisation, order, requirement or decision of which the Commissioner purports it to be a copy, and
  - (b) a document purporting to be a copy of a licence under this Act is evidence of the licence of which the Commissioner purports it to be a copy.

**[84] Section 48 Regulations**

Omit “those courses” from section 48 (2) (b).

Insert instead “security industry competency training”.

**[85] Section 48 (3) (a)**

Omit “5 penalty units”. Insert instead “50 penalty units”.

**[86] Section 48 (3) (b)**

Omit “20 penalty units”. Insert instead “100 penalty units”.

**[87] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Security Industry Amendment Act 2005*

**[88] Schedule 2, Part 4**

Insert after clause 10:

**Part 4 Provisions consequent on enactment of Security Industry Amendment Act 2005**

**11 Definition**

In this Part, *amending Act* means the *Security Industry Amendment Act 2005*.

**12 Saving of existing licences**

- (1) Subject to the regulations:
  - (a) an existing licence that is a master licence is taken to be a master licence of the corresponding kind granted under this Act (as amended by the amending Act) as follows:
    - (i) an existing master licence that authorises the licensee (who is self-employed) to provide his or her services to carry on security activities is taken to be a class MA licence,
    - (ii) an existing master licence that authorises the licensee to employ or provide no more than 10 persons to carry on security activities is taken to be a class MB licence,
    - (iii) an existing master licence that authorises the licensee to employ or provide between 11 and 50 persons to carry on security activities is taken to be a class MC licence,
    - (iv) an existing master licence that authorises the licensee to employ or provide more than 50 persons to carry on security activities is taken to be a class MD licence, and
  - (b) an existing class 1 or class 2 licence is taken to be a class 1 or class 2 licence of the corresponding kind granted under this Act (as amended by the amending Act) as follows:
    - (i) an existing class 1A licence is taken to be:
      - (A) a class 1A, 1D, 1E or 1G licence (as determined by the Commissioner), or
      - (B) if the licensee is authorised by a licence or permit under the *Firearms Act 1996* to use and possess firearms in carrying out a security activity—a class 1A, 1D, 1E, 1F or

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- 1G licence (as determined by the Commissioner),
- (ii) an existing class 1B licence is taken to be a class 1B licence,
  - (iii) an existing class 1C licence is taken to be a class 1C licence,
  - (iv) an existing class 2A licence is taken to be a class 2A licence,
  - (v) an existing class 2B licence is taken to be a class 2B licence,
  - (vi) an existing class 2C licence is taken to be a class 2C, 2E or 2F licence (as determined by the Commissioner),
  - (vii) an existing class 2D licence is taken to be a class 2D licence, and
- (c) an existing licence, unless it is sooner surrendered by the holder or suspended or revoked under this Act, remains in force for the unexpired portion of its term, and
  - (d) the holder of an existing licence that expires can apply for a new licence in accordance with this Act.
- (2) Accordingly, a reference in any Act (other than this Act) or statutory instrument, or in any other instrument, or in any contract or agreement, to an existing licence of a particular kind is to be construed as a reference to a licence of the corresponding kind as determined in accordance with subclause (1) (a) or (b).
- (3) 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 (as amended by the amending Act) and any such condition may be varied or revoked in accordance with this Act.
- (4) In this clause:  
*existing licence* means a licence in force immediately before the commencement of this clause.

### **13 Pending licence applications**

An application for a licence that was not finally determined before the commencement of an amendment to a provision made by the amending Act is to be investigated and determined in accordance with the provision as amended.

**14 Licence conditions**

- (1) Section 21 (3), as substituted by the amending Act, extends to a licence in force immediately before the commencement of that substitution.
- (2) Sections 23AA and 23B, as inserted by the amending Act, extend to a licence in force immediately before the commencement of those sections.

**15 Applications of provisions to existing trainees and apprentices**

- (1) This clause applies to any person who:
  - (a) immediately before the commencement of this clause, was an apprentice or trainee (within the meaning of the *Apprenticeship and Traineeship Act 2001*), and
  - (b) carried on security activities in the course of his or her apprenticeship or traineeship with a person who is authorised by a licence to carry on those security activities, and
  - (c) would not be refused a licence because of section 16.
- (2) A person to whom this clause applies is, for the purposes of section 15 (2) (a) (i) (as inserted by the amending Act), taken to have held a provisional licence so long as the person has completed his or her apprenticeship or traineeship.

**16 Application of provisions to existing subcontracting**

Section 38A, as inserted by the amending Act, does not apply to a contract or subcontract entered into before the commencement of that section.