

[Act 1997 No 157]



New South Wales

Security Industry Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to replace the *Security (Protection) Industry Act 1985* with a legislative scheme that reflects the expansion and changing nature of the security industry.

The main feature of the proposed Act is a modified licensing scheme that is designed to provide greater control over persons who work in the security industry or who conduct a business in the security industry. Under the proposed Act, a person will require a licence if the person intends to work in the security industry (eg as a security guard, bouncer or security consultant) or to conduct a business in the security industry. A licence applicant will need to satisfy stringent probity assessments and suitability criteria in order to obtain a licence.

* Amended in committee—see table at end of volume.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. The term *Commissioner* refers to the Commissioner of Police who will be the licensing authority under the proposed Act.

Clause 4 describes the various activities that are *security activities* for the purposes of the proposed Act (ie those activities for which a person will need to be licensed). These activities include acting as a bodyguard or bouncer, patrolling or guarding property (eg security guards), acting as a security consultant, installing security equipment, providing security industry training or instruction, and conducting a business that involves providing persons to carry on security activities. A person will only need to be licensed if the person is employed to carry on a security activity or if the person is conducting a business.

Clause 5 describes those persons who are *close associates* of a licence applicant for the purposes of the proposed Act. They include persons having relevant financial interests in the applicant's business, and persons such as directors or chief executives. Close associates of a licence applicant will be subject to the same stringent probity assessment as will apply to the applicant.

Clause 6 provides that the proposed Act will bind the Crown, but will not apply to certain classes of persons (eg police officers and military personnel).

Part 2 Licences

Division 1 Requirement for licence

Clause 7 requires a person who carries on a security activity to be licensed under the proposed Act.

Clause 8 provides that a licence does not authorise the licensee to exercise functions apart from those authorised by the licence.

Division 2 Licence classification

Clause 9 specifies 3 classes of licence, namely master licences, class 1 licences and class 2 licences.

Clause 10 provides that a master licence authorises the licensee to conduct a business of providing persons to work in the security industry (so long as those persons are licensed under the proposed Act).

Clause 11 provides that class 1 licences will be classified into subclasses 1A, 1B and 1C. A class 1 licence will apply to security industry personnel such as security guards and bouncers.

Clause 12 provides that class 2 licences will be classified into subclasses 2A, 2B, 2C and 2D. A class 2 licence will apply to such persons as security consultants, persons who sell, install or repair security equipment, and security industry trainers and instructors.

Clause 13 provides that only an individual can hold a class 1 or class 2 licence.

Division 3 Licensing procedures and criteria

Clause 14 provides for the making of applications for licences.

Clause 15 specifies mandatory and discretionary grounds for refusing a licence application (eg the applicant must be a fit and proper person, must be over 18 and must be competent to carry on the security activity to which the proposed licence relates. In the case of an application for a master licence, these grounds will extend to close associates of the applicant).

Clause 16 provides mandatory grounds for refusing a licence application because of the applicant's criminal history or corrupt behaviour (or because of bankruptcy in the case of a master licence).

Clause 17 requires class 1 or class 2 licence applicants to complete relevant training courses before being granted a licence.

Clause 18 requires the Commissioner to investigate and inquire into licence applications, and enables the Commissioner to obtain an applicant's fingerprints if the applicant's identity is in doubt.

Clause 19 provides that applications by former police officers are to be referred to the Internal Affairs Branch of the NSW Police Service.

Clause 20 enables the Commissioner to obtain further information in connection with licence applications.

Clause 21 provides for the grant of licences by the Commissioner. A licence may be granted subject to conditions.

Clause 22 provides that licences must contain a recent photograph of the licensee and specify certain other detail.

Clause 23 prevents the holder of a master licence from employing any person to work in the cash-in-transit sector, or in an area that involves the person, having access to operational information, if the person would be refused a licence because of his or her criminal history.

Clause 24 provides that the term of a licence is 5 years and that the licence cannot be renewed.

Clause 25 enables the Commissioner to suspend a licence.

Clause 26 enables the Commissioner to revoke a licence on certain grounds (eg for any reason for which the licensee would be refused a licence).

Clause 27 enables the holder of a class 1 or class 2 licence to apply for a variation of the kinds of security activity authorised by the licence.

Clause 28 provides that an applicant for a new licence will have to demonstrate an active involvement in the security industry during the term of the previous licence.

Division 4 Review of licensing decisions

Clause 29 confers jurisdiction on the Administrative Decisions Tribunal to review licensing decisions of the Commissioner under the proposed Act.

Part 3 Miscellaneous offences relating to licences

Clause 30 creates an offence of contravening the conditions of a licence.

Clause 31 requires a licence to be surrendered if it is suspended or revoked.

Clause 32 contains offences in relation to advertising.

Clause 33 prohibits the making of misrepresentations in connection with applications and the making of false statements in connection with licence applications.

Clause 34 prohibits a licensee from suggesting that the licence authorises the licensee to do things other than those authorised by the licence.

Clause 35 requires licensees to produce their licence when requested to do so by a police officer or by persons having dealings with the licensee concerned.

Clause 36 requires the holder of a class 1 or class 2 licence to wear their photo-licence when on duty.

Clause 37 prohibits a licensee from selling the licence or permitting another person to use it.

Clause 38 prohibits a licensee from delegating the performance of any security activity to a person who does not hold a licence.

Clause 39 prohibits the holder of a master licence from employing unlicensed persons.

Part 4 Miscellaneous provisions

Clause 40 enables a court to order a licensee to surrender the licence to the court if the licensee is convicted of an offence by the court.

Clause 41 prevents an unlicensed person from charging another person a fee for any security work.

Clause 42 provides for the issue of search warrants in connection with offences under the proposed Act.

Clause 43 enables the Commissioner to delegate functions under the proposed Act to police officers and other authorised persons.

Clause 44 makes directors of corporations liable for offences under the proposed Act that are committed by corporations.

Clause 45 provides that proceedings for offences under the proposed Act are to be dealt with summarily before a Local Court.

Clause 46 provides for the service of notices under the proposed Act.

Clause 47 provides for certificate evidence in relation to certain matters under the proposed Act.

Clause 48 empowers the making of regulations for the purposes of the proposed Act.

Clause 49 gives effect to the amendment to the *Administrative Decisions Tribunal Act 1997* set out in Schedule 1 to the proposed Act.

Clause 50 repeals the *Security (Protection) Industry Act 1985* and the regulations under that Act.

Clause 51 gives effect to the Schedule of savings and transitional provisions.

Clause 52 provides for a review of the proposed Act after 5 years.

Schedules

Schedule 1 amends the *Administrative Decisions Tribunal Act 1997* to provide that the Administrative Decisions Tribunal is to be constituted by a judicial member for the purposes of determining applications made under the proposed Act to the Tribunal.

Schedule 2 contains savings and transitional provisions, including a power to make regulations of a savings or transitional nature, consequent on the enactment of the proposed Act. In particular, the Schedule provides that existing licences under the repealed Act will be continued under the proposed Act until they expire (the term of existing licences is 1 year).