

Passed by both Houses



New South Wales

Sheriff Bill 2005

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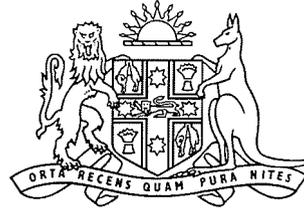
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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

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



New South Wales

Sheriff Bill 2005

Act No , 2005

An Act with respect to the office of Sheriff.

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.

Clause 1 Sheriff Bill 2005

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Sheriff Act 2005*.

2 Commencement

- (1) This Act commences on a day to be appointed by proclamation, subject to subsections (2), (3) and (4).
- (2) Schedule 1.3 [2] commences on the commencement of Schedule 1.3 [1], or on the commencement of Part 6 of the *Court Security Act 2005*, whichever is the later.
- (3) Schedule 1.3 [4] commences on the commencement of Schedule 1.3 [3], or on the commencement of Part 6 of the *Court Security Act 2005*, whichever is the later.
- (4) Schedule 1.4 commences on the commencement of section 14, or on the commencement of Part 2 of the *Commercial Agents and Private Inquiry Agents Act 2004*, whichever is the later.

3 Definitions

- (1) In this Act:
 - Charter of Justice** means the letters patent issued on 13 October 1823 pursuant to the Imperial Act 4 *Geo IV c 96*.
 - exercise** a function includes perform a duty.
 - function** includes power, authority and duty.
 - Sheriff** means the person holding office as Sheriff under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
 - Sheriff's alternate** means such person as is declared by the regulations to be the Sheriff's alternate for the purposes of this Act or, if no such person is declared, the Director-General of the Attorney General's Department.
 - sheriff's officer** means a person holding office as sheriff's officer under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) Notes in the text of this Act do not form part of this Act.

Part 2 Sheriff's functions

4 Sheriff's functions

The Sheriff has and may exercise such functions as are conferred or imposed on the Sheriff by or under this or any other Act or law.

5 Delegation of Sheriff's functions

The Sheriff may delegate any of the Sheriff's functions, other than this power of delegation:

- (a) to any sheriff's officer, or
- (b) to any member of staff of the Attorney General's Department, or
- (c) to any person prescribed by the regulations or belonging to a class so prescribed.

6 Exercise of Sheriff's functions by Sheriff's alternate

- (1) The Sheriff's functions in relation to:
 - (a) any legal proceedings to which the Sheriff is a party, and
 - (b) any legal proceedings the subject of an order in force under subsection (2),are to be exercised by the Sheriff's alternate, and not by the Sheriff.
- (2) If satisfied that any legal proceedings may affect the Sheriff's interests, the court before which, or coroner before whom, the proceedings are being taken may order that the Sheriff's functions in relation to the proceedings be exercised by the Sheriff's alternate.
- (3) In this section, *legal proceedings* includes proceedings to enforce a judgment or order of a court and proceedings of an inquest or inquiry under the *Coroners Act 1980*.

7 Oath or affirmation of office

- (1) Before exercising any of the Sheriff's functions, the Sheriff, and each sheriff's officer, must take an oath of office, or make an affirmation of office, in the form and manner prescribed by the regulations.
- (2) Failure to comply with subsection (1) does not affect the validity of anything done by the Sheriff, or by a sheriff's officer, in the exercise of the Sheriff's functions.

Part 3 Offences

8 Hindrance or obstruction of persons exercising Sheriff's functions

A person must not hinder or obstruct the Sheriff, or any sheriff's officer or other person, in the Sheriff's, sheriff's officer's or other person's exercise of any of the Sheriff's functions.

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

9 Impersonation of sheriff's officers

A person who impersonates the Sheriff, or a sheriff's officer, is guilty of an offence.

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

10 Wearing or possession of sheriff's officer uniforms by others

- (1) A person (not being a sheriff's officer) who wears or possesses a sheriff's officer uniform is guilty of an offence.

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

- (2) A person (including a sheriff's officer) who uses sheriff's insignia otherwise than in the course of, and for the purpose of, exercising the functions of a sheriff's officer is guilty of an offence.

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

- (3) A person is not guilty of an offence under this section if:

- (a) the act or omission constituting the offence is authorised by the regulations or by a licence granted to the person by the Sheriff, or
- (b) the person establishes that the person otherwise had the permission of the Sheriff for the act or omission, or
- (c) the person establishes that the person had a reasonable excuse for the act or omission.

- (4) Without limiting subsection (3), a person is not guilty of an offence under subsection (1) if the person wore or was in possession of the sheriff's officer uniform for the purposes of public entertainment.

- (5) The Sheriff may grant licences for the purposes of this section, with or without conditions, and may vary or revoke any such licences.

(6) In this section:

sheriff's insignia means:

- (a) any items (being insignia, emblems, logos, devices, accoutrements and other things) that are generally recognised as pertaining to the Sheriff or as being used by sheriff's officers, or
- (b) any parts of any such items, or
- (c) any reasonable imitation of any such items or parts, or
- (d) any thing or class of thing prescribed by the regulations as being within this definition (whether or not it may already be within this definition),

and includes sheriff's officer uniforms, but does not include any thing or class of thing prescribed by the regulations as being outside this definition.

sheriff's officer uniform means the uniform of a sheriff's officer, and includes:

- (a) any parts of such a uniform (or any accoutrements of a sheriff's officer) that are generally recognised as parts of the uniform or accoutrements of a sheriff's officer, or
- (b) any reasonable imitation of such a uniform, parts of a uniform or accoutrements.

use of sheriff's insignia includes use of a reproduction or representation of sheriff's insignia.

11 Use of word "sheriff" in operating name

- (1) A person who carries on any activity under an operating name that includes the word "sheriff" is guilty of an offence.
Maximum penalty: 100 penalty units.
- (2) If an activity is carried on in contravention of subsection (1) in the name of a firm (that is, a partnership or other unincorporated body of persons), any person who is a member of the governing body of the firm is guilty of an offence under that subsection if the person knowingly authorised or permitted the contravention.
- (3) This section does not prevent a person or body of persons from doing anything in accordance with the terms of a consent in force under section 12.
- (4) This section does not apply to any body or class of bodies that is declared by the regulations to be a body or class of bodies to which this section does not apply.

- (5) In this section, *operating name* includes any name, style, title or designation under which a person or body carries on an activity, any name under which an association is incorporated under the *Associations Incorporation Act 1984* and any business name registered under the *Business Names Act 2002* in relation to a person, but does not include:
- (a) in the case of an individual, the individual's family name, either alone or together with:
 - (i) one or more of the individual's given names, or
 - (ii) one or more of the initials of the individual's given names, or
 - (iii) a combination of one or more of the individual's given names and one or more of the initials of the individual's remaining given names, or
 - (b) in the case of a corporation, the corporation's corporate name, or
 - (c) in the case of an industrial organisation registered under the *Industrial Relations Act 1996*, the name under which the industrial organisation is registered, or
 - (d) in the case of any other statutory body, the name under which the body is incorporated, constituted or established.

12 Consents for the purposes of section 11

- (1) The Sheriff may grant consent to any person or body of persons to carry on any activity under an operating name (within the meaning of section 11) that includes the word "sheriff", either unconditionally or subject to such conditions as the Sheriff considers appropriate to impose on the consent.
- (2) A consent may be revoked by the Sheriff at any time.
- (3) In deciding whether or not to grant or revoke a consent, the Sheriff must have regard to such matters (if any) as are prescribed by the regulations.
- (4) Before revoking a consent, the Sheriff:
 - (a) must serve notice of the proposed revocation on the person or body of persons having the benefit of the consent, and
 - (b) must allow that person or body at least 14 days within which to make submissions with respect to the proposed revocation, and
 - (c) must have regard to any submissions that are duly made with respect to the proposed revocation.
- (5) As soon as practicable after revoking a consent, the Sheriff must cause notice of that fact to be given:
 - (a) to the person or body of persons concerned, and

- (b) if the consent relates to:
 - (i) the name under which an association is incorporated under the *Associations Incorporation Act 1984*, or
 - (ii) a business name registered under the *Business Names Act 2002*,
 to the Director-General of the Department of Commerce.

Note. Notification of the Director-General will have the following effect:

- (a) In the case of the name under which an association is incorporated under the *Associations Incorporation Act 1984*, it will prompt the Director-General to exercise his or her powers under that Act to direct the association to change its name.
 - (b) In the case of a business name registered under the *Business Names Act 2002*, it will advise the Director-General that continued use of the name is unlawful and will prompt the Director-General to exercise his or her powers under that Act to refuse to re-register, or to cancel, a currently registered business name.
- (6) A consent that is revoked ceases to have effect:
 - (a) except as provided by paragraph (b):
 - (i) at the end of 28 days after notice of the revocation is served on the person or body of persons concerned, or
 - (ii) at such later time as may be specified in the notice of revocation, or
 - (b) in the case of a consent that relates to the name under which an association is incorporated under the *Associations Incorporation Act 1984*:
 - (i) on the date on which the Director-General of the Department of Commerce issues a certificate of incorporation in respect of the association's new name under section 14 (5) of that Act, or
 - (ii) on the date on which the Director-General of the Department of Commerce cancels the association's incorporation under section 54 (2A) of that Act,
 as the case may be.
 - (7) In this section, a reference to the Director-General of the Department of Commerce is, while the position of Commissioner for Fair Trading exists in that Department, to be read as a reference to the Commissioner.

13 Certificate of authority to be carried

At all times while exercising the Sheriff's functions a person must carry, and produce on demand, a certificate of identification in the form prescribed by the regulations.

Maximum penalty: 5 penalty units.

Part 4 Miscellaneous

14 Process serving

For the purpose of exercising the Sheriff's functions, the Sheriff and sheriff's officers are exempt from the requirement for a licence under the *Commercial Agents and Private Inquiry Agents Act 1963* in relation to the service of court process.

15 Exclusion of liability

An act or omission of the Sheriff, the Sheriff's alternate, a sheriff's officer or any other person acting under the direction of the Sheriff or a sheriff's officer does not subject the Sheriff, Sheriff's alternate, sheriff's officer or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing this Act.

16 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

17 Repeals, amendments and savings provisions

- (1) The *Sheriff Act 1900* is repealed.
- (2) Each Act listed in Schedule 1 is amended as set out in that Schedule.
- (3) Schedule 2 has effect.

18 Abrogation of provisions of Charter of Justice

- (1) Such of the provisions of the *Charter of Justice* as provide for the appointment of persons to the office of Sheriff, or to the appointment of Sheriff's deputies, cease to have effect.
- (2) Subsection (1) does not limit or otherwise affect any function exercisable by the Sheriff under or by virtue of the *Charter of Justice*.

19 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of other Acts

(Section 17 (2))

1.1 Associations Incorporation Act 1984 No 143

[1] Section 14 Change of name

Insert “or ‘sheriff’” after “‘police’” wherever occurring in section 14 (1A).

[2] Section 14 (1A)

Insert “or section 12 of the *Sheriff Act 2005*” after “*Police Act 1990*”.

1.2 Jury Act 1977 No 18

Section 24 Alternate procedure where sheriff is interested in case

Omit the section.

1.3 Ombudsman Act 1974 No 68

[1] Schedule 1 Excluded conduct of public authorities

Insert at the end of item 2:

For the purposes of this item, neither the Sheriff nor a sheriff’s officer are taken to be associated with a court referred to in paragraph (a) or a person or body referred to in paragraph (b).

[2] Schedule 1, item 2 (as amended by item [1])

Insert “or any security officer within the meaning of the *Court Security Act 2005*” after “officer”.

[3] Schedule 1, item 2A

Insert after item 2:

- 2A** Conduct of the Sheriff, or of any sheriff’s officer, in relation to:
- (a) the maintenance of court security, or
 - (b) the enforcement of a warrant of arrest or warrant of committal, or
 - (c) the execution of a writ,
- being conduct engaged in at the direction of a court, or of a Judge or Magistrate presiding over proceedings before a court, but excluding conduct engaged in otherwise than in accordance with such a direction.

[4] Schedule 1, item 2A (as inserted by item [3])

Insert “or any security officer within the meaning of the *Court Security Act 2005*” after “officer”.

[5] Schedule 1, item 3 (a)

Insert “, a Judge of the Land and Environment Court of New South Wales” before “or a Judge of the District Court”.

1.4 Sheriff Act 2005

Section 14 Process serving

Omit “1963”. Insert instead “2004”.

Schedule 2 Savings, transitional and other provisions

(Section 17 (3))

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part:

the former Act means the *Sheriff Act 1900*, as in force immediately before its repeal by this Act.

3 Sheriff and sheriff's officers

- (1) The person holding office as Sheriff immediately before the commencement of this Act does not cease to hold office simply because of the enactment of this Act.
- (2) Any person holding office as a sheriff's officer immediately before the commencement of this Act does not cease to hold office simply because of the enactment of this Act.

4 Sureties under former Act

Any bond, recognisance or surety that, immediately before the commencement of this Act, was in force under section 4 of the former Act continues to have effect and may be enforced accordingly.

5 Service of process under former Act

The repeal of the former Act does not invalidate the service of any judgment, order, pleading, affidavit, notice or other document that was served in accordance with section 8A of that Act before the commencement of this Act.

6 Schedule of fees under former Act

Subject to any variation prescribed by the regulations, the scale of fees that, immediately before the commencement of this Act, was in force under section 9 of the former Act continues to have effect in relation to any matter for which it prescribes fees until further provision is made, by or under an Act, for the fees payable to the Sheriff in respect of that matter.

7 References to former Act

In any Act or instrument, a reference to the former Act extends to this Act.