



New South Wales

# Security Industry Amendment (Patron Protection) Bill 2006

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Security Industry Act 1997* to introduce a number of new measures designed to enhance the safety of patrons while in licensed venues and to reduce the number of violent incidents in or around licensed venues. In particular, the Bill:

- (a) provides for the random alcohol and drug testing of bouncers (which includes persons acting as venue or crowd controllers) while on duty and enables the Commissioner of Police to revoke a bouncer's security industry licence if the bouncer fails a breath test or drug test, and
- (b) prevents an applicant from being licensed as a bouncer if the applicant fails to provide a statement by a medical practitioner certifying that the applicant is physically and psychologically fit to carry on work as a bouncer, and
- (c) strengthens the requirements in relation to the wearing of security industry licences by licensees generally.

## Outline of provisions

**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** is a formal provision that gives effect to the amendments to the *Security Industry Act 1997* set out in Schedule 1.

## **Schedule 1 Amendments**

**Schedule 1 [1]** requires the Commissioner of Police to refuse an application for a licence that would authorise a person to act as a bouncer if the person has not provided a statement by a medical practitioner certifying that the person is both physically and psychologically fit to do that type of work. In obtaining such a statement, the applicant will be required to disclose to the medical practitioner any relevant medical, psychiatric or psychological condition.

**Schedule 1 [2]** enables the Commissioner, in determining whether an applicant is a fit and proper person to be licensed, to have regard to information about the applicant obtained by the Commissioner in accordance with an information sharing arrangement under the *Fair Trading Act 1987* (which relates to such matters as consumer complaints and probity assessments).

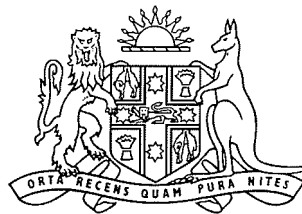
**Schedule 1 [3]** specifies the size of the letters and figures that must appear on a security industry licence.

**Schedule 1 [4]** specifies additional grounds for revoking a bouncer's security industry licence.

**Schedule 1 [5]** inserts new provisions dealing with the random drug and alcohol testing, by police officers, of bouncers and other crowd controllers while on duty. The refusal or failure to undergo a drug or alcohol test, or the returning of a positive test, are grounds for revoking the person's licence.

**Schedule 1 [6]–[11]** make a number of changes to the existing requirements in relation to the wearing of security industry licences by licensees. A licence must be worn at chest level and be clearly readable at all times. In the case of bouncers and other crowd controllers, a licence must be fixed to the licensee's clothing.

**Schedule 1 [12]** enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.



New South Wales

# Security Industry Amendment (Patron Protection) Bill 2006

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New South Wales

## **Security Industry Amendment (Patron Protection) Bill 2006**

No. , 2006

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### **A Bill for**

An Act to amend the *Security Industry Act 1997* to introduce new measures (including random drug and alcohol testing of bouncers and crowd controllers) designed to protect patrons of licensed venues and to make further provision with respect to the regulation of persons in the security industry and the carrying on of security activities; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Security Industry Amendment (Patron Protection) Act 2006</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6
<b>3 Amendment of Security Industry Act 1997 No 157</b>	7
The <i>Security Industry Act 1997</i> is amended as set out in Schedule 1.	8

<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 15 Restrictions on granting licence—general suitability criteria</b>	3
	Insert after section 15 (1):	4
	(1A) In the case of an application for a class 1C or P1C licence made after the commencement of this subsection, the Commissioner must refuse to grant the application if the applicant has not provided a statement by a medical practitioner certifying that the applicant is physically and psychologically fit to carry on security activities of the kind authorised by the licence.	5 6 7 8 9 10
	(1B) In the course of obtaining a statement for the purposes of subsection (1A), the applicant is required to disclose to the medical practitioner concerned any relevant medical, psychiatric or psychological condition (both present and during the last 5 years).	11 12 13 14 15
<b>[2]</b>	<b>Section 15 (6A)</b>	16
	Insert after section 15 (6):	17
	(6A) Without limiting subsection (6), the Commissioner may, in determining whether an applicant is a fit and proper person to hold the class of licence sought by the applicant, have regard to any information in relation to the applicant that is obtained by the Commissioner in accordance with an information sharing arrangement under section 9A of the <i>Fair Trading Act 1987</i> .	18 19 20 21 22 23
	<b>Note.</b> The information about an applicant that may be obtained under such an arrangement is limited to the following:	24 25
	(a) information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters,	26 27
	(b) probity assessments and reference checks concerning persons who provide goods or services to consumers,	28 29
	(c) any other information affecting the interests of consumers.	30
<b>[3]</b>	<b>Section 22 Form of licence</b>	31
	Insert after section 22 (2):	32
	(3) The class (or subclass) of a licence, and the number of the licence, must appear in black letters and figures that are at least 3 centimetres in height.	33 34 35

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<b>[4] Section 26 Revocation of licence</b>	1
Insert after section 26 (1) (b):	2
(b1) in the case of a class 1C or PIC licence:	3
(i) if the licensee refuses or fails to undergo a breath test or to submit a breath analysis, or to provide a sample of the licensee's urine or hair, when required to do so in accordance with Division 3A, or	4
(ii) if the result of a test conducted under Division 3A indicates that the prescribed concentration of alcohol was present in the licensee's blood while the licensee was carrying on security activities authorised by the licence, or	5
(iii) if the result of a test conducted under Division 3A indicates that the licensee has used a prohibited drug, or	6
(iv) if the licensee failed, in the course of obtaining a statement by a medical practitioner for the purposes of section 15 (1A), to disclose to the medical practitioner a relevant medical, psychiatric or psychological condition, or	7
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<b>[5] Part 2, Division 3A</b>	21
Insert after Division 3:	22
<b>Division 3A Testing of crowd and venue controllers and bouncers for alcohol and prohibited drugs</b>	23
	24
<b>28A Definitions</b>	25
In this Division:	26
<i>analyst</i> means a person employed by the Government of New South Wales as an analyst.	27
<i>AS 4308</i> means the document entitled AS/NZS 4308:2001, <i>Procedures for the collection, detection and quantitation of drugs of abuse in urine</i> , published jointly by Standards Australia and Standards New Zealand and in force as at 29 March 2001.	28
<i>breath analysing instrument</i> means any instrument of a type approved by the Governor by order under the <i>Road Transport (Safety and Traffic Management) Act 1999</i> as such an instrument, that is, as an instrument designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in that person's blood.	29
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<i>breath analysis</i> means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's blood.	1 2 3 4
<i>breath test</i> means a test:	5
(a) that is designed to indicate the concentration of alcohol present in a person's blood, and	6 7
(b) that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the <i>Road Transport (Safety and Traffic Management) Act 1999</i> .	8 9 10 11 12
<i>licensee</i> means a person who is the holder of a class 1C or P1C licence.	13 14
<i>prescribed concentration of alcohol</i> means a concentration of 0.02 grams or more of alcohol in 100 millilitres of blood.	15 16
<i>prohibited drug</i> has the same meaning as in the <i>Drug Misuse and Trafficking Act 1985</i> .	17 18
<b>28B Testing for presence of alcohol or prohibited drugs</b>	19
(1) A police officer may require a licensee, at any time during the course of the licensee's employment:	20 21
(a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol, or	22 23
(b) to provide a sample of the licensee's urine or hair for the purpose of testing for the presence of prohibited drugs,	24 25
in accordance with the reasonable directions of the police officer.	26
(2) The selection of a licensee for testing pursuant to subsection (1) may be conducted on a random or targeted basis.	27 28
(3) Without limiting subsection (2), a licensee may be selected for testing whether or not there is any suspicion that the licensee has recently consumed alcohol or has used a prohibited drug.	29 30 31
<b>28C Breath analysis of licensee following positive breath testing</b>	32
(1) This section applies if:	33
(a) it appears to a police officer, as a result of a breath test conducted under section 28B, that the prescribed concentration of alcohol may be present in a licensee's blood, or	34 35 36 37

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(b)	a licensee, who is required by a police officer to undergo a breath test under this Division, refuses or fails to do so in accordance with the direction of the police officer.	1 2 3
(2)	In such a case, the police officer may require the licensee to submit to a breath analysis in accordance with the directions of the police officer.	4 5 6
(3)	As soon as practicable after a licensee has submitted to a breath analysis the person who carried out the analysis must deliver to the licensee a statement in writing signed by the person specifying:	7 8 9 10
(a)	the concentration of alcohol determined by the analysis to be present in the licensee's blood and expressed in grams of alcohol in 100 millilitres of blood, and	11 12 13
(b)	the day on which and time of the day at which the breath analysis was completed.	14 15
(4)	A licensee who is required to submit to a breath analysis may request the police officer making the requisition to arrange for the taking (in the presence of a police officer) of a sample of the licensee's blood for analysis, at the licensee's own expense, by:	16 17 18 19
(a)	a medical practitioner nominated by the licensee, or	20
(b)	a medical practitioner nominated by a police officer at the licensee's request.	21 22
(5)	The making of any such request or the taking of a sample of a licensee's blood does not absolve the licensee from the obligation imposed on the licensee to submit to a breath analysis in accordance with this section.	23 24 25 26
(6)	If a licensee makes such a request, the police officer concerned must take all reasonable steps to contact the relevant medical practitioner.	27 28 29
<b>28D</b>	<b>Action with respect to samples of urine, hair and blood</b>	30
(1)	This section applies to:	31
(a)	a police officer who arranges for a sample of urine or hair to be taken when empowered to do so under section 28B, and	32 33 34
(b)	a medical practitioner who takes a sample of blood when empowered to do so under section 28C.	35 36

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|------------|--|----------------------------|
| (2)        | A person to whom this section applies must ask the licensee from whom the sample was taken whether or not the licensee would like to keep part of the sample of urine, hair or blood taken from the licensee.  | 1<br>2<br>3<br>4           |
| (3)        | A person to whom this section applies must:  | 5                          |
| (a)        | divide the sample into 2 approximately equal portions, or, if the licensee has indicated that he or she would like to keep a part of the sample, divide the same into 3 approximately equal portions, and  | 6<br>7<br>8<br>9           |
| (b)        | place each portion into a container, and   | 10                         |
| (c)        | fasten and seal each container, and  | 11                         |
| (d)        | mark or label each container for future identification.  | 12                         |
| (4)        | Of the sealed containers:  | 13                         |
| (a)        | the first container must:  | 14                         |
| (i)        | in the case of a sample taken by a medical practitioner under section 28C, be handed by a medical practitioner to the police officer present when the sample was taken, or   | 15<br>16<br>17<br>18       |
| (ii)       | in any other case, be dealt with in accordance with section 28E, and   | 19<br>20                   |
| (b)        | the second container must be transported to a laboratory accredited by the Department of Health and nominated by the Commissioner, and must be stored at that laboratory on behalf of the Commissioner, and  | 21<br>22<br>23<br>24       |
| (c)        | in the case where the licensee has indicated that he or she would like to keep a part of the sample, the third container must be given to the licensee.  | 25<br>26<br>27             |
| (5)        | In the case of samples of urine, the 2 sealed containers referred to in subsection (4) (a) and (b) must be handled in accordance with the procedure set out in AS 4308 or any other procedure approved by the Commissioner in that regard.   | 28<br>29<br>30<br>31       |
| <b>28E</b> | <b>Analysis of samples of urine, hair or blood</b>   | 32                         |
| (1)        | A police officer may arrange for a portion of a sample of a licensee's urine, hair or blood taken in accordance with this Division to be submitted for analysis to an analyst to determine the concentration of alcohol in the blood or to determine whether the urine or hair contains a prohibited drug. | 33<br>34<br>35<br>36<br>37 |
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(2)	An analyst to whom a portion of a sample of urine, hair or blood is submitted for analysis under this section may carry out an analysis of the portion to determine the concentration of alcohol in the blood or to determine whether the urine or hair contains alcohol or a prohibited drug or drugs, as the case requires.	1 2 3 4 5
(3)	Such analysis must be carried out, and a report on that analysis provided, in accordance with the procedure set out in AS 4308 or any other procedure approved by the Commissioner in that regard.	6 7 8 9
(4)	Analysis must be carried out in a laboratory accredited by the Department of Health and nominated by the Commissioner.	10 11
(5)	If the first analysis of a portion of the sample indicates the presence of alcohol or a prohibited drug in the sample, an analysis of another portion of the sample must be undertaken.	12 13 14
<b>28F</b>	<b>Interfering with results of test</b>	15
(1)	A licensee who does anything to introduce, or alter the concentration of, alcohol or any prohibited drug in the licensee's urine, hair or blood before submitting to a breath analysis or providing a sample of urine, blood or hair under this Division is guilty of an offence if the licensee does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the licensee.	16 17 18 19 20 21 22
(2)	A person who does anything to introduce, or alter the concentration of, alcohol or any prohibited drug in a licensee's urine, blood or hair before the licensee submits to a breath analysis or provides a sample of urine, blood or hair under this Division is guilty of an offence if the person does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the licensee. Maximum penalty: 50 penalty units.	23 24 25 26 27 28 29 30
<b>28G</b>	<b>Interfering or tampering with, or destroying, samples</b>	31
	A person must not interfere or tamper with, or destroy, a sample of a person's urine, blood or hair provided or taken under this Division unless the sample is destroyed:	32 33 34
	(a) by or at the direction of an analyst in the course of or on completion of analysis, or	35 36
	(b) in the case of a sample handed to a person on behalf of a licensee, by or at the direction of the person, or	37 38

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(c) after the expiration of 12 months commencing on the day on which the sample was taken.	1 2
Maximum penalty: 50 penalty units.	3
<b>28H Operation of Division</b>	4
Nothing in this Division affects:	5
(a) any liability for an offence relating to the consumption or supply of alcohol, or the use or supply of other drugs, arising under the <i>Road Transport (Safety and Traffic Management) Act 1999</i> or the <i>Drug Misuse and Trafficking Act 1985</i> or any other Act, or	6 7 8 9 10
(b) any right to conduct breath or other tests for the presence of alcohol or other drugs in a person's body, under the <i>Road Transport (Safety and Traffic Management) Act 1999</i> or any other Act, or	11 12 13 14
(c) any obligation or right under the <i>Anti-Discrimination Act 1977</i> , the <i>Occupational Health and Safety Act 2000</i> or any other Act.	15 16 17
<b>[6] Section 36 Licence to be worn by licensee</b>	18
Omit "clearly visible" from section 36 (1) (as substituted by Schedule 1 [60] to the <i>Security Industry Amendment Act 2005</i> ).	19 20
Insert instead "clearly readable at all times".	21
<b>[7] Section 36 (1A) (as inserted by Schedule 1 [61] to the Security Industry Amendment Act 2005)</b>	22 23
Omit " <i>clearly visible</i> ". Insert instead " <i>clearly readable at all times</i> ".	24
<b>[8] Section 36 (1A) (b) (as inserted by Schedule 1 [61] to the Security Industry Amendment Act 2005)</b>	25 26
Omit "or above the level of the person's waist". Insert instead "chest level".	27
<b>[9] Section 36 (1A) (c) (as inserted by Schedule 1 [61] to the Security Industry Amendment Act 2005)</b>	28 29
Omit "or side".	30
<b>[10] Section 36 (1A) (d) (as inserted by Schedule 1 [61] to the Security Industry Amendment Act 2005)</b>	31 32
Omit "visible". Insert instead "readable".	33

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Security Industry Amendment (Patron Protection) Bill 2006

Schedule 1 Amendments

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<b>[11] Section 36 (1A) (as inserted by Schedule 1 [61] to the Security Industry Amendment Act 2005)</b>	1
	2
Insert after section 36 (1A) (e):	3
(e1) in the case of a class 1C or P1C licence—the licence:	4
(i) is displayed in a clear sleeve or badge, and	5
(ii) is fixed to the licensee’s clothing and not displayed	6
on a chain or ribbon or hung around the licensee’s	7
neck, and	8
<b>[12] Schedule 2 Savings and transitional provisions</b>	9
Insert at the end of clause 1 (1):	10
<i>Security Industry Amendment (Patron Protection) Act 2006</i>	11