

Security Industry Regulation 1998

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New South Wales

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Security Industry Regulation 1998



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Security Industry Regulation 1998*.

2 Commencement

This Regulation commences on 1 July 1998.

3 Definitions and notes

(1) In this Regulation:

approved means approved by the Commissioner from time to time.

restricted key means a security key that is of an approved type.

the Act means the *Security Industry Act 1997*.

(2) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

4 Security activities: section 4 (e)

(1) For the purposes of section 4 (e) of the Act, the following activities are prescribed:

(a) the duplication of restricted keys—the relevant licence being a class 2C licence,

(b) the carrying on of a service that involves the manipulation (eg unlocking) of security equipment otherwise than by ordinary means—the relevant licence being a class 2C licence,

(c) the sale of security equipment (other than the sale of basic household or automotive security items at approved classes of retail outlets)—the relevant licence being a class 2B licence.

(2) Subclause (1) (b) does not apply in respect of a service, or a particular class of service, that is approved for the purposes of this subclause.

5 Exemptions: section 6

For the purposes of section 6 (3) of the Act, the following classes of persons are, to the extent specified, exempt from the operation of the Act:

- (a) State Rail Authority revenue protection officers and plain-clothes investigative staff of the State Rail Authority Internal Investigations Unit (other than security guards who are stationed to perform watch and guard duty at State Rail Authority properties), but only to the extent to which they carry out duties in that capacity,
- (b) correctional officers within the meaning of the *Correctional Centres Act 1952*, but only to the extent to which they carry out duties in that capacity,
- (c) authorised fire officers under the control of New South Wales Fire Brigades or a local council or similar body, but only to the extent to which they carry out duties in that capacity,
- (d) persons employed in the Sheriff's Office, Attorney General's Department, but only to the extent to which they carry out duties in that capacity,
- (e) apprentices or trainees (within the meaning of the *Industrial and Commercial Training Act 1989*) while carrying on security activities in the course of their apprenticeship or training with a person who is the holder of a licence authorising that person to carry on those security activities, but not if the apprentice or trainee concerned would be refused a licence because of section 16 of the Act,
- (f) the Director of Casino Surveillance appointed under the *Casino Control Act 1992*, but only to the extent to which that person carries out duties in that capacity,
- (g) casino inspectors appointed under section 106 of the *Casino Control Act 1992*, but only to the extent to which they carry out duties in that capacity,
- (h) persons employed at a correctional centre managed under an agreement in accordance with Part 6A of the *Correctional Centres Act 1952*, but only to the extent to which they carry out duties in that capacity,
- (i) persons employed at a detention centre within the meaning of the *Children (Detention Centres) Act 1987*, but only to the extent to which they carry out duties in that capacity,
- (j) persons who, in the course of their employment with an employer (being an employer who is not conducting a business in the security industry), provide internal advice (but no other type of security activity) in relation to security matters concerning the employer's business,
- (k) persons who, in the course of their employment with an employer (being an employer who is not conducting a business in the security industry), install, maintain, repair or

service internal security equipment (but no other type of security activity) in connection with the employer's business,

- (l) persons who are the holders of a hotelier's licence under the *Liquor Act 1982*, and persons who are employees of those hoteliers (other than any such employee who is employed for the purposes of carrying on security activities), but only to the extent to which they are exercising functions under that Act,
- (m) persons who are secretaries of registered clubs, and persons who are employees of registered clubs (other than any such employee who is employed for the purposes of carrying on security activities), but only to the extent to which they are exercising functions under the *Registered Clubs Act 1976*,
- (n) persons who are engaged in the building and construction industry who, in the course of their building activities, install basic security equipment such as locks.

Part 2 Licences—general provisions

6 Licence applications

In making an application for a licence, the applicant is required to send the application by mail to the following address:

Security Industry Registry, NSW Police Service
Locked Bag 10
Darlinghurst 2010.

6A Term of licence

- (1) In making an application for a class 1 or class 2 licence, the applicant may apply for a licence that will be in force for a period of one year only.
- (2) For the purposes of section 24 (1) of the Act, the period of one year is prescribed in relation to any such licence.

7 Licence application fees: section 14

- (1) **Class 1 and 2 licences—one year term** For the purposes of section 14 (2) (a) of the Act, the prescribed fee to accompany an application for a class 1 or class 2 licence that will be in force for a period of one year is:
 - (a) except as provided by paragraph (b)—\$85, or
 - (b) in the case of an application for more than one such class (or subclass) of licence that is made at the same time in respect of the same person—\$115.
- (2) **Class 1 and 2 licences—5 year term** For the purposes of section 14 (2) (a) of the Act, the prescribed fee to accompany an application for a class 1 or class 2 licence that will be in force for a period of 5 years is:

- (a) except as provided by paragraph (b)—\$350, or
 - (b) in the case of an application for more than one such class (or subclass) of licence that is made at the same time in respect of the same person—\$380.
- (3) **Master licences** For the purposes of section 14 (2) (a) of the Act, the prescribed fee to accompany an application for a master licence is:
- (a) if the licensee is to be self-employed and no licensed security industry employees are to be employed by the licensee under the licence during the term of the licence—\$300, or
 - (b) if a total of no more than 10 licensed security industry employees are to be employed by the licensee during the term of the licence—\$550, or
 - (c) if a total of no more than 50 licensed security industry employees are to be employed by the licensee during the term of the licence—\$1,050, or
 - (d) if a total of more than 50 licensed security industry employees are to be employed by the licensee during the term of the licence—\$2,050.
- (4) **Refund of application fee if licence not granted** If an application for a licence is refused, the application fee paid in respect of the application (less \$50) is to be refunded to the person who made the application.

8 Information and particulars to accompany licence application: section 14

- (1) **Class 1 and 2 licences** For the purposes of section 14 (2) (b) of the Act, the following particulars are required in relation to an application for a class 1 or class 2 licence:
- (a) the applicant's name and residential address,
 - (b) the applicant's date of birth,
 - (c) evidence of the relevant qualifications referred to in clause 10 (1),
 - (d) in the case of an application for a subsequent licence or the variation of a licence—the number and expiry date of the existing licence.
- (2) **Master licences** For the purposes of section 14 (2) (b) of the Act, the following particulars are required in relation to an application for a master licence:
- (a) the applicant's name and business address,
 - (b) in the case of an individual—the applicant's date of birth,
 - (c) the applicant's trading name (if any),
 - (d) in the case of a partnership or company—the name of the partnership or company, the names of the partners, and the address of the registered office or

principal place of business,

- (e) particulars relating to each close associate of the applicant (including dates of birth),
- (f) particulars relating to any business (other than a business operated under the name of the applicant) proposed to be operated under the authority of the licence,
- (g) evidence of membership of an approved security industry organisation,
- (h) in the case of an application for a subsequent or additional licence—the number and expiry date of the existing licence,
- (i) particulars relating to each employee of the applicant who is authorised to possess or use a firearm in the course of his or her employment (including the number of the employee's firearms licence).

(3) The Commissioner may refuse to grant an application for a licence if the applicant does not provide such other information and particulars as the Commissioner may require in respect of the application.

9 Application for class 1 or class 2 licence—written references: section 14

For the purposes of section 14 (3) (b) of the Act, the following classes of persons are prescribed:

- (a) accountants (namely, members of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants, the National Institute of Accountants or the Association of Taxation and Management Accountants, or registered tax agents),
- (b) bank managers,
- (c) legal practitioners and patent attorneys,
- (d) clerks of court,
- (e) registered medical practitioners,
- (f) judges,
- (g) members of the Chartered Institute of Company Secretaries in Australia,
- (h) public sector employees (other than members of the Police Service, or other law enforcement agency, of any jurisdiction) who have been employed full-time continuously for at least 5 years,
- (i) teachers who have been teaching full-time for at least 5 years at schools or tertiary institutions,

- (j) ministers of religion,
- (k) employers,
- (l) justices of the peace,
- (m) persons who have held a security industry licence continuously for at least 5 years.

10 Qualifications: section 15

- (1) **Class 1 and 2 licences** For the purposes of section 15 (1) (c) of the Act, the following qualifications are prescribed in relation to an applicant for a class 1 or 2 licence:
 - (a) attainment of the approved competency standards, or the approved level of accreditation, for the class of licence sought by the applicant,
 - (b) in the case of a class 1 licence only—completion of an approved first aid course.
- (2) **Master licences** For the purposes of section 15 (1) (c) of the Act, membership of an approved security industry organisation is prescribed in relation to an applicant for a master licence.
- (3) Despite subclause (2), the Commissioner may grant a master licence to an applicant who is not a member of an approved security industry organisation but only if the application is made before 1 January 1999 and the Commissioner is of the opinion that the applicant will satisfy the membership requirement within 6 months of being granted the licence.
- (4) **False qualification certificates** A person who:
 - (a) dishonestly attempts to obtain a certificate or any other document that purports to be evidence of the person having obtained an approved competency standard or approved level of accreditation as referred to in subclause (1), or
 - (b) knowingly is in possession of any such certificate or other document that has been dishonestly obtained and attempts to use, or uses it, for a dishonest purpose, or
 - (c) dishonestly issues any such certificate or other document,is guilty of an offence.

Maximum penalty: 20 penalty units in the case of a corporation, or 5 penalty units in the case of an individual.

11 Offences that disqualify applicants: section 16

For the purposes of section 16 (1) (a) and (b) of the Act, the following offences are prescribed offences regardless of whether they are committed in New South Wales:

- (a) **Offences relating to firearms or weapons**

An offence relating to the possession or use of a firearm, or any other weapon, committed under:

- (i) the law of any Australian jurisdiction, or
- (ii) the law of any overseas jurisdiction (being an offence that, had it been committed in Australia, would be an offence under the law of an Australian jurisdiction),

and being an offence that would disqualify the applicant concerned from holding a licence under the *Firearms Act 1996*.

(b) Offences relating to prohibited drugs

An offence in respect of a prohibited drug (within the meaning of the *Drug Misuse and Trafficking Act 1985*) committed under:

- (i) the law of any Australian jurisdiction, or
- (ii) the law of any overseas jurisdiction (being an offence that, had it been committed in Australia, would be an offence under the law of an Australian jurisdiction).

(c) Offences involving assault

An offence under the law of any Australian or overseas jurisdiction involving assault of any description, being:

- (i) an offence in respect of which the penalty imposed was imprisonment, or a fine of \$200 or more, or both, or
- (ii) in such cases where the applicant concerned has been found guilty but not been convicted—an offence that, in the opinion of the Commissioner, is a serious assault offence.

(d) Offences involving fraud, dishonesty or stealing

An offence under the law of any Australian or overseas jurisdiction involving fraud, dishonesty or stealing, being an offence in respect of which the maximum penalty is (had the offence been committed under the law of an Australian jurisdiction) imprisonment for 3 months or more.

(e) Offences involving robbery

An offence under the law of any Australian or overseas jurisdiction involving robbery (whether armed or otherwise).

(f) Offences involving industrial relations matters

In the case of an application for a master licence only—an offence under the *Industrial Relations Act 1996*, including the contravention of a State industrial instrument, or under any similar law of any other Australian jurisdiction, but only if a total of at least

5 such offences have been committed by the applicant during any period of 2 years.

13 Surrender of licence: section 31

For the purposes of section 31 of the Act, a licence that is suspended or revoked must be immediately surrendered as follows:

- (a) if a notice of suspension or revocation is sent to the person to whom the licence was granted, the person must, on receiving that notice, deliver the licence to a police officer or other approved person,
- (b) if no such notice is sent to the person but the person is otherwise directed by a police officer or other approved person to hand over the licence, the person must hand over the licence in accordance with that direction.

14 Requirement to notify change of licence particulars

- (1) In the event of a change in any of the particulars in respect of a licence (including any change of address by the licensee), it is a condition of the licence that the holder of the licence must notify the Commissioner of the change, and of the appropriate new particulars, within 14 days of the change and surrender the licence on doing so.
- (2) On the surrender of the licence, and on payment of the fee of \$30, the Commissioner may issue a duplicate licence for the unexpired portion of the surrendered licence.

15 Lost, stolen or destroyed licence

A person to whom a licence has been granted must, within 7 days after becoming aware that the licence has been lost, stolen, destroyed, defaced or mutilated, notify the Commissioner in writing of that occurrence.

Maximum penalty: 20 penalty units in the case of a corporation, or 5 penalty units in the case of an individual.

16 Application for duplicate licence

- (1) The Commissioner may, on being satisfied that a licence has been lost, stolen, destroyed, defaced or mutilated, and on payment of the fee of \$30, issue a duplicate licence.
- (2) An application for a duplicate licence may be made by lodging an application in the approved form (or in such other manner as may be approved) with the Security Industry Registry, NSW Police Service or at such other place as may be approved.

16A Application for variation of licence

An application under section 27 of the Act for the variation of a class 1 or class 2 licence must be accompanied by a fee of \$50.

17 Pending application for subsequent licence

(1) If:

- (a) a person applies for a subsequent licence before the term of the person's current licence expires (referred to in this clause as the **old licence**), and
- (b) the application has not been dealt with by the time the old licence permit expires, the authority conferred by the old licence continues until such time as the person is notified of the granting, or refusal of, the subsequent licence.

(2) This clause does not apply in respect of any licence that is an existing licence within the meaning of clause 2 of Schedule 2 to the Act.

18 Revocation of licence—additional reasons

In accordance with section 26 (1) (d) of the Act, a licence may be revoked if the Commissioner considers that it is not in the public interest for the person to whom it is granted to continue to hold it.

19 Composite licence for trainers/instructors: section 12 (4)

- (1) If the holder of a class 2D licence is also employed to carry on another security activity requiring a class 1 licence, the authority conferred by the class 2D licence extends to the carrying out of that other activity but only to the extent that the other activity involves an activity in respect of which the holder of the licence is authorised to provide instruction or training.
- (2) Any such licence is to be treated as a single composite licence for the purposes of the Act and this Regulation.

20 Licensed security personnel authorised to provide certain advice

The authority conferred by a class 1, class 2B, class 2C or class 2D licence extends to the providing of advice in relation to security mechanisms, devices, equipment, methods and principles if that advice is provided by the holder of the licence in the course of, or incidental to, the carrying on of the security activity authorised by the licence.

Part 3 Master licences—special conditions

21 Requirement to display master licence at business premises

It is a condition of a master licence that the licensee must conspicuously display a copy of the master licence at each of the premises that are used for the purposes of conducting the security activity authorised by the master licence.

22 Job advertisements

It is a condition of a master licence that the licensee must, in any advertisement relating to the employment of persons to perform security activities as employees of the master licensee, indicate that applicants for licences are, in accordance with the Act, subject to criminal records checks and other probity assessment criteria.

23 Requirement to notify changes relating to close associates

It is a condition of a master licence that the licensee must notify the Commissioner in writing of any change in the particulars relating to the close associates of the licensee as soon as practicable after the change occurs.

24 Public liability insurance

If the holder of a master licence provides persons to carry on security activities involving the possession or use of firearms or the use of dogs, it is a condition of the master licence that the licensee must obtain (in an approved form) public liability insurance cover totalling at least \$10,000,000.

25 Records required to be kept by master licensees

- (1) It is a condition of a master licence that the holder of the master licence must keep a record of:
 - (a) the full name, residential address and licence number of each class 1 licensee employed by the holder of the master licence, and
 - (b) in relation to each occasion on which the holder of the master licence is engaged to provide security services to be performed by a class 1 licensee employed by the holder of the master licence:
 - (i) the name and address of the person engaging those services, and
 - (ii) the address of the location at which the services are provided, and
 - (iii) the date on which the services are provided, and
 - (iv) details of the services provided, and
 - (v) the name of the class 1 licensee who provided the services.
- (2) If the holder of a master licence employs persons to perform a mobile patrol service, it is a condition of the licence that the holder of the licence must ensure that a record of each patrol visit is kept.

26 Incident register

- (1) If the holder of a master licence employs a class 1C licensee to perform crowd control duties, it is a condition of the master licence that the holder of the master licence

must keep a register containing particulars relating to each incident, in the course of performing those crowd control duties, involving the class 1C licensee:

- (a) making forceable physical contact with, or physically restraining, a member of the public, or
- (b) ejecting a member of the public from the premises or site concerned.

(2) The requirement to keep a register under this clause is in addition to the requirement under clause 25 to keep records.

Part 4 Miscellaneous provisions

27 Inspection of records and register

(1) Any record kept under clause 25, and any incident register kept under clause 26, may be inspected at any reasonable time at the place of business where they are kept:

- (a) by any police officer, or
- (b) by any person authorised in writing by the Commissioner for the purposes of this clause,

and any police officer or person so authorised may take copies of or extracts from those records or that register.

(2) A person for the time being in charge of a place where those records or register are kept must not, without reasonable excuse, fail to produce the records or register on demand made by a person who is authorised to inspect the records or register and who produces evidence of his or her authority to do so.

Maximum penalty: 10 penalty units in the case of a corporation, or 2 penalty units in the case of an individual.

(3) A person who fails to produce any such records or register to a person authorised to inspect the records or register does not contravene this clause unless it is established that the person was informed by the person so authorised, or that the person otherwise knew, that such a failure could constitute an offence.

28 Uniforms and vehicle markings

(1) The Commissioner is to prepare guidelines with respect to:

- (a) the character and design of uniforms to be worn in connection with the carrying out of security activities, and
- (b) the markings that may be made on, and the design of any specified features of, vehicles used in any such connection,

and must make those guidelines available on request to any interested person.

- (2) The Commissioner may, by notice to a person or the person's employer, advise:
 - (a) that the character and design of the uniform worn by that person, by reason of some feature specified in the notice, do not accord with the relevant guidelines, or
 - (b) that the vehicle used by that person, by reason of some marking or feature specified in the notice, does not accord with the relevant guidelines.
- (3) A person to whom an advice has been notified in relation to a uniform or vehicle must not wear the uniform or use the vehicle, or permit his or her employees to do so, until the objectionable feature or marking has been corrected or removed.

Maximum penalty: 2 penalty units (in the case of an individual) or 10 penalty units (in the case of a corporation).

- (4) Nothing in this clause applies to or in respect of a uniform worn or vehicle used by a person exempted by clause 5 in connection with the carrying on of a security activity in respect of which the exemption has effect.

29 Procedures for duplicating restricted keys

If the holder of a class 2C licence is authorised under the licence to duplicate restricted keys, it is a condition of the licence that the holder must not duplicate a restricted key except in accordance with the procedures laid down by the Security Industry Council of New South Wales and published with the approval of the Commissioner.

30 Transitional provision—continuation of “existing licences”

- (1) An existing licence (within the meaning of clause 2 of Schedule 2 to the Act) continues in force:
 - (a) in the case of an existing licence that is a relevant licence referred to in clause 4 (2) of the *Security (Protection) Industry Regulation 1995* (as in force immediately before 1 July 1998)—until 1 September 1998, or
 - (b) in the case of an existing licence that would expire at any time during July 1998—for a period of 60 days following the date of its expiry, or
 - (c) for the unexpired portion of the term of the existing licence, or
 - (d) until such time as a new licence is granted under the Act to the holder of the existing licence, or
 - (e) until such time as the existing licence is suspended, surrendered or revoked in accordance with the Act,

whichever first occurs.

(2) Subclause (1) has effect despite clause 3 (1) (b) of Schedule 2 to the Act.

31 Transitional exemption—phasing-in of certain licensing requirements

(1) This clause applies to the following persons:

- (a) any person who, immediately before 1 July 1998, was carrying on a security activity referred to in section 4 (f) of the Act (but who was not required to hold a licence under the *Security (Protection) Industry Act 1985* in respect of that activity),
- (b) any person who, immediately before 1 July 1998, was employing persons to carry on security activities referred to in section 4 (a)–(f) of the Act (but who was not required to hold a class 2 licence under the *Security (Protection) Industry Act 1985* because the person was not conducting a security business).

(2) A person to whom this clause applies is exempt from the requirement under the Act to hold a licence authorising the person to carry on the security activity previously carried on by the person, but only until:

- (a) 1 October 1998, or
- (b) such time as a licence is granted under the Act authorising the person to carry on the security activity concerned,

whichever first occurs.

(3) The exemption provided by this clause is subject to the condition that the person concerned must make an application for the appropriate licence in accordance with the Act and this Regulation before 1 August 1998.

32 Transitional exemption—retail trade industry

(1) This clause applies to the following persons:

- (a) any person who is a member of the Retail Traders' Association of New South Wales and who, immediately before 1 July 1998, was employing persons to carry on security activities referred to in section 4 (a)–(f) of the Act (but who was not required to hold a class 2 licence under the *Security (Protection) Industry Act 1985* because the person was not conducting a security business),
- (b) any person who is an employee of a person referred to in paragraph (a) and who, immediately before 1 July 1998, was employed by that person to carry on a security activity referred to in section 4 (a)–(f) of the Act (but who did not, or was not required to, hold a licence under the *Security (Protection) Industry Act 1985* in respect of that activity).

(2) If such a person:

(a) has applied for a licence to carry on the security activity previously carried on by the person, but has not been granted the licence or been notified of the refusal of the licence, or

(b) applies for such a licence before 31 March 1999,

the person is exempt from the requirement under the Act to hold a licence to carry on the security activity concerned, but only until such time as the person is granted the licence or is notified of the refusal of the licence.

(3) (Repealed)

33 Transitional provision—continuation of existing licences

(1) If the holder of an existing licence (within the meaning of clause 2 of Schedule 2 to the Act):

(a) has applied for a new licence of the corresponding kind (as referred to in clause 3 (1) (a) of Schedule 2 to the Act), but has not been granted the licence or been notified of the refusal of the licence, or

(b) applies for such a licence before 31 March 1999,

the authority conferred by the existing licence continues (unless the existing licence is sooner suspended, revoked or surrendered in accordance with the Act) until such time as the holder is granted the new licence or is notified of the refusal of the new licence.

(2) This clause has effect despite:

(a) clause 30, and

(b) clause 3 (1) (b) of Schedule 2 to the Act.

34 Transitional exemption—applicants for new licences

If a person (other than a person to whom clause 32 applies or a person who is the holder of an existing licence):

(a) has applied for a licence, but has not been granted the licence or been notified of the refusal of the licence, or

(b) applies for a licence before 31 March 1999,

and the Commissioner is satisfied that the person would be eligible to be granted the licence to which the application relates, the person is exempt from the requirement under the Act to hold a licence to carry on the security activity that would be authorised by the licence, but only until such time as the person is granted the licence or is notified of the refusal of the licence.