

Security Industry Act 1997 No 157

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New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced — to commence on 1.12.2005)
 - [Security Industry Amendment Act 2005 No 63](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2005 No 98](#)) (not commenced)

Authorisation

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Security Industry Act 1997 No 157



New South Wales

An Act to provide for the licensing and regulation of persons in the security industry; to repeal the *Security (Protection) Industry Act 1985*; and for related purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Security Industry Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

approved means approved by the Commissioner from time to time.

armed security guard means a person who:

- (a) is employed to carry on a security activity referred to in section 4 (b), and
- (b) is the holder of a class 1A licence, and
- (c) in carrying out the activities authorised by that licence, is authorised by a licence under the *Firearms Act 1996* to use and possess firearms.

close associate is defined in section 5.

Commissioner means the Commissioner of Police.

employ includes engage.

exercise a function includes perform a duty.

function includes a power, authority or duty.

licence means a licence in force under this Act.

licensee means the holder of a licence.

master licensee means the holder of a master licence.

permanent Australian resident means a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

property includes money and other valuables.

security activity is defined in section 4.

security equipment means any of the following:

- (a) any type of safe or vault,
- (b) any mechanical, electronic, acoustic or other equipment designed or adapted to provide or enhance security or for the protection or watching of any property,
- (c) any type of device or equipment prescribed by the regulations for the purposes of this definition,

but does not include any type of device or equipment declared not to be security equipment by the regulations.

(2) Notes in the text of this Act do not form part of this Act.

4 Carrying on “security activities”

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, crowd controller or bouncer,
- (b) patrolling, protecting, watching or guarding any property (including cash in transit),
- (c) installing, maintaining, repairing or servicing security equipment,
- (d) providing advice in relation to security equipment or security methods or principles,
- (e) an activity, or class of activities, that is connected with security or the protection of persons or property and that is prescribed by the regulations for the purposes of this section,
- (f) providing training or instruction in relation to any activity referred to in paragraphs (a)–(e),
- (g) employing or providing persons to carry on any activity referred to in paragraphs (a)–(f).

5 Meaning of “close associate”

- (1) For the purposes of this Act, a person is a **close associate** of an applicant for, or the holder of, a licence if the person:
- (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the licence applicant or holder, and by virtue of that interest or power is or will be able (in the opinion of the Commissioner) to exercise a significant influence over or with respect to the conduct of that business, or
 - (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the licence applicant or holder.

- (2) In this section:

relevant financial interest in relation to a business means:

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

relevant position means the position of director, manager, and other executive positions and secretary, however those positions are designated, and such other positions as may be prescribed by the regulations for the purposes of this definition.

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

6 Application of Act

- (1) Except to the extent provided by subsection (2), this Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.
- (2) This Act does not apply to or in respect of any person who is employed in the capacity of:
- (a) a police officer, or
 - (b) a police officer of the Commonwealth, another State or a Territory, or
 - (c) a member of the armed forces of the Commonwealth, or
 - (d) a special constable appointed under Part 4 of the *Police Offences Act 1901* and

employed by the Commissioner,

while, and to the extent that, the person is performing official duties in that capacity.

- (3) The regulations may exempt any person or class of persons from the operation of this Act in such circumstances, and subject to such conditions, as may be specified in the regulations. Any such regulation may create offences in relation to a failure to comply with a condition prescribed in relation to an exemption.

Part 2 Licences

Division 1 Requirement for licence

7 Offence of carrying on unauthorised security activity

A person must not carry on a security activity unless the person is the holder of a licence authorising the person to carry on the activity.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in the case of an individual—50 penalty units or imprisonment for 6 months, or both.

8 Licences do not confer additional powers

A licence does not confer on the licensee any function apart from a function authorised by the licence.

Division 2 Licence classification

9 Classes of licences

A licence may be of one of the following classes:

- (a) a master licence,
- (b) a class 1 licence,
- (c) a class 2 licence.

10 Master licences

- (1) A master licence authorises the licensee to employ or provide persons to carry on security activities.
- (2) The authority conferred by a master licence allows only the employment or provision of persons who are the holders of a licence.
- (3) A master licence does not authorise the licensee to enter into any arrangement, by

contract, franchise or otherwise, with another person for the purpose of employing or providing persons to carry on security activities unless the other person is the holder of a master licence.

11 Class 1 licences

- (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, guard, watch or protect property (including the guarding of cash in transit) or to carry on such other activities as may be prescribed by the regulations,
 - (b) class 1B—authorises the licensee to act as a bodyguard,
 - (c) class 1C—authorises the licensee to act as a crowd controller or bouncer.
- (2) The relevant subclass is to be endorsed on each class 1 licence. More than one such subclass may be endorsed on a class 1 licence.

12 Class 2 licences

- (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 security consultant,
 - (b) class 2B—authorises the licensee to sell security equipment, to carry out surveys and inspections of security equipment and to give advice about security equipment,
 - (c) class 2C—authorises the licensee to install, repair, service or maintain security equipment,
 - (d) class 2D—authorises the licensee to provide training or instruction in relation to any security activity.
- (2) The relevant subclass is to be endorsed on each class 2 licence. More than one such subclass may be endorsed on a class 2 licence.
- (3) The authority conferred by a class 2D licence does not extend to training or instruction in the use of firearms.

Note—

Trainers and instructors of security guards and security personnel who use firearms in their employment are approved by the Commissioner under the [Firearms \(General\) Regulation 1997](#) and are required to be licensed under the [Firearms Act 1996](#).

- (4) A class 2D licence may, in accordance with the regulations, be combined with a class 1 licence into a single composite licence that authorises the licensee to carry on more

than one kind of security activity.

13 Persons who may hold class 1 and class 2 licences

A person is eligible to hold a class 1 or class 2 licence only if the person is an individual who:

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

Division 3 Licensing procedures and criteria

14 Application for licence

- (1) A person may apply to the Commissioner for the grant of a licence.
- (2) An application must be in the approved form and be accompanied:
 - (a) by the fee prescribed by the regulations, and
 - (b) by such information and particulars as may be prescribed by the regulations.
- (3) In the case of an application for a class 1 or class 2 licence, the applicant must:
 - (a) specify the name and business address of the applicant's employer (except in the case of an applicant who is the holder of a master licence and who is self-employed), and
 - (b) provide 2 written references from such class or classes of persons as are prescribed by the regulations to the effect that the applicant is a fit and proper person to work in the security industry.

15 Restrictions on granting licence—general suitability criteria

- (1) The Commissioner must refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:
 - (a) is not a fit and proper person to hold the class of licence sought by the applicant, or
 - (b) is not of or above the age of 18, or
 - (c) does not hold the qualifications and experience prescribed by the regulations in respect of the class of licence sought by the applicant, or
 - (d) is not competent to carry on the security activity to which the proposed licence relates, or
 - (e) is not an Australian citizen or a permanent Australian resident.

- (2) The Commissioner must refuse to grant an application for a licence to carry on a security activity that involves the possession of a firearm if the applicant is not authorised by a licence or permit under the *Firearms Act 1996* to possess or use the firearm.
- (3) The Commissioner may refuse to grant an application for a licence if the Commissioner considers that the grant of the licence would be contrary to the public interest.
- (4) The regulations may provide additional mandatory or discretionary grounds for refusing the granting of an application for a licence.
- (5) A reference in this section to an applicant includes, in the case of an application for a master licence, a reference to each close associate of the applicant.
- (6) For the purpose of determining whether an applicant is a fit and proper person to hold the class of licence sought by the applicant, the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the applicant that:
 - (a) is relevant to the activities carried out under the class of licence sought by the applicant, or
 - (b) causes the Commissioner to conclude that improper conduct is likely to occur if the applicant were granted the licence, or
 - (c) causes the Commissioner not to have confidence that improper conduct will not occur if the applicant were granted the licence.
- (7) 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 as referred to in subsection (6).

16 Restrictions on granting licence—criminal and other related history

- (1) The Commissioner must refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:
 - (a) has, within the period of 10 years before the application for the licence was made, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or
 - (b) has, within the period of 5 years before the application for the licence was made, been found guilty (but with no conviction being recorded) by a court in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or

- (c) has, within the period of 10 years before the application for the licence was made, been removed or dismissed from the Police Service of New South Wales or from the Police Force of any other jurisdiction (whether in Australia or overseas).
- (2) However, if the applicant concerned has been so removed from the Police Service of New South Wales by the Commissioner under section 181D of the *Police Service Act 1990* on grounds other than the applicant's integrity as a police officer, the removal of the applicant in those circumstances is a discretionary ground for refusing the granting of the application for a licence.
- (3) The Commissioner must refuse to grant an application for a licence if the Commissioner is of the opinion that the applicant is not suitable to hold a licence because the applicant has been involved in corrupt conduct.
- (4) The Commissioner must refuse to grant an application for a master licence if the Commissioner is of the opinion that the applicant (or, if the applicant is a corporation, any person who is a director or who is concerned in the management of the corporation) has, within the period of 5 years before the application was made, been declared bankrupt.
- (5) A reference in subsection (1), (2) or (3) to an applicant includes, in the case of an application for a master licence, a reference to each close associate of the applicant.

17 Training requirements—class 1 or class 2 licence

- (1) The Commissioner must not grant an application for a class 1 or class 2 licence unless the applicant has completed, to the satisfaction of the Commissioner, an approved security industry training course relevant to the class of licence sought by the applicant.
- (2) A person is not eligible to undertake any such approved security industry training course if the person would be refused a licence because of section 16.

18 Investigation of licence application

- (1) On receiving an application for a licence, the Commissioner may carry out all such investigations and inquiries as the Commissioner considers necessary to enable the Commissioner to consider the application properly.
- (2) The Commissioner:
 - (a) may require an applicant for a licence to consent to having his or her fingerprints taken by an authorised officer in order to confirm the applicant's identity, and
 - (b) must refuse to grant the licence unless the applicant has been fingerprinted in accordance with any such requirement.
- (3) The Commissioner:

- (a) may require an applicant for a licence to provide the Commissioner with a photograph of the applicant or consent to having his or her photograph taken by an authorised officer in order to confirm the applicant's identity, and
 - (b) must refuse to grant the licence unless the applicant has provided a photograph or been photographed in accordance with any such requirement.
- (4) Any fingerprint or photograph obtained in accordance with this section may be used by the Commissioner for any purpose as the Commissioner sees fit.
- (5) A person who formerly held a licence, but is not currently a licensee, or who was an applicant for, but was never granted, a licence, may apply to the Commissioner to have the following destroyed:
- (a) the person's fingerprints obtained in accordance with a requirement under subsection (2) and any copies of them,
 - (b) the person's photograph obtained in accordance with a requirement under subsection (3) and any copies of it.
- (6) The Commissioner may grant or refuse the application as the Commissioner sees fit.
- (7) In this section, **authorised officer** means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this section:
- (a) a police officer or any other member of NSW Police,
 - (b) a member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*,
 - (c) any other person prescribed by the regulations.

19 Applications by former police officers

Any application for a licence made by any person who was at any time a police officer or a member of the police force of any other jurisdiction (whether in Australia or overseas) must be referred to the Internal Affairs Branch of the Police Service of New South Wales. That branch may seek further advice from the Police Integrity Commission as to the suitability of the applicant to hold a licence.

20 Commissioner may require further information

- (1) The Commissioner may, by notice in writing, require a person who is an applicant for a licence or who, in the opinion of the Commissioner, has some association or connection with the applicant that is relevant to the application to do any one or more of the following things:
- (a) to provide, in accordance with directions in the notice, such information, verified by statutory declaration, as is relevant to the investigation of the application and

is specified in the notice,

- (b) to produce, in accordance with directions in the notice, such records relevant to the investigation of the application as are specified in the notice and to permit examination of the records, the taking of extracts from them and the making of copies of them,
 - (c) to authorise a person described in the notice to comply with a specified requirement of the kind referred to in paragraph (a) or (b),
 - (d) to furnish to the Commissioner such authorities and consents as the Commissioner directs for the purpose of enabling the Commissioner to obtain information (including financial and other confidential information) from other persons concerning the person and his or her associates or relations.
- (2) If a requirement made under this section is not complied with, the Commissioner may refuse to consider the application concerned.
 - (3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.
 - (4) The reasonable costs incurred by the Commissioner in investigating and inquiring into an application for a licence are payable to the Commissioner by the applicant, unless the Commissioner determines otherwise in a particular case.
 - (5) The Commissioner may require part or full payment in advance of the amount the Commissioner estimates will be payable by the applicant and may refuse to deal with the application until the required payment is made.
 - (6) Investigation and inquiry costs may include reasonable travelling expenses within or outside the State.
 - (7) It is a condition of any licence granted to the applicant that any amount payable under this section is paid.

21 Grant of licence

- (1) The Commissioner may, after considering an application:
 - (a) grant a licence to the person making the application and nominate a place where the person is to collect the licence, or
 - (b) refuse to grant a licence.
- (2) A licence confers no right of property and is incapable of being transferred, assigned or mortgaged, charged or otherwise encumbered.
- (3) A licence may be granted by the Commissioner subject to such conditions as the

Commissioner thinks fit to impose and that are specified in the licence. A licence is subject to such other conditions as are set out in this Act or as may be prescribed by the regulations.

- (4) A licence is granted subject to the condition that the person making the application collect the licence from the place nominated by the Commissioner under subsection (1) (a) within 60 days of being notified of the grant.

22 Form of licence

- (1) A licence is to be in any one or more approved forms.
- (2) A licence must:
- (a) contain a recent photograph of the person to whom it is granted (such photograph being obtained in accordance with arrangements determined by the Commissioner), and
 - (b) bear the signature of the licensee, and
 - (c) specify the class (or subclass) of licence, and
 - (d) contain the number of the licence, and
 - (e) contain such other details as may be prescribed by the regulations.

23 Master licence—condition relating to certain employees

It is a condition of every master licence that the licensee must not employ any person:

- (a) to work in the cash-in-transit sector of the security industry, or
- (b) to work in any area which involves access to any operational information relating to the licensee's security business,

if that person would be refused a licence because of section 16.

23A Special conditions—uniforms must be worn when carrying firearms

- (1) It is a condition of every class 1A licence that, if the licensee is an armed security guard, the licensee must not carry a firearm unless the licensee is wearing a recognisable security guard's uniform.
- (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 allow 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 carried by an armed security guard who is not wearing a recognisable security guard's uniform.
- (3) 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 allow any person employed by the master licensee to carry a firearm while carrying on security activities for the master licensee unless the person is an armed security guard who is wearing a recognisable security guard's uniform.

- (4) If a police officer discovers an armed security guard carrying a firearm while the armed security guard is not wearing a recognisable security guard's uniform, the police officer may seize the firearm.
- (5) If an armed security guard carries a firearm while the armed security guard is not wearing a recognisable security guard's uniform, the Commissioner must:
 - (a) suspend, in accordance with section 25, the armed security guard's class 1A licence, and
 - (b) 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 holder of a master licence), personally or by post:
 - (i) stating that the armed security guard's class 1A 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.
- (6) The Commissioner may, if the Commissioner is satisfied there is a genuine reason, authorise in writing a person employed as an armed security guard to carry a firearm while not wearing a recognisable security guard's uniform.
- (7) An authorisation under subsection (6) remains in force for such time as is specified in the authorisation unless it is sooner revoked by the Commissioner.
- (8) The conditions set out in subsections (1)–(3) do not apply in relation to an armed security guard authorised under subsection (6), but only while the armed security guard is carrying the Commissioner's written authorisation.

24 Term of licence

- (1A) A licence comes into force on the day that it is collected from the place nominated by the Commissioner under section 21 (1) (a).
- (1) A licence remains in force for a period of 5 years (or such shorter period as may be prescribed by the regulations) from the day on which it comes into force, unless sooner surrendered or revoked or it otherwise ceases to be in force.
- (2) A licence cannot be renewed, but an application for a new licence may be made in accordance with this Act.

(3) Despite subsection (1), if the person who made the application for a licence (the **applicant**) fails to collect the licence in accordance with the condition set out in section 21 (4):

- (a) the licence does not come into force and is taken to have not been granted, and
- (b) for the purposes of section 18 (5), the applicant is taken to be a person who was an applicant for, but was never granted, a licence.

25 Suspension of licence

(1) The Commissioner may, if the Commissioner is satisfied there may be grounds for revoking a licence, suspend the licence by serving on the licensee, personally or by post, a notice:

- (a) stating that the licence is suspended and the reasons for suspending it, and
- (b) requesting that the licensee provide the Commissioner with reasons why the licence should not be revoked.

(2) A suspended licence does not authorise the licensee to carry on any security activity during the period specified in the notice suspending it.

26 Revocation of licence

(1) A licence may be revoked:

- (a) (Repealed)
- (b) if the licensee:
 - (i) supplied information that was (to the licensee's knowledge) false or misleading in a material particular in, or in connection with, the application for the licence, or
 - (ii) contravenes any provision of this Act or the regulations, whether or not the licensee has been convicted of an offence for the contravention, or
 - (iii) contravenes any condition of the licence, or
- (c) if the Commissioner is of the opinion that the licensee is no longer a fit and proper person to hold a licence, or
- (d) for any other reason prescribed by the regulations.

(1A) The Commissioner must revoke a licence where the Commissioner is satisfied that, if the licensee were applying for a new licence, the application would be required by this Act to be refused.

(2) The Commissioner may revoke a licence by serving on the licensee, personally or by

post, a notice stating that the licence is revoked and the reasons for revoking it.

- (3) The revocation of a licence by such a notice takes effect when the notice is served or on a later date specified in the notice.

Note—

Section 31 requires the licensee to immediately surrender the licence if the licence is revoked.

- (4) The Commissioner may, by serving a further notice on the holder of a licence, cancel a notice revoking a licence before the notice takes effect.

27 Variation of licence

- (1) The holder of a class 1 or class 2 licence may apply to the Commissioner for a variation of the kind or kinds of security activity authorised by the licence.
- (2) An application for a licence variation is to be treated in the same way as an application for the grant of a licence.

28 Application for new licence

In making an application for a new licence, the applicant must demonstrate, to the satisfaction of the Commissioner, that the applicant has been actively involved in the security industry during the term of the previous licence.

Division 4 Review of licensing decisions

29 Right to seek review from Administrative Decisions Tribunal

- (1) A person may apply to the Administrative Decisions Tribunal for a review of the following decisions:
 - (a) the refusal or failure by the Commissioner to grant a licence to the person (other than by operation of section 24 (3)),
 - (b) a condition imposed by the Commissioner on a licence granted to the person,
 - (c) the revocation or suspension of a licence granted to the person.
- (2) For the purposes of this section, an application for the grant of a licence is taken to have been refused if the licence is not granted within 60 days after the application is made in accordance with this Act.

Note—

Under the *Administrative Decisions Tribunal Act 1997*, if the ADT has reviewed a “reviewable decision” (such as a decision referred to in the above section), a party to the proceedings may appeal to an Appeal Panel of the ADT. An appeal on a question of law may then lie to the Supreme Court.

Part 3 Miscellaneous offences relating to licences

30 Contravention of licence conditions

A licensee must not contravene any condition of the licence.

Maximum penalty: 40 penalty units.

31 Surrender of suspended or revoked licence

If a licence is suspended or revoked, the person to whom it was granted must immediately surrender the licence in accordance with the regulations.

Maximum penalty: 20 penalty units.

32 Advertising

- (1) A person must not advertise that the person carries on or is willing to carry on any security activity referred to in the advertisement unless the person is the holder of a licence that authorises the person to carry on that security activity.

Maximum penalty:

- (a) in the case of a corporation—40 penalty units, or
- (b) in the case of an individual—20 penalty units.

- (2) A licensee must ensure that any advertisement in relation to any security activity carried on by the licensee contains the number of the licence.

Maximum penalty:

- (a) in the case of a corporation—40 penalty units, or
- (b) in the case of an individual—20 penalty units.

- (3) A reference in this section to an advertisement includes a reference to any form of notice or statement in the nature of an advertisement.

33 Misrepresentation and related offences

- (1) A licensee must not:

- (a) by any false, misleading or deceptive statement, representation or promise, or
- (b) by any wilful concealment of a material fact,

induce, or attempt to induce, any person to enter into an agreement or contract in connection with the carrying on of any security activity.

Maximum penalty: 20 penalty units.

(2) A person must not:

(a) in relation to any application for the purposes of this Act or the regulations, or

(b) in relation to any information or particulars that the person is required to furnish under this Act or the regulations,

make any representation or statement that the person knows is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

34 Abuse of authority conferred by licence

A licensee must not in any way:

(a) suggest or imply that the licensee may, because of the licence, exercise any function apart from a function authorised by the licence, or

(b) use or attempt to use the licence to exercise any function apart from a function authorised by the licence.

Maximum penalty: 40 penalty units.

35 Licence to be produced on demand

A licensee must produce the licence for inspection on demand by:

(a) a police officer or any other member of the Police Service, or

(b) any person with whom the licensee has dealings when carrying on any security activity.

Maximum penalty: 20 penalty units.

36 Licence to be worn by licensee

(1) The holder of a class 1 or class 2 licence must, at all times while carrying on a security activity, wear on his or her person so as to be clearly visible the form of the licence that contains a photograph of the licensee.

Maximum penalty: 40 penalty units.

(2) This section does not apply to a licensee who is exempted by the Commissioner in writing from the requirement to wear the licence because of the special nature of the licensee's duties.

37 Licensee not to sell or dispose of licence

A licensee must not:

- (a) sell, dispose of, deliver, let out, hire or rent the licence to any other person, or
- (b) permit any other person to use the licence.

Maximum penalty: 20 penalty units.

38 Prohibition of delegation of functions

A licensee must not delegate the carrying on of a security activity to a person who is not the holder of a licence.

Maximum penalty: 40 penalty units.

39 Master licensee not to employ unlicensed persons

Without limiting the operation of section 30, the holder of a master licence must not knowingly employ any person to carry on any security activity if that person is not the holder of a licence.

Maximum penalty: 40 penalty units.

39A Master licensee to submit any firearms for ballistics tests

- (1) If a master licensee is authorised under the *Firearms Act 1996* to possess any firearms by reason of holding the master licence, the master licensee must, on request by the Commissioner, submit all the master licensee's firearms to a police officer for ballistics testing.

Maximum penalty: 50 penalty units or 2 years imprisonment, or both.

- (2) If, after a master licensee's firearms have been tested in accordance with subsection (1), a firearm so tested has been modified in a manner that would change the characteristics of the firearm's firing (such as any alteration, modification or change to the barrel, chamber, firing pin, extractor, ejector or bolt action of a firearm that may affect the forensic identifying features of that firearm), the master licensee must notify the Commissioner of that modification and on request by the Commissioner submit the firearm to a police officer for further ballistics testing.

Maximum penalty: 50 penalty units or 2 years imprisonment, or both.

- (3) The Commissioner may keep the records of the results of any ballistics tests undertaken in accordance with this section and may use those records for any purpose as the Commissioner sees fit.

Part 4 Miscellaneous provisions

40 Power of court to order licence to be surrendered

- (1) If:

- (a) in any proceedings before a court in which a licensee is convicted of an indictable offence, or
- (b) in any proceedings before a court in which a licensee gives evidence or is convicted of an offence against this Act or the regulations,

the court is of opinion on the evidence before it, whether that evidence is given by the licensee or any other person, that the licensee's licence should be suspended or revoked, the court may order that the licence be suspended for a period not exceeding 28 days and that the licence be delivered up to the court.

- (2) If a licence is delivered up to a court in accordance with an order under subsection (1), the clerk or other relevant officer of the court must immediately send the licence and a copy of the order to the Commissioner.
- (3) The Commissioner, on receiving the licence under subsection (2), may:
 - (a) cause the licence to be returned to the licensee, or
 - (b) take action to suspend or revoke the licence.

41 Payment of fees charged by unlicensed persons

- (1) A person is not entitled to charge a fee in relation to a security activity unless the person is, or was, authorised by a licence to carry on the activity.
- (2) If any such fee is charged by a person in contravention of this section, the fee cannot be sued for, recovered or retained by the person.

42 Search warrant

- (1) A police officer may apply to an authorised justice for the issue of a search warrant if the police officer believes on reasonable grounds that any provision of this Act or the regulations is being or has been contravened on any premises.
- (2) An authorised justice to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any police officer to enter and search the premises.
- (3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (4) A police officer who enters any premises pursuant to a search warrant issued under this section may search the premises and seize anything that may reasonably be suspected to relate to the carrying on of a security activity.
- (5) In this section, **authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).

42A Further powers of inspection and seizure

- (1) 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, seize any registers, books, records or other documents relating to the business being carried on under the authority of the master licence.
- (2) 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, require any person to answer any question relating to any registers, books, records or other documents or any other relevant matter required to be kept by a licensee by or under this Act.
- (3) If a police officer is authorised under this or any other Act to make copies of entries in the registers, books, records or other documents of any person, the police officer may take those registers, books, records or other documents from the premises for the purpose of copying them and must return them after that copying is completed.
- (4) A person must not:
 - (a) obstruct, hinder, prevent or interfere with a police officer in the exercise of a power under this section, or
 - (b) fail without reasonable excuse to answer any question relating to any register, book, record or other document or any other relevant matter when required to do so by a police officer in accordance with subsection (2).

Maximum penalty (subsection (4)): 50 penalty units.

43 Delegation by Commissioner

- (1) The Commissioner may delegate to an authorised person any of the Commissioner's functions under this Act or the regulations, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any of the functions delegated by the Commissioner if the delegate is authorised in writing to do so by the Commissioner.
- (3) In this section, **authorised person** means:
 - (a) a police officer or any other member of the Police Service, or
 - (b) a public servant, or
 - (c) any other person prescribed by the regulations.

44 Offences by corporations

- (1) If a corporation contravenes a 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 if the person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

45 Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Proceedings referred to in subsection (1) must be commenced not later than 3 years from when the offence was alleged to have been committed.

45A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, **authorised officer** means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this section:
 - (a) a police officer or any other member of the NSW Police,
 - (b) a member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*,
 - (c) any other person prescribed by the regulations.

46 Service of notices

Any notice or other instrument required or authorised by this Act or the regulations to be served on a person by post is sufficiently addressed if it is addressed to the last address of the person known to the Commissioner.

47 Evidence

A certificate signed by the Commissioner (or by a person holding an office prescribed by the regulations) certifying any of the following:

- (a) that a specified person was or was not, on a day or during a specified period, the holder of a licence,
- (b) that any licence was or was not, on a day or during a specified period, subject to specified conditions,

is admissible in any proceedings under this Act and is prima facie evidence of the matters so specified.

48 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) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to any of the following:
 - (a) the keeping by the Commissioner of a register of licences and the particulars to be contained in the register,
 - (b) the approval of training courses for persons in the security industry, and the accreditation of trainers and instructors to conduct those courses,

- (c) specialised training of licensees,
 - (d) security equipment,
 - (e) methods and practices relating to the security industry, including:
 - (i) the carrying or display, by licensees, of means of identification and the production or surrender of that identification, and
 - (ii) the wearing by licensees of uniforms and the character or design of any uniforms so worn, and
 - (iii) the markings that may be made on, and the design of any features of, a vehicle used by any person in or in connection with the carrying on of any security activity, and
 - (iv) the preparation, keeping and maintenance, by licensees, of records and accounts, and the audit of any accounts, in respect of the carrying on by the licensee of any business requiring a licence and the production and inspection of any such records,
 - (f) the procedure relating to applications for licences,
 - (g) any matter relating to licences, including the particulars to be endorsed on licences and the notification by the licensee of any change in those particulars,
 - (h) requiring holders of master licences to obtain specified insurance in connection with their security activities,
 - (i) fees payable under this Act or the regulations.
- (3) A regulation may create an offence punishable by a penalty not exceeding:
- (a) 5 penalty units in the case of an individual, or
 - (b) 20 penalty units in the case of a corporation.

49 (Repealed)

50 Repeal of [Security \(Protection\) Industry Act 1985](#) and [Security \(Protection\) Industry Regulation 1995](#)

The [Security \(Protection\) Industry Act 1985](#) and the [Security \(Protection\) Industry Regulation 1995](#) are repealed.

51 Savings and transitional provisions

Schedule 2 has effect.

52 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 (Repealed)

Schedule 2 Savings and transitional provisions

(Section 51)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following:
 - this Act
 - Security Industry Amendment Act 2002*
- (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 Definitions

In this Part:

existing licence means a licence:

- (a) that was issued under the former Act, and
- (b) that was in force immediately before the repeal of the former Act by this Act.

former Act means the *Security (Protection) Industry Act 1985*.

3 Saving of existing licences

- (1) Subject to the regulations, an existing licence:
 - (a) is taken to be a licence of the corresponding kind (as determined by the Commissioner) granted under this Act, and
 - (b) continues, unless it is sooner surrendered by the holder or suspended or revoked under this Act, in force for the unexpired portion of its term, and
 - (c) cannot be renewed.

Note—

All existing licences will terminate during the year following the repeal of the former Act because they are annual licences.

- (2) 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, and any such condition may be varied or revoked in accordance with this Act.

4 Pending licence applications

An application for a licence made under the former Act that was not finally determined before the repeal of the former Act by this Act is void and does not have any operation with respect to this Act.

5 Pending reviews and appeals

Any proceedings before a Local Court that were instituted before the repeal of the former Act and not determined before that repeal, being proceedings arising out of a licensing decision under the former Act, are to be determined as if this Act had not been enacted.

6 Transitional review and appeal process

- (1) If the former Act is repealed before the commencement of the *Administrative Decisions Tribunal Act 1997*, the provisions of the former Act relating to the review of licence applications by a Local Court and to appeals to a Local Court against the cancellation and suspension of licences, continue, subject to the regulations, to apply in relation to decisions under this Act until such time as the *Administrative Decisions Tribunal Act 1997* commences.
- (2) If proceedings are commenced in a Local Court in accordance with subclause (1) but are not determined when the *Administrative Decisions Tribunal Act 1997* commences,

the provisions referred to in subclause (1) continue to apply to those proceedings until such time as they are determined by the Local Court.

7 References to [Security \(Protection\) Industry Act 1985](#)

Except as provided by the regulations, a reference in any instrument (other than this Act or the regulations) to any provision of the [Security \(Protection\) Industry Act 1985](#), or the [Security \(Protection\) Industry Regulation 1995](#), is to be read as a reference to the corresponding provision of this Act, or the regulations made under this Act, respectively.

Part 3 Provisions consequent on enactment of [Security Industry Amendment Act 2002](#)

8 Requirement as to Australian citizenship or residence not to apply to current licences

- (1) Sections 15 (1) (e) and 26 (1A), as inserted by the [Security Industry Amendment Act 2002](#), do not operate to require the Commissioner to revoke a licence that is in force on the commencement of those provisions.
- (2) Section 15 (1) (e) extends to an application for a new licence that was made but not determined before the commencement of that paragraph.
- (3) For the avoidance of doubt, an application for a new licence includes an application for a new licence by a person who holds, or has previously held, a licence.

9 Fingerprints held by Commissioner

Section 18 (4)-(6), as inserted by the [Security Industry Amendment Act 2002](#), extend to fingerprints that were obtained from the person in accordance with a requirement under section 18 (2), and any copies of them, and kept by the Commissioner on the commencement of those subsections.

10 Proceedings for offences

Section 45 (2), as inserted by the [Security Industry Amendment Act 2002](#), does not apply to an offence committed before the commencement of that subsection.