

# Security Industry Act 1997 No 157

[1997-157]



New South Wales

## Status Information

### Currency of version

Historical version for 16 January 2009 to 31 March 2009 (accessed 28 April 2024 at 7:28)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Security Industry Amendment Act 2005 No 63](#), Sch 1 [65] (to the extent that it inserts sec 38A) (not commenced)
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
  - [Security Industry Amendment Act 2008 No 113](#), Sch 1 [1]–[3] [5]–[10] and [12] (to the extent that it inserts cl 18) (not commenced — Sch 1 [1]–[3] and [6]–[10] to commence on 1.1.2010, Sch 1 [5] and [12] (to the extent that it inserts cl 18) to commence on 1.4.2009)
- **See also**
  - [Security Industry Amendment \(Patron Protection\) Bill 2007](#) [Non-government Bill: Revd the Hon Dr G K M Moyes, MLC]

### Authorisation

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File last modified 16 January 2009

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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 (1) (c), and
- (b) is the holder of a class 1F or P1F 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** does not include subcontract or arrange by contract, franchise or otherwise with another person for the purpose of that other person employing or providing persons.

**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 a “security activity”**

- (1) 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 or providing close personal protection, or acting in a similar capacity,
  - (b) acting as a crowd controller, venue controller or bouncer, or acting in a similar capacity, by physical or electronic means,
  - (c) patrolling, protecting, watching or guarding any property, by physical means (which may involve the use of patrol dogs or the possession or use of firearms) or by electronic means, in any one or more of the following circumstances:
    - (i) carrying on control room operations,
    - (ii) carrying on monitoring centre operations,
    - (iii) carrying on retail loss prevention,

- (iv) patrolling, protecting, watching or guarding cash (including cash in transit) or other valuables,
  - (v) patrolling, protecting, watching or guarding an airport or any other infrastructure,
- (d) installing, maintaining, repairing or servicing, by physical or electronic means:
  - (i) any security equipment, or
  - (ii) any mechanical, electronic, acoustic or other equipment that the person installing, maintaining, repairing or servicing the equipment purports to be equipment that is designed or adapted to provide or enhance security or for the protection or watching of any property,
- (e) selling:
  - (i) any security equipment (other than basic household or automotive security items at approved classes of retail outlets), or
  - (ii) any mechanical, electronic, acoustic or other equipment that the person selling the equipment purports to be equipment that is designed or adapted to provide or enhance security or for the protection or watching of any property,
- (f) selling security methods or principles,
- (g) selling the services of persons to carry on any security activity referred to in this section,
- (h) providing advice in relation to security equipment (other than basic household or automotive security items at approved classes of retail outlets), including:
  - (i) providing product advice in relation to security equipment, or
  - (ii) identifying and analysing security risks and providing solutions or management strategies to minimise security risks,
- (i) providing advice in relation to any other mechanical, electronic, acoustic or other equipment (other than basic household or automotive security items at approved classes of retail outlets) that the person providing the advice purports to be equipment that is designed or adapted to provide or enhance security or for the protection or watching of any property,
- (j) providing training or instruction in relation to any security activity referred to in this section,
- (k) assessing another person's training, instruction or competencies in relation to any security activity referred to in this section,

- (l) supervising or monitoring, for fee or reward, any person who is carrying on a security activity authorised by a provisional licence,
  - (m) employing or providing persons, or arranging by contract, franchise or other arrangement with another person for the purpose of that other person employing or providing persons, to carry on any security activity referred to in this section,
  - (n) acting as an agent for, or otherwise obtaining contracts for:
    - (i) the supply of persons to carry on any security activity referred to in this section, or
    - (ii) the supply of any security equipment (other than basic household or automotive security items at approved classes of retail outlets), or
    - (iii) the supply of any security activity referred to in this section,
  - (o) brokering any security activity referred to in this section, by acting or purporting to act as an intermediary to negotiate and obtain any such activity for a person (other than the person's employer or a principal who is not a client of the person) in return for a commission or financial benefit,
  - (p) any other activity, or class of activities, that is connected with security or the protection of persons or property, whether by physical or electronic means, and that is prescribed by the regulations for the purposes of this section.
- (2) For the purposes of this section, **basic household or automotive security item** has the meaning given by the regulations.

## 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 as provided by this section, 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 other member of the NSW Police Force, 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 or in the course of that employment.

- (2A) This Act does not apply to or in respect of any person who is employed by or in:
  - (a) the New South Wales Crime Commission, or
  - (b) the Australian Crime Commission, or
  - (c) the Police Integrity Commission, or
  - (d) the Independent Commission Against Corruption, or
  - (e) the Department of Corrective Services as a correctional officer (within the meaning of the [Crimes \(Administration of Sentences\) Act 1999](#)), or
  - (f) the Department of Juvenile Justice, or

(g) any other agency responsible for the enforcement of criminal laws of the State, of the Commonwealth or of another State or Territory,

while, and to the extent that, the person is performing official duties in the course of that employment.

(2B) The Commissioner may, on application by a person who provides training or instruction in relation to a security activity of a kind authorised by a class 2 licence, exempt the person from the requirement under section 7 (2) to be licensed to provide that training or instruction.

(2C) An exemption under subsection (2B):

(a) is to be specified in a written notice given to the person concerned, and

(b) is subject to such terms and conditions as the Commissioner may specify in the notice, and

(c) may be revoked at any time by the Commissioner.

(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 activities**

(1) A person must not employ or provide persons to carry on security activities unless:

(a) the person is the holder of a master licence, and

(b) the person employs or provides no more than the number of persons authorised by the master licence.

(c) (Repealed)

Maximum penalty:

(a) in the case of a corporation—1,000 penalty units, or

(b) in the case of an individual—500 penalty units or imprisonment for 2 years, or both.

(2) A person must not carry on a security activity (other than employing or providing persons to carry on security activities) unless the person is the holder of a class 1

licence, class 2 licence or provisional licence that authorises the person to carry on the security activity.

Maximum penalty: 500 penalty units or imprisonment for 2 years, 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**

- (1) A licence may be of one of the following classes:
  - (a) a master licence,
  - (b) a class 1 licence,
  - (c) a class 2 licence,
  - (d) a provisional licence.
- (2) A class of licence may, in accordance with the regulations, be combined with another class of licence into a composite licence that authorises the licensee to carry on more than one kind of security activity.

### **10 Master licences**

- (1) Master licences are to be classified into subclasses. Those subclasses, and the authority they confer, are as follows:
  - (a) class MA—authorises the holder (who is self-employed and who holds a class 1 or class 2 licence, or both) to provide his or her services to carry on security activities,
  - (b) class MB—authorises the holder to employ or provide no more than 10 persons to carry on security activities, each of whom must be the holder of a class 1 licence, class 2 licence or provisional licence,
  - (c) class MC—authorises the holder to employ or provide between 11 and 50 persons to carry on security activities, each of whom must be the holder of a class 1 licence, class 2 licence or provisional licence,
  - (d) class MD—authorises the holder to employ or provide more than 50 persons to carry on security activities, each of whom must be the holder of a class 1 licence, class 2 licence or provisional licence.
- (2) (Repealed)

- (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, protect, watch or guard any property while unarmed (and whether while static or mobile),
  - (b) class 1B—authorises the licensee to act as a bodyguard or to provide close personal protection or to act in a similar capacity,
  - (c) class 1C—authorises the licensee to act as a crowd controller, venue controller or bouncer or to act in a similar capacity,
  - (d) class 1D—authorises the licensee to patrol, protect, watch or guard any property with a dog,
  - (e) class 1E—authorises the licensee to patrol, protect, watch or guard any property while carrying on monitoring centre operations,
  - (f) class 1F—authorises the licensee to patrol, protect, watch or guard approved classes of property while armed (but only under the authority of a licence or permit to use or possess firearms under the [Firearms Act 1996](#)),
  - (g) class 1G—authorises the licensee to patrol, protect, watch or guard any property while carrying on retail loss prevention,
  - (h) any other class prescribed by the regulations—authorises the licensee to carry on the security activity prescribed by the regulations in relation to the prescribed class of licence concerned.
- (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 consultant by identifying and analysing security risks and providing solutions and management strategies to minimise those security risks,
  - (b) class 2B—authorises the licensee to sell, and provide advice in relation to, security

equipment and to sell the services of persons to carry on any security activity,

- (c) class 2C—authorises the licensee to act as a locksmith, including selling, installing, maintaining, repairing and servicing, and providing advice in relation to, security equipment (including barrier equipment),
- (d) class 2D—authorises the licensee to provide training, assessment or instruction in relation to any security activity,
- (e) class 2E—authorises the licensee to protect assets or other property by selling, installing, maintaining, repairing and servicing, and providing advice in relation to, barrier equipment,
- (f) class 2F—authorises the licensee to sell, install, maintain, repair and service, and provide advice in relation to, electronic security equipment,
- (g) any other class prescribed by the regulations—authorises the licensee to carry on the security activity prescribed by the regulations in relation to the prescribed class of licence concerned.

(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) (Repealed)

## **12A Provisional licences**

(1) Provisional licences are to be classified into subclasses. Those subclasses, and the authority they confer, are as follows:

- (a) class P1A—authorises the licensee to patrol, protect, watch or guard any property while unarmed (and whether while static or mobile), but only while being supervised as required by section 29A,
- (b) class P1B—authorises the licensee to act as a bodyguard or provide close personal protection, or to act in a similar capacity, but only while being supervised as required by section 29A,
- (c) class P1C—authorises the licensee to act as a crowd controller, venue controller or bouncer, or to act in a similar capacity, but only while being supervised as required by section 29A,

- (d) class P1D—authorises the licensee to patrol, protect, watch or guard any property with a dog, but only while being supervised as required by section 29A,
  - (e) class P1E—authorises the licensee to patrol, protect, watch or guard any property while carrying on monitoring centre operations, but only while being supervised as required by section 29A,
  - (f) class P1F—authorises the licensee to patrol, protect, watch or guard approved classes of property while armed, but only under the authority of a licence or permit to use or possess firearms under the [Firearms Act 1996](#) and only while being supervised as required by section 29A,
  - (g) class P1G—authorises the licensee to patrol, protect, watch or guard any property while carrying on retail loss prevention, but only while being supervised as required by section 29A,
  - (h) any other class prescribed by the regulations (being a class that corresponds to any additional class prescribed by the regulations under section 11 (1) (h))—authorises the licensee to carry on the security activity prescribed by the regulations in relation to the prescribed class of licence concerned, but only while being supervised as required by section 29A.
- (2) The relevant subclass is to be endorsed on each provisional licence. More than one such subclass may be endorsed on a provisional licence.

### **13 (Repealed)**

## **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, class 2 or provisional licence, the applicant must:
  - (a) if the applicant is employed, specify the name and business address of the applicant's employer, 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.

- (4) In the case of an application for a class 1 licence by an applicant who has previously held a class 1 licence or a provisional licence, the applicant must also:
  - (a) supply proof of the person's employment in carrying on an authorised security activity during the term of the previous licence (for example, by providing the names of employers during that term and providing records indicating the type of security activity carried out), and
  - (b) supply evidence to the Commissioner's satisfaction that the person has been engaged in the security activity proposed to be authorised by the licence for a significant period of the previous licence and has demonstrated continuing knowledge and competency in relation to that security activity.
- (5) In the case of an application for a class P1F licence, the applicant must also supply a letter of endorsement from the applicant's employer or proposed employer (being an approved master licensee providing uniformed cash in transit security services) that states that the applicant is or will be employed by the employer.
- (6) Section 12 of the [Criminal Records Act 1991](#) does not apply in relation to an application for a licence.

#### **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) in the case of application for a licence other than a provisional licence—does not have the competencies 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 may refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:
  - (a) in the case of an application for a class 1 licence:
    - (i) has not, for at least 12 months, held a provisional licence authorising the applicant to carry on the security activity to which the proposed licence relates, or

- (ii) has not previously been authorised by a licence (other than a provisional licence) to carry on the security activity to which the proposed licence relates, or
- (b) in the case of an application for a provisional licence—has not completed, to the satisfaction of the Commissioner, an approved security industry training course that is relevant to the class of licence sought, or
- (c) in the case of an application for a class 1 licence where the applicant has previously been authorised by a licence to carry on the security activity to which the proposed licence relates:
  - (i) has failed to demonstrate active participation or employment in the security industry for a significant period of the previous licence, after taking into account any actual experience or offered work or contracts, or
  - (ii) has not been engaged in the security activity authorised by the previous licence for a significant period, or
  - (iii) has failed to demonstrate continuing knowledge and competency in relation to the security activity authorised by the previous licence.
- (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) Except as provided by the regulations, 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 in relation to the class of licence sought, 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 in relation to the class of licence sought, whether or not the offence is an offence under New South Wales law, or
  - (c) has, within the period of 5 years before the application for the licence was made, had a civil penalty imposed on the applicant by a court or tribunal in New South Wales or elsewhere, being a civil penalty prescribed by the regulations in relation to the class of licence sought, or
  - (d) has, within the period of 10 years before the application for the licence was made, been removed or dismissed from the NSW Police Force or from the police force of any other jurisdiction (whether in Australia or overseas) on the ground of the applicant's integrity as a police officer.
- (2) (Repealed)
- (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) (Repealed)
- (4A) The Commissioner may refuse to grant an application for a licence if, within the period of 10 years before the application for the licence was made, the applicant has been removed from the NSW Police Force under section 181D of the [Police Act 1990](#) on grounds other than the applicant's integrity as a police officer.
- (5) A reference in subsection (1), (3), (4) or (4A) to an applicant includes, in the case of an application for a master licence, a reference to each close associate of the applicant.

#### **16A Restrictions on granting licence—conflict of interest for police officers**

- (1) The Commissioner must refuse to grant an application for a licence to a police officer or other member of the NSW Police Force if the Commissioner considers that the grant of the licence, or the carrying on of the security activities authorised by the licence, would create a conflict of interest between the proper performance of the officer's or member's duties as an officer or member and the officer's or member's private interests.
- (2) However, the Commissioner may grant an application for a licence to a police officer or other member of the NSW Police Force subject to the condition that the person may not be employed by specified persons, if to do so would avoid a conflict of interest of the kind described in subsection (1). This subsection does not limit the other conditions to which a licence may be subject.

#### **17 (Repealed)**

#### **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.

(6A) A reference in this section to an applicant or a licensee includes, in the case of an application for a master licence, or in the case of a former licensee, a reference to each close associate of the applicant or former licensee.

(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 the NSW Police Force,

(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 serving and former police officers**

Any application for a licence made by any person who is, or 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 Professional Standards Command of the NSW Police Force. That branch may seek further advice from the Police Integrity Commission as to the suitability of the applicant to hold a licence or the suitability of the applicant being employed by any specified master licensee.

## **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,

(b1) in the case of an application for a class 1 licence by an applicant who has previously held a class 1 licence or a provisional licence—to provide, in accordance with directions in the notice, statements from previous employers specifying the duration of the applicant's employment and the security activities carried on by

the applicant during the applicant's employment (but only if that employment included time during the term of that previous licence),

- (c) to authorise a person described in the notice to comply with a specified requirement of the kind referred to in paragraph (a), (b) or (b1),
- (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.
- (8) A certificate signed by the Commissioner (or by a person holding an office prescribed by the regulations) certifying the reasonable costs incurred by the Commissioner in investigating and inquiring into an application for a licence is admissible in any proceedings for the recovery of an amount payable under this section and is prima facie evidence of the amount so specified.

## **21 Grant and conditions 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 is subject:

- (a) to such conditions as may be imposed by the Commissioner (whether at the time the licence is granted or at any later time), and
- (b) to such other conditions as are imposed by this Act or 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 and others**

It is a condition of every master licence that the licensee must not employ or provide 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.

## **23AA Special conditions—authority to carry firearms**

- (1) It is a condition of every class 1F or P1F licence that the licensee must not carry on the security activity authorised by the licence unless the licensee is authorised by a licence or permit under the [Firearms Act 1996](#) to possess or use a firearm.
- (2) If the holder of a class 1F or P1F licence is found guilty of an offence under the [Firearms Act 1996](#) in relation to the unauthorised possession or use of a firearm, the

person cannot be found guilty of an offence under section 30 of this Act of failing to comply with the condition imposed by this section in respect of that unauthorised possession or use.

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

- (1) It is a condition of every class 1F or P1F 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 1F or P1F 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 1F or P1F 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.

### **23B Special conditions—storage of firearms in certain residential premises**

- (1) It is a condition of every class 1F or P1F licence that, if the licensee is an armed security guard, the licensee must not store a firearm at any prohibited premises.
- (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 cause or permit 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 stored at any prohibited premises.
- (3) If a police officer discovers that a firearm is stored at prohibited premises, the police officer may seize the firearm.
- (4) If an armed security guard stores a firearm at any prohibited premises, the Commissioner:
- (a) must suspend, in accordance with section 25, the armed security guard’s class 1F or P1F licence, and
  - (b) must 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 the holder of a master licence), personally or by post:
    - (i) stating that the armed security guard’s class 1F or P1F 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.
- (5) In this section:

**prohibited premises** means any premises that are regularly used as a principal or temporary place of residence by a person who has been found guilty of a criminal offence, being an offence that would disqualify the person from holding a licence because of section 16 (1) (a) (if the person has been convicted) or section 16 (1) (b) (whether or not the person has been convicted).

### **23C Special conditions—class P1F licences**

- (1) It is a condition of every P1F licence that the licensee must, before carrying on any security activity authorised by the licence, successfully complete approved training provided by the licensee’s employer (being an approved master licensee providing

uniformed cash in transit security services).

- (2) It is a condition of every class P1F licence that the licensee remains employed by the approved master licensee who provided the licensee with a letter of endorsement, as referred to in section 14 (5).
- (3) It is a condition of every class P1F licence that the licensee must:
  - (a) within 3 months of being granted the licence, successfully complete such further training as is determined by the Commissioner, and
  - (b) successfully complete such other training as may be required by the Commissioner during the term of the licence.
- (4) The Commissioner must revoke a class P1F licence if the Commissioner is satisfied that the licensee has failed to comply with a condition under this section.

## **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) (Repealed)
- (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, class 2 or provisional 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 (Repealed)**

## 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.

- (3) In determining an application for a review of any decision to refuse to grant a licence or to revoke a licence that was made on the ground of the applicant not being a fit and proper person, the Administrative Decisions Tribunal:
  - (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information referred to in section 15 (6) without the approval of the Commissioner, and
  - (b) in order to prevent the disclosure of any such report or other criminal information, is to receive evidence and hear argument in the absence of the public, the applicant for review, the applicant’s representative and any other interested party, unless the Commissioner approves otherwise.

**Note—**

Section 15 (7) of this Act provides that 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 referred to in section 15 (6). Accordingly, Part 2 of Chapter 5 of the [Administrative Decisions Tribunal Act 1997](#) does not apply to any decision to refuse to grant a licence based on such information to the extent that it would require disclosure of the existence or content of any criminal intelligence report or other criminal information.

## Part 3 Miscellaneous offences relating to licences

### 29A Offence of permitting employee who is provisional licensee to carry on unsupervised

### **security activity**

- (1) A person who is the holder of a provisional licence must not carry on a security activity authorised by that licence otherwise than under the direct supervision (as determined in accordance with the regulations) of a person who holds a class 1 licence that authorises the carrying on of the security activity to which the provisional licence relates.
- (2) If subsection (1) is contravened, the person who is (at the time of the contravention) the employer of the person holding the provisional licence is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units.

### **29B Certain licensees must be employed by other licensees**

- (1) A person who is the holder of a class 1 or class 2 licence must not carry on a security activity authorised by the licence unless the person:
  - (a) is employed by a master licensee, or
  - (b) is self-employed and is the holder of a master licence.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

- (2) A person who is the holder of a provisional licence must not carry on a security activity authorised by the licence unless the person is employed by a master licensee.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

### **30 Contravention of licence conditions**

A licensee must not contravene any condition of the licence.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

### **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:

- (a) in the case of a corporation—200 penalty units, or

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

### **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 master licence.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
  - (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.
- (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—200 penalty units, or
  - (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.
- (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:

- (a) in the case of a corporation—200 penalty units, or
  - (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.
- (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: 50 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: 50 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 NSW Police Force, or
- (b) any person with whom the licensee has dealings when carrying on any security activity.

Maximum penalty: 50 penalty units.

### **36 Licence to be worn by licensee**

- (1) The holder of a class 1, class 2 or provisional licence must, at all times while carrying on a security activity, wear on his or her person so as to be clearly visible his or her licence, being an original and not a photocopy or other copy.

Maximum penalty: 50 penalty units.

- (1A) For the purposes of this section, a licence is worn by a person so as to be **clearly visible** only if:

- (a) the licence is attached to the person's outer clothing, and
- (b) the licence is attached at or above the level of the person's waist, and
- (c) the licence is attached at the front or side of the person's body, and
- (d) the licence is attached with the front face of the licence clearly visible to a person standing in front of the person, and
- (e) there is no material adhering to the licence that obscures any part of the licence

from the view of such a person, and

(f) any other requirements prescribed by the regulations are complied with.

- (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:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

### **38 Prohibition of delegation of functions**

- (1) A licensee must not delegate the carrying on of a security activity to a person who is not the holder of a licence authorising the person to carry on the same security activity.

Maximum penalty: 40 penalty units.

- (2) A person who is the holder of a provisional licence must not delegate the carrying on of any security activity authorised by the licence to any other person.

Maximum penalty: 40 penalty units.

### **38B Supervising or monitoring licensees**

- (1) A person (***the relevant person***) must not, for fee or reward, supervise or monitor the performance of a person who holds a provisional licence unless the relevant person is the holder of a class 1 licence authorising the relevant person to carry on the security activity to which the provisional licence relates.

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

- (2) A person (***the relevant person***) must not, for fee or reward, supervise or monitor the performance of a person who holds a class 1 or class 2 licence unless the relevant person is:

- (a) the holder of a master licence, or
- (b) in the case of a master licence held by a corporation, government agency or

public authority—the person nominated by the corporation, agency or authority for the purpose of such supervision or monitoring, or

- (c) the holder of a licence authorising the relevant person to carry on the security activity to which the class 1 or class 2 licence relates.

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

### **38C Rostering or scheduling of licensed persons to carry on security activities**

A person (***the relevant person***) must not, for fee or reward, roster or schedule the carrying on of any security activity by a person who holds a class 1 licence, class 2 licence or provisional licence if the relevant person is not eligible to hold a licence because of section 16.

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

### **39 Master licensee not to employ unlicensed persons**

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

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or  
(b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.

- (2) It is a defence in proceedings for an offence under this section if the master licensee satisfies the court that the master licensee did not know, and could not reasonably have been expected to know, that the person employed by the master licensee was unlicensed.

### **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: 100 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: 100 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.

### **39B Master licensee to have “fitness for work” policy**

A master licensee must not employ or provide any person to carry on a security activity unless the master licensee has prepared and implemented a fitness for work policy that covers the use of alcohol and other drugs by persons employed or provided by the licensee to carry on security activities.

Maximum penalty:

- (a) in the case of a corporation—20 penalty units, or
- (b) in the case of an individual—10 penalty units.

## **Part 4 Miscellaneous provisions**

### **40 Power of court to suspend licence**

(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, or
- (c) in any proceedings before a court in which a licensee is found to be liable to a civil penalty of a kind prescribed by 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 officer 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 officer 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) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) 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 officer** has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

#### **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.
- (1A) 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:
  - (a) make a copy on the premises of any registers, books, records or other documents relating to the business being carried on under the authority of the master licence and retain that copy, or
  - (b) require any person to make a copy on the premises of any registers, books,

records or other documents relating to the business being carried on under the authority of the master licence and give that copy to the police officer to retain.

- (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
  - (a1) fail without reasonable excuse to assist a police officer to copy any registers, books, records or other documents, when required to do so by a police officer in accordance with subsection (1A) (b), 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)): 100 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 NSW Police Force, or
  - (b) a member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*, or
  - (c) any other person prescribed by the regulations.

#### **43A Security Industry Council**

- (1) The Minister may establish a Security Industry Council.

- (2) The members of the Security Industry Council are to be appointed by the Minister in accordance with the regulations.
- (3) The functions of the Security Industry Council are as follows:
  - (a) to advise the Minister on any matter that is referred to it by the Minister,
  - (b) to monitor and advise on the regulation of the security industry,
  - (c) to establish and promote industry standards for the security industry,
  - (d) to conduct industry research into security industry statistics and trends,
  - (e) to review this Act and the regulations under this Act and to make recommendations to the Minister,
  - (f) to make recommendations to the Minister on licence fees,
  - (g) to monitor the performance and obligations of approved security industry associations against performance agreements,
  - (h) to arrange independent audits of approved security industry associations,
  - (i) to facilitate consistent complaints management processes by approved security industry associations,
  - (j) to advise the Minister on any other matter it considers relevant to the security industry.

#### **44 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any 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, unless the person satisfies the court that:
  - (a) the corporation contravened the provision without the knowledge actual, imputed or constructive of the person, or
  - (b) the person was not in a position to influence the corporation in relation to its contravention of the provision, or
  - (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (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.
- (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 Force,
- (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**

- (1) 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.
- (2) Any such notice or other instrument is taken to have been served at the time it would have been delivered in the ordinary course of post.

#### **47 Certificate and other evidence**

- (1) 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,
  - (c) that a specified person was or was not nominated as an employer in relation to the holder of a provisional licence (either in the application for a licence or at some subsequent time),
  - (d) that a specified person had or had not previously applied for a licence and been refused,
  - (e) that the Commissioner has or has not authorised a specified person not to wear a uniform when carrying a firearm pursuant to section 23A (6), and if the authorisation was subject to specified conditions,
  - (f) that the Commissioner has authorised a specified person not to wear a licence pursuant to section 36 (2), and if the authorisation was subject to specified conditions,
  - (g) that a specified person had or had not previously contravened a licence condition and been found guilty of doing so,
  - (h) that a penalty notice had been issued in respect of a licence and that the amount of penalty had or had not been paid in the time specified by the penalty notice,
  - (i) that the licence of a specified person was or was not suspended, revoked or had or

had not otherwise ceased to be in force during a specified period,

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

(2) In proceedings under this Act:

- (a) a document purporting to be a copy of a direction, notice, authorisation, order, requirement or decision given or made under this Act is evidence of the direction, notice, authorisation, order, requirement or decision of which the Commissioner purports it to be a copy, and
- (b) a document purporting to be a copy of a licence under this Act is evidence of the licence of which the Commissioner purports it to be a copy.

#### **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 security industry competency training,
  - (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) 50 penalty units in the case of an individual, or
- (b) 100 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*

*Security Industry Amendment Act 2005*

*Security Industry Amendment Act 2008*

- (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.

## Part 4 Provisions consequent on enactment of [Security Industry Amendment Act 2005](#)

### 11 Definition

In this Part, **amending Act** means the [Security Industry Amendment Act 2005](#).

### 12 Saving of existing licences

- (1) Subject to the regulations:
  - (a) an existing licence that is a master licence is taken to be a master licence of the corresponding kind granted under this Act (as amended by the amending Act) as follows:
    - (i) an existing master licence that authorises the licensee (who is self-employed) to provide his or her services to carry on security activities is taken to be a class MA licence,
    - (ii) an existing master licence that authorises the licensee to employ or provide no more than 10 persons to carry on security activities is taken to be a class MB licence,

- (iii) an existing master licence that authorises the licensee to employ or provide between 11 and 50 persons to carry on security activities is taken to be a class MC licence,
    - (iv) an existing master licence that authorises the licensee to employ or provide more than 50 persons to carry on security activities is taken to be a class MD licence, and
  - (b) an existing class 1 or class 2 licence is taken to be a class 1 or class 2 licence of the corresponding kind granted under this Act (as amended by the amending Act) as follows:
    - (i) an existing class 1A licence is taken to be:
      - (A) a class 1A, 1D, 1E or 1G licence (as determined by the Commissioner), or
      - (B) if the licensee is authorised by a licence or permit under the [Firearms Act 1996](#) to use and possess firearms in carrying out a security activity—a class 1A, 1D, 1E, 1F or 1G licence (as determined by the Commissioner),
    - (ii) an existing class 1B licence is taken to be a class 1B licence,
    - (iii) an existing class 1C licence is taken to be a class 1C licence,
    - (iv) an existing class 2A licence is taken to be a class 2A licence,
    - (v) an existing class 2B licence is taken to be a class 2B licence,
    - (vi) an existing class 2C licence is taken to be a class 2C, 2E or 2F licence (as determined by the Commissioner),
    - (vii) an existing class 2D licence is taken to be a class 2D licence, and
  - (c) an existing licence, unless it is sooner surrendered by the holder or suspended or revoked under this Act, remains in force for the unexpired portion of its term, and
  - (d) the holder of an existing licence that expires can apply for a new licence in accordance with this Act.
- (2) Accordingly, a reference in any Act (other than this Act) or statutory instrument, or in any other instrument, or in any contract or agreement, to an existing licence of a particular kind is to be construed as a reference to a licence of the corresponding kind as determined in accordance with subclause (1) (a) or (b).
- (3) 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 (as amended by the amending Act) and any such condition may be varied or revoked in accordance with this Act.

(4) In this clause:

**existing licence** means a licence in force immediately before the commencement of this clause.

### 13 Pending licence applications

An application for a licence that was not finally determined before the commencement of an amendment to a provision made by the amending Act is to be investigated and determined in accordance with the provision as amended.

### 14 Licence conditions

- (1) Section 21 (3), as substituted by the amending Act, extends to a licence in force immediately before the commencement of that substitution.
- (2) Sections 23AA and 23B, as inserted by the amending Act, extend to a licence in force immediately before the commencement of those sections.

### 15 Applications of provisions to existing trainees and apprentices

- (1) This clause applies to any person who:
  - (a) immediately before the commencement of this clause, was an apprentice or trainee (within the meaning of the [Apprenticeship and Traineeship Act 2001](#)), and
  - (b) carried on security activities in the course of his or her apprenticeship or traineeship with a person who is authorised by a licence to carry on those security activities, and
  - (c) would not be refused a licence because of section 16.
- (2) A person to whom this clause applies is, for the purposes of section 15 (2) (a) (i) (as inserted by the amending Act), taken to have held a provisional licence so long as the person has completed his or her apprenticeship or traineeship.

### 16 Application of provisions to existing subcontracting

Section 38A, as inserted by the amending Act, does not apply to a contract or subcontract entered into before the commencement of that section.

## Part 5 Provisions consequent on enactment of [Security Industry Amendment Act 2008](#)

### 17 Definition

In this Part, **amending Act** means the [Security Industry Amendment Act 2008](#).

## **19 Applications for licences**

Section 14 (6), as inserted by the amending Act, does not apply to or in respect of an application for a licence that was lodged but was not finally determined before the commencement of that subsection.