

# Court Security Act 2005 No 1

[2005-1]



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**
  - [Industrial Relations Amendment \(Jurisdiction of Industrial Relations Commission\) Act 2009 No 32](#) (amended by [Industrial Relations Further Amendment \(Jurisdiction of Industrial Relations Commission\) Act 2009 No 87](#)) (not commenced)
  - [Court Security Amendment Act 2011 No 15](#), Sch 1 [9] and [11] (not commenced)
  - [Courts and Other Legislation Further Amendment Act 2013 No 1](#) (not commenced — to commence on 1.7.2013)

### Authorisation

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# Court Security Act 2005 No 1



New South Wales

An Act to make provision with respect to the security of courts and tribunals; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Court Security Act 2005*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are:

- (a) to provide for the secure and orderly operation of courts, and
- (b) to confer certain functions on judicial officers and security officers for that purpose.

### 4 Definitions

(1) In this Act:

**audio link** means facilities (including telephone) that enable audio communication between persons at different places.

**audio visual link** means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

**correctional centre** means a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*, and includes a correctional complex within the meaning of that Act.

**correctional officer** means a correctional officer within the meaning of the *Crimes (Administration of Sentences) Act 1999*.

**court** means any of the following:

- (a) the Supreme Court,
- (b) the Industrial Relations Commission,
- (c) the Land and Environment Court,
- (d) the District Court,
- (e) the Drug Court,
- (f) the Children's Court,
- (g) the Local Court (including the Local Court constituted by an Industrial Magistrate),
- (h) the Dust Diseases Tribunal,
- (i), (j) (Repealed)
- (k) a person who exercises or performs the functions of a coroner under the [Coroners Act 2009](#),
- (l) the Administrative Decisions Tribunal,
- (m) the State Parole Authority,
- (n) any other tribunal, body or person prescribed by the regulations that is authorised by law to conduct proceedings for the purpose of the determination of any matter or thing.

**court premises**, in relation to a court, means the premises or place where a court is held or that is used in relation to the operations of a court, and (without limitation) includes:

- (a) a forecourt, courtyard, yard, parking area, toilet facility, hall, corridor or other area used in conjunction with the premises or place, and
- (b) a part of premises or a place used as an entrance to or exit from the premises or place where the court is held or that is used in relation to the operations of the court, and
- (c) a part of premises or a place being used to enable a person to appear before the court by means of an audio link or audio visual link, and
- (d) any part of premises or a place used in relation to the operations of a court, or referred to in the preceding paragraphs, that is also used for other purposes.

**court security power** means a power conferred on a security officer by Part 3.

**custodial officer** for a person means any of the following:

- (a) a police officer who has lawful custody of the person for the time being,
- (b) a correctional officer or other officer of the Department of Corrective Services who has lawful custody of the person for the time being,
- (c) an officer of the Department of Juvenile Justice who has lawful custody of the person for the time being.

**exercise** a function includes perform a duty.

**face** and **face covering** have the same meanings as they have in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**fail to comply** includes refuse to comply.

**function** includes a power, authority or duty.

**journalist** means a person engaged in the profession or practice of reporting, photographing, editing or recording for a media report of a news, current affairs, information or documentary character.

**judicial officer** means:

- (a) a judicial officer within the meaning of the [Judicial Officers Act 1986](#), or
- (b) any other person who is, or who alone or with others constitutes, a court.

**media report** means an article, program or other report for publication in or broadcast on any of the following:

- (a) a newspaper, magazine, journal or other periodical,
- (b) a radio or television broadcasting service,
- (c) an electronic service (including a service provided by the Internet) that is similar to a newspaper, magazine, radio broadcast or television broadcast.

**mobile phone** includes any device that may be used, in whole or in part, for the purpose of sending or receiving voice or other data over a mobile telephone network, whether or not it may be used for any other purpose.

**offensive implement** means any thing (other than a restricted item):

- (a) made or adapted for use for causing injury to a person, or
- (b) intended, by the person having custody of the thing, to be used to injure or menace a person or damage property.

**personal search** means a search (other than a scanner search) of a person or of things in the person's possession or control that may include any of the following:

- (a) an examination of any thing worn or carried by the person that is conveniently and voluntarily removed by the person,
- (b) a search of a person conducted by quickly running the hands over the person's outer clothing,
- (c) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat and conducting an examination of those things,

but does not include requiring a person to remove a face covering.

**recording device** means any device that is capable of being used to record images or sound (or both), including any of the following devices:

- (a) a camera (including a video camera),
- (b) a mobile phone that is capable of recording images or sound (or both),
- (c) a tape recorder or digital audio recorder.

**restricted item** means any of the following:

- (a) any prohibited weapon within the meaning of the [Weapons Prohibition Act 1998](#),
- (b) a firearm, or an imitation firearm, within the meaning of the [Firearms Act 1996](#),
- (c) any knife (whether or not a prohibited weapon within the meaning of the [Weapons Prohibition Act 1998](#)).

**scanner search** means a search of a person or of things in the person's possession or control that involves:

- (a) passing an electronic scanning or screening device over or in close proximity to the person's outer clothing, or
- (b) requiring the person to pass through, or provide a thing for passage through, an electronic scanning or screening device.

**security officer** means:

- (a) the Sheriff, or
- (b) a person appointed by the Sheriff under section 21.

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

## 5 Operation of Act and effect on other powers

(1) The powers conferred by this Act are in addition to, and not in derogation of, any

other power of a court, judicial officer or other person in relation to the conduct of proceedings in a court or regulating the conduct of persons in court premises.

- (2) Without limiting subsection (1), this Act does not affect:
- (a) any power of a court relating to contempt of the court or any other similar power, or
  - (b) any power of a correctional officer under the *Crimes (Administration of Sentences) Act 1999* or any other law with respect to a person in the officer's custody in a court cell complex or other place in court premises.

## **Part 2 Entry and use of court premises**

### **6 Right to enter and remain in open areas of court premises**

- (1) A person has a right to enter and remain in an area of court premises that is open to the public if:
- (a) the person has complied with all relevant orders made by a judicial officer (whether under this Act or another law) in respect of the person, and
  - (b) the person has complied with all directions or requirements made by a security officer under this Act in respect of the person.
- (2) Without limiting subsection (1), a journalist has a right to enter and remain in an area of court premises open to the public that is located outside of a building in which the court is housed or is sitting for the purpose of making a media report if the journalist is not obstructing or otherwise impeding access to the building.
- (3) This section has effect subject to the following:
- (a) the provisions of this Act,
  - (b) any inherent or implied jurisdiction of a court to regulate its proceedings,
  - (c) any other Act or law about persons who may be present in a court or court premises.
- (4) Nothing in this section confers a right on any person to enter or remain in a correctional centre for the purpose of seeing another person appear before a court by means of an audio link or audio visual link.

### **7 Judicial officer may close court premises for security reasons**

- (1) If a judicial officer considers it necessary for securing order and safety in court premises or a part of court premises, the judicial officer may:
- (a) order members of the public generally, or specified members of the public, to



leave the court premises or a part of the court premises, or

(b) order members of the public generally, or specified members of the public, not to be admitted to the court premises or a part of the court premises.

(1A) An order of a judicial officer under this section may have effect for no more than 28 days. However, nothing prevents the judicial officer from renewing the order for a further period not greater than 28 days if the judicial officer considers that the circumstances warrant it.

(1B) An order may be renewed more than once.

(2) A person must not contravene an order of a judicial officer under this section.

Maximum penalty: 50 penalty units.

#### **7A Animals in court premises**

(1) A security officer may refuse a person entry to court premises, or may require a person in court premises to leave the premises, if the person is in possession of an animal.

(2) If a security officer requires a person to leave court premises in accordance with this section, the person must immediately leave the premises.

Maximum penalty: 5 penalty units.

(3) This section does not apply to or in respect of the following:

(a) an assistance animal (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth) that is being used by a person with a disability (within the meaning of that Act),

(b) an animal that is taken into court premises with the authority of a judicial officer, police officer or security officer.

#### **8 Possession of restricted items in court premises**

(1) A person must not, without reasonable excuse, be in possession of a restricted item while in court premises.

Maximum penalty:

(a) in the case of a restricted item that is a prohibited weapon within the meaning of the *Weapons Prohibition Act 1998* or a firearm, or an imitation firearm, within the meaning of the *Firearms Act 1996*—100 penalty units or imprisonment for 2 years (or both), or

(b) in the case of a knife that is not a prohibited weapon within the meaning of the *Weapons Prohibition Act 1998*:

- (i) if the person has not previously been convicted of an offence (whether under this Act or any other law) involving the possession or use of a knife—5 penalty units, or
  - (ii) if the person has previously been convicted of only one offence (whether under this Act or any other law) involving the possession or use of a knife—10 penalty units or imprisonment for 12 months (or both), or
  - (iii) if the person has previously been convicted of more than one offence (whether under this Act or any other law) involving the possession or use of a knife—20 penalty units or imprisonment for 2 years (or both).
- (2) Subsection (1) does not apply with respect to any of the following:
- (a) the possession of any restricted item that is (or is to be) an exhibit in proceedings before a court in court premises if:
    - (i) the item is in the possession of a person who is involved in the conduct of, or appearing in, the proceedings, and
    - (ii) the item is enclosed in a bag or other container of a kind prescribed by the regulations,
  - (b) the possession of any restricted item that a judicial officer has directed should be allowed to be brought into court premises,
  - (c) the possession by a security officer of any restricted item that has been taken into possession or confiscated under this Act,
  - (d) the possession by a police officer or custodial officer of any restricted item in the exercise of the officer's functions under any Act or law,
  - (e) the possession of such restricted items in such other kinds of circumstances as may be prescribed by the regulations.

## **9 Use of recording devices in court premises**

- (1) A person must not use a recording device to record sound or images (or both) in court premises.

Maximum penalty: 200 penalty units or imprisonment for 12 months (or both).

### **Note—**

This subsection only prohibits the use of a recording device to record sound or images (or both) and not any other use of the device. For example, this subsection would not prohibit a person from using a mobile phone with recording capabilities to make a telephone call, but would prohibit the use of the phone to record court proceedings.

- (2) Subsection (1) does not apply with respect to any of the following:

- (a) the use of a recording device that has been expressly permitted by a judicial officer,
- (b) the use by a lawyer of a recording device to record the lawyer's own voice in a part of court premises other than a room where a court is sitting,
- (c) the use of a recording device by a person for the purpose of transcribing court proceedings for the court,
- (d) the use of a recording device by a journalist while exercising a right referred to in section 6 (2),
- (e) the use of such recording devices in such other kinds of circumstances as may be prescribed by the regulations.

### **Part 3 Court security powers**

#### **Note—**

The exercise of certain powers conferred on security officers by this Part are subject to the provisions of Part 5. Section 19 limits the circumstances in which these powers (other than the power conferred by section 15) may be exercised. Section 20 also makes provision for certain safeguards that security officers are to observe when exercising these powers (other than the powers conferred by sections 10 and 11).

### **Division 1 Search and seizure**

#### **10 Power to search persons and vehicles**

- (1) A security officer may require a person who is entering or in court premises to do any or all of the following:
  - (a) submit to a scanner search of the person (but not if the officer believes that a scanner search would pose a risk to the health of the person) or to provide a thing in the person's possession or control to the security officer for a scanner search,
  - (b) submit to a personal search of the person if the officer believes on reasonable grounds that the person possesses a restricted item or offensive implement,
  - (c) stop any vehicle in the person's possession or control that is about to be driven, or that has been driven, into the court premises,
  - (d) allow a vehicle in the person's possession or control to be searched if the officer believes on reasonable grounds that the person possesses or the vehicle contains a restricted item or offensive implement,
  - (e) produce for inspection any thing that the security officer has detected or seen on or with the person that the security officer believes on reasonable grounds is a restricted item or offensive implement or may be required to be deposited with the officer under section 11 (1),

- (f) answer any question that is reasonable in the circumstances concerning the nature of a thing that is being inspected or that has been detected during a search under this section.
- (2) A search of a person conducted under this section must, as far as is reasonably practicable in the circumstances, comply with the following requirements:
- (a) the security officer must inform the person to be searched of the following matters:
    - (i) whether the person will be required to remove clothing during the search,
    - (ii) why it is necessary to remove the clothing,
  - (b) the security officer must ask for the person's co-operation,
  - (c) a personal search must be conducted:
    - (i) in a way that provides reasonable privacy for the person searched, and
    - (ii) as quickly as is reasonably practicable,
  - (d) the security officer must conduct the least invasive kind of search practicable in the circumstances,
  - (e) a personal search of a child under 12 years of age may only be conducted if a responsible person for the child is present during the search,
  - (f) a personal search of a person (other than a child under 12 years of age) must be conducted by a security officer of the same sex as the person or, if a security officer of that sex is unavailable, by another person of that sex at the direction of a security officer,
  - (g) a personal search of a child under 12 years of age must be conducted by a female security officer or, if a female security officer is unavailable, by another female person at the direction of a security officer.
- (3) If a security officer makes a requirement of a person under subsection (1) and the person fails immediately to comply with that requirement or to leave the court premises, the security officer may again make the requirement and, in that case, must:
- (a) warn the person that a failure immediately to comply with the requirement or leave the court premises may be an offence, and
  - (b) provide the person with the information referred to in section 20 (2) (a)-(c).
- (4) If a security officer makes a requirement of a person in accordance with subsection (3), the person must immediately:

- (a) comply with the requirement, or
- (b) leave the court premises.

Maximum penalty (subsection (4)): 5 penalty units.

(5) In this section:

**responsible person** for a child means a person (other than a security officer) aged 16 years or more who:

- (a) is a parent (including a step-parent), grandparent or sibling (including a half-sibling) of the child, or
- (b) is a guardian of the child, or
- (c) has custody of the child for the time being, or
- (d) is accompanying the child as the child's legal representative, friend, carer or support person, or
- (e) is a person, or person belonging to a class of persons, prescribed by the regulations.

#### **11 Power to require property and other things to be surrendered for safekeeping**

- (1) A security officer may require a person who is entering or in court premises to deposit with the officer while the person remains in the premises any or all of the following:
  - (a) any thing in the person's possession or control that the security officer believes on reasonable grounds is a restricted item or offensive implement,
  - (b) any thing in the person's possession or control that is reasonably capable of concealing a thing of the kind referred to in paragraph (a),
  - (c) any alcohol, or bottle or other container in which alcohol is contained, that is in the person's possession or control unless the person is taking it into court premises with the authority of a judicial officer or the registrar of the relevant court,
  - (d) any other thing in the person's possession or control that the security officer believes on reasonable grounds to be a thing that is, or is of a class, prescribed by the regulations for the purposes of this section.
- (2) If a security officer makes a requirement of a person under subsection (1) and the person fails immediately to comply with that requirement or to leave the court premises, the security officer may again make the requirement and, in that case, must:

- (a) warn the person that a failure immediately to comply with the requirement or leave the court premises may be an offence, and
  - (b) provide the person with the information referred to in section 20 (2) (a)–(c).
- (3) If a security officer makes a requirement of a person in accordance with subsection (2), the person must immediately:
- (a) comply with the requirement, or
  - (b) leave the court premises.

Maximum penalty (subsection (3)): 5 penalty units.

- (4) Subject to section 12, if a person deposits a thing with a security officer under subsection (1), the security officer must ensure that the thing is returned to the person if:
- (a) the person requests the return of the thing, and
  - (b) the security officer is satisfied, on reasonable grounds, that the person is about to leave the court premises.

## **12 Power to confiscate restricted items and other things**

- (1) **Power to take into possession and confiscate certain things** A security officer may in any court premises:
- (a) take possession of any thing that the security officer has reasonable grounds to believe is:
    - (i) a restricted item, or
    - (ii) an offensive implement, or
    - (iii) a recording device that has been used in contravention of section 9, or
    - (iv) any film, tape or other recording medium in a recording device used in contravention of section 9, and
  - (b) confiscate the thing.
- (2) **Confiscated thing to be returned or handed to police** A security officer who confiscates a thing under this section (the **confiscated thing**) must:
- (a) if the officer is satisfied after examining the thing that its retention as evidence is not required and that it is lawful for the person to have possession of the thing—return the thing to the person from whom it was confiscated, or
  - (b) if the officer is not so satisfied—give the thing (or cause the thing to be given) to

the Local Area Commander of Police for the area in which the court premises are located as soon as is reasonably practicable after its confiscation.

- (3) The Local Area Commander of Police to whom a confiscated thing is given must return the thing to the person from whom it was confiscated or to its owner if satisfied after examining the thing that its retention as evidence is not required and that it is lawful for the person to have possession of the thing.
- (4) **Applications for return of confiscated things** The person from whom a thing is confiscated under this section or its owner may, within the period of 28 days after it is confiscated (the ***initial confiscation period***), apply to the Local Area Commander of Police for its return.
- (5) An application for the return of the confiscated thing must be in writing and state why the thing should in all the circumstances be returned.
- (6) If the person seeking the return of the confiscated thing is under the age of 18 years, the application for its return may be made only by a parent or guardian of the person, or a person who has lawful care or custody of the person, on his or her behalf.
- (7) **Appeals to Local Court against refusals to return confiscated things** If the Local Area Commander of Police fails or refuses to return a confiscated thing at the expiration of the initial confiscation period to a person who has made an application for its return under this section, the person may appeal against the failure or refusal to the Local Court within 28 days of the expiration of the initial confiscation period.
- (8) On hearing such an appeal, the Local Court may order that the confiscated thing:
  - (a) be forfeited to the Crown, or
  - (b) be returned to the applicant or some other appropriate person.
- (9) Without limiting subsection (8), the Local Court may, if the confiscated thing is a recording device, limit any order for forfeiture to the film, tape or other recording medium used in the device.
- (10) **Forfeiture of confiscated things** A confiscated thing is forfeited to the Crown:
  - (a) if an application for the return of the thing is not made within the initial confiscation period—at the expiration of that period, or
  - (b) in a case where such an application is made within the initial confiscation period and the thing is not returned within that period:
    - (i) if an appeal under this section is not made within 28 days after the expiration of the initial confiscation period—at the expiration of that period, or
    - (ii) if an appeal under this section is made within 28 days after the expiration of

the initial confiscation period—when an order made under subsection (8) (a) in respect of the thing takes effect.

- (11) The Local Area Commander of Police (or such other person as the Commissioner of Police may direct) may destroy or otherwise dispose of a confiscated thing forfeited to the Crown under this section in accordance with the directions of the Commissioner of Police.
- (12) **Confiscated thing may be destroyed** In this section, a reference to the disposal of a thing includes a reference to its destruction.

## **Division 2 Identification of persons**

### **13 Power to ask for identification particulars**

- (1) A security officer may require a person who is entering or in court premises and whose name or residential address is unknown to the officer to disclose the person's name and residential address or to disclose the reason for the person's visit to the court premises, or both, if the officer believes on reasonable grounds that:
- (a) the person is carrying a restricted item or offensive implement, or
  - (b) the person has committed an offence in the court premises.
- (2) However, a security officer may not require a person who is in possession of a restricted item or offensive implement to provide information of the kind referred to in subsection (1) if:
- (a) in the case of a restricted item—the officer has reasonable grounds to believe that the person is permitted to possess the item in court premises under section 8 (2), or
  - (b) in the case of an offensive implement—the officer has reasonable grounds to believe that the person would have been permitted to possess the implement in court premises under section 8 (2) if the implement had been a restricted item.
- (3) A person:
- (a) must not, without reasonable excuse, fail to comply with a requirement made by a security officer in accordance with subsection (1) and section 20, or
  - (b) must not attempt to comply with a requirement made by a security officer in accordance with subsection (1) and section 20 by:
    - (i) stating a reason that is false or misleading in a material particular, or
    - (ii) providing a name or address that is false or misleading in a material particular.

Maximum penalty: 2 penalty units.



**Note—**

Section 20 requires a security officer to provide certain information and a warning before exercising a power under this section.

- (4) A security officer may request a person who is required by the officer in accordance with subsection (1) and section 20 to disclose the person's name and address to provide proof of the person's name and address.

**13A Power to require removal of face coverings**

- (1) A security officer may require a person who is wearing a face covering to remove the covering so as to enable the officer, or another security officer or person assisting in following the procedures set out in subsection (2), to see the person's face if:
- (a) the person is seeking to enter court premises, or
  - (b) the officer arrests, or has grounds for arresting, the person under this Act.

**Note—**

Section 16 sets out the circumstances in which a security officer may arrest a person.

- (2) A security officer who requires a person to remove a face covering under this section must, as far as is reasonably practicable, ensure that the following procedures are followed:
- (a) the security officer must ask for the person's co-operation,
  - (b) the viewing of the person's face must be conducted:
    - (i) in a way that provides reasonable privacy for the person if the person requests privacy, and
    - (ii) as quickly as is reasonably practicable,
  - (c) the viewing of the face of a child under 12 years of age may only be conducted if a responsible person for the child is present during the viewing,
  - (d) if the person is 12 years old or older and requests it—the viewing of the person's face is to be conducted by a security officer of the same sex as the person or, if a security officer of that sex is unavailable, by another person of that sex at the direction of a security officer,
  - (e) if the person is a child under 12 years old and the responsible person for the child requests it—the viewing of the child's face is to be conducted by a female security officer or, if a female security officer is unavailable, by another female person at the direction of a security officer.
- (3) If a security officer:

(a) makes a requirement of a person under subsection (1) (a) and the person fails immediately to comply with that requirement or to leave the court premises, or

(b) makes a requirement of a person under subsection (1) (b) and the person fails immediately to comply with that requirement,

the security officer may again make the requirement and, in that case, must:

(c) where the requirement being repeated was made under subsection (1) (a)—warn the person that a failure immediately to comply with the requirement or leave the court premises may be an offence, and

(d) where the requirement being repeated was made under subsection (1) (b)—warn the person that a failure immediately to comply with the requirement may be an offence, and

(e) provide the person with the information referred to in section 20 (2) (a)-(c).

(4) A security officer may not make a requirement in accordance with subsection (3) if the person establishes, to the officer's satisfaction, that the person has a special justification for not removing the face covering.

**Note—**

A special justification includes having a legitimate medical reason for not removing the face covering.

(5) If a security officer makes a requirement of a person in accordance with subsection (3), the person must immediately:

(a) comply with the requirement, or

(b) in the case of a requirement made of a person seeking to enter court premises—leave the court premises.

Maximum penalty (subsection (5)): 5 penalty units.

(6) It is sufficient compliance with a requirement made under this section if only so much of the face covering as prevents the person's face from being seen is removed.

(7) This section does not limit any other power that a security officer may have under section 14 or any other provision of this Act.

(8) In this section:

**responsible person** for a child has the same meaning as it has in section 10.

**special justification** has the same meaning as it has in section 19B of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

## Division 3 Directions to persons

### 14 Power to give directions

- (1) A security officer may give a direction to a person in court premises if the security officer has reasonable grounds to believe that the person's behaviour in the premises (referred to in this section as **relevant conduct**):
- (a) is obstructing another person or persons, or
  - (b) constitutes harassment or intimidation of another person or persons, or
  - (c) is causing or is likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness.
- (2) Such a direction must be reasonable in the circumstances for the purpose of reducing or eliminating the obstruction, harassment, intimidation or fear.
- (2A) Without limiting subsection (1), a security officer may give either or both of the following directions to a person who is entering or in court premises:
- (a) a direction to remove a helmet that is being worn by the person,
  - (b) a direction to not wear a helmet while in court premises.
- (2B) A security officer may give a direction under subsection (2A) only if the helmet concerned is obscuring the face of the person wearing it or would obscure the face of a person wearing it.
- (3) If a security officer has complied with this section and section 20 in giving a direction to a person under this section and the person fails to comply with the direction, the security officer may again give the direction and, in that case, must again warn the person that failure to comply with the direction may be an offence.

**Note—**

Section 20 requires a security officer to provide certain information and a warning before exercising a power under this section.

- (4) A person must not, without reasonable excuse, fail to comply with a direction given in accordance with subsection (3).

Maximum penalty (subsection (4)): 20 penalty units.

- (5) A person is not guilty of an offence under subsection (4) unless it is established that the person persisted, after the direction concerned was given, to engage in the relevant conduct.

- (6) A security officer may give a direction under this section to persons comprising a

group.

- (7) In the case of a direction that is given to a group of persons in accordance with this section, the security officer is not required to repeat the direction, or to repeat the information and warning referred to in section 20, to each person in the group.
- (8) In the case of a direction that is given to a group of persons in accordance with subsection (3), the security officer is not required to repeat the direction, or to repeat the warning referred to in that subsection, to each person in the group.
- (9) However, just because the security officer is not required to repeat any such direction, information or warning does not in itself give rise to any presumption that each person in the group has received the direction, information or warning.
- (10) The other person or persons referred to in subsection (1) need not be in the court premises but must be near the premises at the time the relevant conduct is being engaged in.
- (11) For the purposes of subsection (1) (c), no person of reasonable firmness need actually be, or be likely to be, present at the scene.

## **Division 4 Security signs and notices**

### **15 Power to erect security signs and notices in court premises**

- (1) A security officer may erect such signs or notices in the court premises as the security officer considers necessary concerning the provision of security in the court premises.
- (2) A person must not remove, alter, damage, deface or destroy any such sign or notice without the permission of a security officer or judicial officer in the court premises.

Maximum penalty: 5 penalty units.

## **Part 4 Powers of arrest and use of force**

### **16 Powers of arrest**

- (1) A security officer may, without a warrant, arrest a person in court premises if:
  - (a) the person is in the act of committing an offence under this Act or has just committed such an offence, or
  - (b) the security officer believes on reasonable grounds that the person has committed an offence under this Act.

#### **Note—**

Section 20 requires a security officer to provide certain information and a warning before or at the time of exercising, or as soon as is reasonably practicable after exercising, a power under this section. Section 19 limits the circumstances in which a power under this section may be exercised.

- (2) A security officer may exercise the power conferred on the officer by subsection (1) in respect of a person at a place outside of the court premises if:
- (a) the person absconded from the court premises in an attempt to avoid arrest, and
  - (b) the officer pursued the person from the court premises and the pursuit was not stopped or interrupted at any time before the officer concerned arrived at the place for the purpose of exercising the power.
- (3) For the purposes of subsection (2), a pursuit of a person is taken not to have stopped or to have been interrupted only because the security officer concerned has temporarily lost sight of the person.
- (4) A security officer who arrests a person under this section must, as soon as practicable, take the person:
- (a) to a police officer to be dealt with according to law, or
  - (b) before an authorised officer to be dealt with according to law.
- (4A) A security officer may discontinue an arrest at any time if the arrested person is no longer a suspect or the reason for the arrest no longer exists or for any other reason.
- (5) In this section:

**authorised officer** means:

- (a) before the commencement of section 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002*—an authorised justice within the meaning of the *Search Warrants Act 1985*, or
- (b) on or after the commencement of section 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002*—an authorised officer within the meaning of that Act.

## **17 Use of force generally by security officers**

- (1) It is lawful for a security officer exercising a court security power in relation to a person or a thing to use such force as is reasonably necessary to exercise the power.
- (2) Without limiting subsection (1), a security officer who exercises a power to arrest under this Part may use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.

## **Part 5 Limitations and safeguards on exercise of certain powers**

### **18 Powers to which this Part applies**

- (1) This Part applies to the exercise of any of the following powers:
  - (a) a court security power (other than a power conferred by section 15),

(b) a power of arrest conferred by section 16.

(2) In this Part, **relevant power** means a power to which this Part applies.

### **19 Limitations on exercise of relevant powers**

(1) The following limitations apply to the exercise of a relevant power:

- (a) a relevant power may not be exercised in respect of a judicial officer,
- (b) a relevant power may not be exercised within a room in which a court is sitting unless the security officer seeking to exercise the power is satisfied that:
  - (i) there is an emergency, and
  - (ii) there is insufficient time in the circumstances to obtain a direction from the presiding judicial officer,
- (c) a relevant power may not be exercised in respect of a person who is being dealt with by a police officer unless the police officer has requested the security officer's assistance,
- (d) a relevant power may not be exercised in respect of a person who is in the custody of a custodial officer for the person unless the custodial officer has requested the security officer's assistance,
- (e) a relevant power may not be exercised in respect of such persons or in such circumstances (or both) as may be prescribed by the regulations.

(2) Despite subsection (1), a security officer may exercise a relevant power in respect of a person or in a circumstance referred to in that subsection if:

- (a) a judicial officer directs the security officer to exercise the power, or
- (b) the security officer is exercising the power to prevent the person from causing harm to himself or herself or to another person or causing damage to property, or
- (c) the security officer is assisting a custodial officer for the person to prevent the person from escaping from lawful custody.

### **20 Safeguards concerning exercise of relevant powers**

(1) This section:

- (a) does not apply to the exercise of a power under section 10, 11 or 13A, and
- (b) applies in addition to, and not in derogation of, the provisions of section 14.

#### **Note—**

Sections 10, 11 and 13A make special provision for the giving of the kind of information referred to in this

section.

Section 14, which confers a power on security officers to give persons in court premises reasonable directions, contains a number of safeguards in relation to the exercise of the power.

- (2) A security officer must provide the person who is subject to the exercise of a relevant power with the following information within the time specified by subsection (3):
  - (a) evidence that the officer is a security officer (for example, by showing the person the officer's certificate of identification),
  - (b) the name or badge number of the security officer,
  - (c) the reason for the exercise of the power,
  - (d) a warning that failure or refusal to comply with a direction or requirement of the security officer, in the exercise of the power, may be an offence.
- (3) The information referred to in subsection (2) must be provided:
  - (a) in the case of the exercise of a power of arrest:
    - (i) if it is practicable to do so, before or at the time of exercising the power, or
    - (ii) if it is not practicable to do so, as soon as is reasonably practicable after exercising the power, or
  - (b) in any other case—before exercising the power concerned.
- (4) The information referred to in subsection (2) may, but need not, be provided in writing.
- (5) If 2 or more security officers are exercising a relevant power, only one officer present is required to comply with this section.
- (6) However, if a person asks another security officer present for information as to the name or badge number of the security officer, the security officer must give to the person the information requested.

## **Part 6 Security officers**

### **21 Security officers**

- (1) The Sheriff may, by instrument in writing, appoint any of the following persons to be a security officer:
  - (a) a sheriff's officer,
  - (b) any other person who holds a licence under the *Security Industry Act 1997* to carry out security activities of the kind that a security officer may be required to carry out under this Act.

(2) The Sheriff may, at any time and for any reason, revoke an appointment of a person made under subsection (1) by notice in writing given to the person.

(3) A security officer appointed under subsection (1) (b) is to be provided by the Sheriff with a certificate of identification in the form prescribed by the regulations.

## **22 Security officer to carry identification**

A security officer (other than the Sheriff or a sheriff's officer) must, at all times while exercising his or her functions under this Act, carry, and produce on demand, a certificate of identification issued under section 21.

Maximum penalty: 5 penalty units.

## **23 Delegation of Sheriff's functions not permitted**

Despite any other Act or law, the Sheriff may not delegate:

- (a) any function of the Sheriff under section 21, or
- (b) any function of the Sheriff as a security officer.

## **Part 7 Miscellaneous**

### **24 Obstruction and impersonation of security officer**

A person must not:

- (a) wilfully delay, hinder or obstruct a security officer in the exercise of the officer's functions under this Act, or
- (b) falsely represent himself or herself to be a security officer in court premises.

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

### **25 Exclusion of liability**

An act or omission of a security officer, or any person acting under the direction of a security officer, does not subject the security officer or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of exercising a function under this Act.

### **26 Service of documents**

(1) A document that is authorised or required by this Act or the regulations to be given or served on any person may be given or served by:

- (a) in the case of a natural person:
  - (i) delivering it to the person personally, or



- (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
  - (iii) sending it by facsimile transmission to the facsimile number of the person, or
- (b) in the case of a body corporate:
- (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
  - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

## **27 Onus of proof concerning reasonable excuse**

In any proceedings for an offence against a provision of this Act, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant and must be proved on the balance of probabilities.

## **28 Nature of proceedings for offences**

- (1) Proceedings for an offence under this Act may be dealt with:
- (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

## **29 Penalty notices**

- (1) A security 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, 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 a 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.

### **30 Regulations**

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.

### **31 Savings, transitional and other provisions**

Schedule 1 has effect.

### **32 (Repealed)**

### **33 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 Savings, transitional and other provisions

(Section 31)

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

*Court Security Amendment Act 2011*

- (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 Provision consequent on the enactment of the **Court Security Amendment Act 2011**

#### 2 Orders to exclude persons from court premises

Section 7 (1A) (as inserted by the *Court Security Amendment Act 2011*) applies only to orders made under that section after the commencement of that subsection.