

# Security Industry Act 1997 No 157

[1997-157]



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**
  - [Police Legislation Amendment \(Special Constables\) Act 2013 No 56](#) (not commenced)
  - [Security Industry Amendment \(Licences\) Act 2013 No 68](#) (not commenced)
  - [Civil and Administrative Legislation \(Repeal and Amendment\) Act 2013 No 95](#) (not commenced — to commence on 1.1.2014)

### Authorisation

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# Security Industry Act 1997 No 157



New South Wales

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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 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.

**enforcement officer** means:

- (a) a police officer, or
- (b) any other member of the NSW Police Force who is authorised by the Commissioner in writing to exercise the functions of an enforcement officer under this Act.

**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.

**providing persons** includes employing or subcontracting another person (or arranging by contract, franchise or otherwise with another person) for the purpose of that other person employing or providing persons.

**renewed licence** means a licence that is renewed under section 17.

**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 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.

**temporary excess provision of services permit** means a temporary excess provision of services permit in force under section 40A.

**visitor permit** means a visitor permit in force under this Act.

(1A) In this Act, a reference to a class of licence includes a reference to a subclass of that class of licence.

(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 acting in a similar capacity,
- (b) acting as a crowd controller, or acting in a similar capacity, by physical or electronic means,
- (c) patrolling, protecting or guarding any property, by physical means (which may involve the use of dogs or the possession or use of firearms) or by electronic means, including, but not limited to, 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 or guarding cash (including cash in transit) or other valuables,
  - (v) patrolling, protecting 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 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 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



providing product advice in relation to security equipment,

- (h1) providing advice in relation to the identification and analysis of 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 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) (Repealed)
- (m) 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) In this section:

**basic household or automotive security item** has the meaning given by the regulations.

**bodyguard** means a person who is employed or engaged for the purpose of providing close personal protection to another person.

**crowd controller** means a person who, in respect of any licensed premises (within

the meaning of the [Liquor Act 2007](#)), public entertainment venue or public or private event or function, as part of his or her regular duties performs for remuneration any of the following functions:

- (a) controlling or monitoring the behaviour of persons,
- (b) screening persons seeking entry,
- (c) removing persons for behavioural or other reasons,
- (d) any other function prescribed 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) Any person who is employed in any of the following capacities does not carry on a security activity while, and to the extent that, the person is performing official duties in that capacity or in the course of that employment:
- (a) a police officer or other member of the NSW Police Force,
  - (b) a police officer of the Commonwealth, another State or a Territory,
  - (c) a member of the armed forces of the Commonwealth,
  - (d) a special constable appointed under Part 4 of the *Police (Special Provisions) Act 1901* and employed by the Commissioner.
- (2A) A person does not carry on a security activity while, and to the extent that, the person is performing official duties in the course of his or her employment by or in any of the following:
- (a) the New South Wales Crime Commission,
  - (b) the Australian Crime Commission,
  - (c) the Police Integrity Commission,
  - (d) the Independent Commission Against Corruption,
  - (e) the Department of Attorney General and Justice as a correctional officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) or a juvenile justice officer,
  - (f) any other agency responsible for the enforcement of criminal laws of the State, of the Commonwealth or of another State or Territory.
- (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.

## **6A Application of Commonwealth *National Vocational Education and Training Regulator Act 2011***

(1) In this section:

**Commonwealth Act** means the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

**State security industry regulation provisions** means the provisions of this Act and the regulations:

- (a) regulating organisations providing training, assessment or instruction in relation to any security activity, and
- (b) providing for the approval by or under this Act of training, assessment or instruction provided by organisations, and
- (c) providing for the exercise of investigative powers, sanctions and enforcement by or under this Act in relation to such matters.

(2) The State security industry regulation provisions are declared to be an excluded matter for the purposes of section 10 of the Commonwealth Act in relation to section 9 (Immunity from State and Territory laws) of the Commonwealth Act to the extent only that that section prevents the application of the State security industry regulation provisions to an NVR registered training organisation (within the meaning of the Commonwealth Act) providing training, assessment or instruction in relation to security activities regulated by this Act.

(3) This section is taken to have had effect from 1 July 2011.

## **Part 2 Licences**

### **Division 1 Requirement for licence**

#### **7 Offence of carrying on unauthorised security activities**

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

- (a) the person is the holder of a master licence, and
- (b) the person provides no more persons on any one day 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 providing persons to carry on security activities) unless the person is the holder of a class 1 licence or class 2 licence that authorises the person to carry on the security activity.

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

- (3) The holder of a visitor permit does not commit an offence under this section while acting under and in accordance with the authority conferred by the visitor permit.

- (4) The holder of a temporary excess provision of services permit granted under section 40A does not commit an offence under subsection (1) while acting under and in accordance with the authority conferred by the temporary excess provision of services permit.

## **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) (Repealed)

- (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 provide no more than 3 persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or class 2 licence,
  - (c) class MC—authorises the holder to provide between 4 and 14 persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or class 2 licence,
  - (d) class MD—authorises the holder to provide between 15 and 49 persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or class 2 licence,
  - (e) class ME—authorises the holder to provide 50 or more persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or class 2 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 providing persons to carry on security activities unless the other person is the holder of a master licence or is a corporation holding a visitor permit authorising its holder to carry on security activities of a kind authorised by 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 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 act in a similar capacity,
  - (c) class 1C—authorises the licensee to act as a crowd controller or to act in a similar capacity,
  - (d) class 1D—authorises the licensee to patrol, protect or guard any property with a dog,
  - (e) class 1E—authorises the licensee to patrol, protect or guard any property while carrying on monitoring centre operations,
  - (f) class 1F—authorises the licensee to patrol, protect 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) (Repealed)

(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 sell, install, maintain, repair and service, and provide advice in relation to, security equipment (including electronic security equipment and barrier equipment) and to act as a locksmith,

(d) class 2D—authorises the licensee to provide training, assessment or instruction in relation to any security activity,

(e), (f) (Repealed)

(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 Regulation 2006](#) and are required to be licensed under the [Firearms Act 1996](#).

(4) (Repealed)

## **12A, 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)–(5) (Repealed)
- (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 not satisfied that the applicant:
  - (a) is a fit and proper person to hold the class of licence sought by the applicant, or
  - (b) is of or above the age of 18, or
  - (c) has the competencies and experience approved by the Commissioner, or
  - (d) has undertaken and completed the requisite training, assessment and instruction for the class of licence sought by the applicant, or
  - (e) is competent to carry on the security activity to which the proposed licence relates, or
  - (f) is an Australian citizen or a permanent Australian resident.
- (2) For the purposes of subsection (1) (d), the requisite training, assessment and instruction for a class of licence is training, assessment and instruction in relation to the carrying on of security activities under a licence of that class:
  - (a) that is of a kind approved, and to a standard required, by the Commissioner, and
  - (b) is provided by such persons or organisations as are approved by the Commissioner for the purposes of this section.
- (2A) The Commissioner may impose conditions with respect to the provision of training, assessment and instruction by any person or organisation approved by the Commissioner for the purposes of this section.
- (2B) A person or organisation approved by the Commissioner for the purposes of this



section must comply with any conditions imposed by the Commissioner under subsection (2A).

Maximum penalty:

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

- (2C) The Commissioner must also refuse to grant an application for a licence if the applicant has supplied information that is (to the applicant's knowledge) false or misleading in a material particular in, or in connection with, the application.
- (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) Without limiting subsection (1), the Commissioner may refuse to grant an application for a licence if the Commissioner is satisfied that the applicant has a conviction that is not capable of becoming spent.

**Note—**

Under section 7 of the [Criminal Records Act 1991](#), certain convictions are not capable of becoming spent. For example, convictions for which a prison sentence of more than 6 months has been imposed, convictions for certain sexual offences and convictions prescribed by the [Criminal Records Regulation 2004](#).

- (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), (2), (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 Renewal of licence**

- (1) An application for the renewal of a licence may be lodged with the Commissioner by the holder of the licence no earlier than 8 weeks before the licence ceases (otherwise than by revocation) to be in force (its **expiry**).
- (2) The application is to be:
- (a) in the approved form, and
  - (b) lodged electronically, by post or in any other approved manner, and
  - (c) accompanied by a fee prescribed by the regulations.

### **Note—**

See sections 18, 21 and 24 in relation to the grant, conditions and terms of renewed licences.

- (3) Subsection (1) does not prevent the Commissioner from granting an application for the renewal of a licence lodged no later than 90 days after its expiry on payment of the late fee prescribed by the regulations.
- (4) The Commissioner may refuse an application to renew a licence if the Commissioner is satisfied that, if the applicant were applying for a new licence, the application would be required by this Act to be refused.

### **Note—**

For example, under section 15 (1) of this Act the Commissioner must refuse an application for a new licence if the Commissioner is not satisfied that the applicant is a fit and proper person to hold the licence or is not competent to carry on the security activity to which the licence relates.

- (5) For the purposes of subsection (4), section 15 (6) and (7) apply to an application for renewal of a licence in the same way as they apply to an application for a licence.
- (6) Without limiting section 18, the Commissioner may request an applicant for the renewal of a licence to demonstrate, in the manner required by the Commissioner and to the satisfaction of the Commissioner, continuing knowledge and competency in relation to the security activity authorised by the licence before renewal of the licence

is granted.

- (7) Without limiting section 21 (3), the Commissioner may grant an application for renewal of a licence on the condition that the applicant undertake and complete to the satisfaction of the Commissioner any requisite training, assessment or instruction required by the Commissioner to ensure the licensee has continuing knowledge and competency in relation to the security activity authorised by the licence.
- (8) Section 15 (2) and (2A) apply to the requisite training, assessment and instruction under subsection (7) required in relation to an application for the renewal of a licence in the same way as they apply to an application for a licence.
- (9) A licence may be renewed under this section on more than one occasion.
- (10) Section 12 of the [Criminal Records Act 1991](#) does not apply in relation to an application for the renewal of a licence.

## **18 Investigation of licence and renewal applications**

- (1) On receiving an application for a licence or for the renewal of 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 or palm prints, or both, 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 fingerprints or palm prints in accordance with any such requirement.
- (3) The Commissioner:
  - (a) may require an applicant for a licence or for the renewal of 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 or renew the licence unless the applicant has provided a photograph or been photographed in accordance with any such requirement.
- (4) Any fingerprint, palm print 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 or palm prints 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 for the renewal of 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—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 or for the renewal of 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 or for the renewal of 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 and renewal of licence**

- (1) The Commissioner may, after considering an application for the grant or renewal of a licence:
  - (a) grant a licence to, or renew the licence of, the person making the application and

nominate a place where the person is to collect the licence or renewed licence, or

(b) refuse to grant a licence or to renew the 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 renewed 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 or renewed subject to the condition that the person making the application collect the licence or renewed licence from the place nominated by the Commissioner under subsection (1) (a) within 60 days of being notified of the grant or renewal.

#### **21A Continuing training, assessment and instruction**

(1) It is a condition of every class 1 or class 2 licence that the licensee undertake and complete, to the satisfaction of the Commissioner, such training, assessment and instruction as may be required by the Commissioner to ensure the licensee has continuing knowledge and competency in relation to the security activity authorised by the licence.

(2) Subsection (1) extends to licences granted before the commencement of this section.

#### **22 Form of licence**

(1) A licence is to be in any one or more approved forms.

(2) A licence must:

(a) contain the name of the licensee, and

(b) specify the class (or subclass) of licence, and

(c) contain the number of the licence, and

(d) contain such other details as may be prescribed by the regulations.

(3) In addition, the Commissioner may determine that a particular class or subclass of licence is:

(a) to contain a recent photograph of the person to whom it is granted (such photograph being obtained in accordance with arrangements determined by the Commissioner), or

- (b) to bear the signature of the licensee,
- or both.

### **23 Master licence—condition relating to provision of certain persons**

It is a condition of every master licence that the licensee must not 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 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 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 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 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 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 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 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 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 (Repealed)**

### **23D Special conditions—dog handling security services**

- (1) It is a condition of every master licence that the master licensee must not provide any person to carry out dog handling security services unless the master licensee is approved to provide such services.
- (2), (3) (Repealed)

### **23E Special conditions—class 1 licences**

A class 1 licence that is granted on application by a person who has not, during the 3 years immediately before the application, been authorised by a class 1 licence to carry on the security activity to which the proposed licence relates is subject to the condition that the person undertake and complete, to the satisfaction of the Commissioner, such training, assessment or instruction as may be required by the Commissioner, within 6 months (or such longer period as the Commissioner allows) of the grant of the licence.

## **24 Term of licence**

- (1A) A licence other than a renewed licence comes into force on the day that it is collected from the place nominated by the Commissioner under section 21 (1) (a).
- (1B) The renewal of a licence comes into force:
  - (a) if the application for renewal is lodged under section 17 before its expiry and the Commissioner grants the application—on the expiry of the licence, or
  - (b) if the application for renewal is lodged after its expiry—on the day the Commissioner grants the application for renewal of the licence.

- (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) (Repealed)
- (3) Despite subsection (1), if the person who made the application for a licence or for the renewal of 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 or renewed, 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 the renewal of 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.
- (5) For the purpose of determining whether a licence should be revoked under subsection (1A), the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the licensee that:
  - (a) is relevant to the activities carried on under the class of licence held by the licensee, or
  - (b) causes the Commissioner to conclude that improper conduct is likely to occur if the licensee continues to hold the licence, or
  - (c) causes the Commissioner not to have confidence that improper conduct will not occur if the licensee continues to hold the licence.
- (6) The Commissioner is not, under this or any other Act or law, required to give any reasons for revoking 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 (5).

## **27 Variation of licence**

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

## **28 (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)),
  - (a1) the refusal or failure of the Commissioner to renew a licence (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 or renewal of a licence is taken to have been refused if the licence is not granted or renewed 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, to renew 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), 17 (5) or 26 (5) 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—**

Sections 15 (7), 17 (5) and 26 (6) of this Act provide that the Commissioner is not, under this or any other Act or law, required to give any reasons for not granting or renewing a licence or revoking 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) or 26 (5). Accordingly, Part 2 of Chapter 5 of the [Administrative Decisions Tribunal Act 1997](#) does not apply to any decision to refuse to grant (or renew) or revoke 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 (Repealed)**

**29B Certain licensees must be employed by other licensees or visitor permit holders**

- (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 the holder of a visitor permit authorising the holder to carry out security activities of a kind authorised by a master licence, 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) (Repealed)

**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

- (1) 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.

- (2) Subsection (1) does not require a licensee to produce a licence that has been lost, stolen, destroyed, defaced or mutilated during the period in which the licensee is waiting for the issue of a replacement licence after notifying the Commissioner of that occurrence, and applying for a replacement licence within 14 days after giving that notification, in accordance with the regulations.

### 36 Licence to be worn by licensee

- (1) The holder of a class 1 or class 2 licence must, at all times while carrying on a security activity, wear on his or her person so as to be clearly visible 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.
- (3) Subsection (1) does not require a licensee to wear a licence that has been lost, stolen, destroyed, defaced or mutilated during the period in which the licensee is waiting for the issue of a replacement licence after notifying the Commissioner of that



occurrence, and applying for a replacement licence within 14 days after giving that notification, in accordance with the regulations.

### **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) (Repealed)

### **38A Prohibition on unauthorised subcontracting**

- (1) A master licensee (the **principal**) who enters into a contract to provide persons to carry on any relevant security activity with a person (the **client**) on or after the commencement of this section must not engage another master licensee (the **subcontractor**) to provide those persons on behalf of the principal unless:
  - (a) the client has expressly agreed in the contract to the provision of the persons by a subcontractor, and
  - (b) the principal provides the requisite subcontracting particulars in relation to any subcontractor engaged by the principal to the client before requiring payment by the client for the work of such a subcontractor.

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 subcontractor providing persons on behalf of the principal must not engage another master licensee (**further subcontractor**) to provide any of the persons to carry on

security activities that the principal has engaged the subcontractor to provide unless:

- (a) the principal has expressly agreed in the contract with the subcontractor to the provision of the persons by a further subcontractor, and
- (b) the subcontractor provides the requisite subcontracting particulars in relation to any further subcontractor engaged by the subcontractor to the principal before requiring payment by the principal for the work of the further subcontractor.

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) The regulations may exempt any principal or class of principals or relevant security activity from the operation of subsection (1) (b) in such circumstances as may be specified in the regulations.
- (4) In this section:

**relevant security activity** does not include the provision of a restricted security keying system.

**requisite subcontracting particulars**, in relation to a subcontractor or further subcontractor, means:

- (a) the name and master licence number of the subcontractor or further subcontractor, and
- (b) any other particulars prescribed by the regulations.

### **38B (Repealed)**

### **38C Rostering or scheduling of licensed persons to carry on security activities and monitoring of their performance**

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 or class 2 licence, or monitor the performance of such a person in carrying on a security activity, 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 provide unlicensed persons**

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

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) 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 provided by the master licensee did not hold a licence that authorised the person to carry on a security activity of the kind concerned.

### **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 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 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 3A Visitor permits

### 39C Special events

- (1) The Commissioner may, by order published on the website maintained by the Security Licensing and Enforcement Directorate within the NSW Police Force, declare any event or class of events that the Commissioner considers to be of regional, State or national significance to be a special event for the purposes of this Part.
- (2) For the purposes of this section, the period of a special event includes such periods immediately before or after a special event as the Commissioner considers necessary.

### 39D Visitor permits

- (1) A person may apply to the Commissioner for the grant of a visitor permit to carry on one or more kinds of security activity specified in the application during the period of one or more special events so specified or an event described in the application that the applicant requests be declared to be a special event (referred to in this Part as a **proposed special event**).
- (2) The application must be in the approved form and be accompanied by the fee, and information and particulars, prescribed by the regulations.
- (3) The applicant must supply evidence to the Commissioner's satisfaction of the following requirements (referred to in this Part as the **visitor permit eligibility requirements**):
  - (a) if the applicant is an individual—that the applicant:
    - (i) is ordinarily resident in another State or Territory, and
    - (ii) is licensed or otherwise authorised in that State or Territory to carry on the activity or activities of the kind proposed to be authorised by the visitor permit,
  - (b) if the applicant is a corporation—that:
    - (i) the applicant's registered office and, if the address of that office is not the address of its principal place of business, its principal place of business is in another State or Territory, and
    - (ii) the applicant is licensed or otherwise authorised in that State or Territory to carry on the activity or activities of the kind proposed to be authorised by the visitor permit.
- (4) The Commissioner may require the applicant to verify any relevant information by a statutory declaration or to provide proof of identity (or both) and may require the applicant to provide additional information or particulars.

- (5) The Commissioner may carry out all such investigations and enquiries as the Commissioner considers necessary to enable the Commissioner to consider the application properly.
- (6) Without limiting subsection (5), the Commissioner may have regard to any criminal intelligence report or other criminal information held (whether in this State or elsewhere) in relation to the applicant.
- (7) Section 12 of the [Criminal Records Act 1991](#) does not apply in relation to an application for a visitor permit.

### **39E Grant and authority conferred by visitor permit**

- (1) The Commissioner may, after considering an application for a visitor permit:
  - (a) grant the permit, or
  - (b) refuse to grant the permit.
- (2) The Commissioner may refuse to grant a visitor permit if:
  - (a) the applicant fails to supply evidence to the Commissioner's satisfaction that the applicant satisfies the visitor permit eligibility requirements or any additional information or particulars required under section 39D (4), or
  - (b) the Commissioner is satisfied that the applicant is not a fit and proper person to hold a visitor permit, or
  - (c) where the event to which the application relates is a proposed special event—the Commissioner refuses to declare the event to be a special event, or
  - (d) the Commissioner considers that the special event or proposed special event to which the application relates does not warrant or require provision of security activities of the kind specified in the application.
- (3) A visitor permit is to be in a form approved by the Commissioner.
- (4) A visitor permit authorises the holder of the permit to carry on each kind of security activity specified in the permit during the period of each special event specified in the permit.
- (5) A visitor permit is subject:
  - (a) to such conditions as may be imposed by the Commissioner (whether at the time the permit is granted or at any later time), and
  - (b) to such other conditions as are imposed by this Act or prescribed by the regulations.

### **39F Contravention of visitor permit conditions**

A holder of a visitor permit must not contravene any condition of the visitor permit.

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.

### **39G Revocation of visitor permit**

The Commissioner may revoke a visitor permit:

- (a) if the permit was granted on the basis of false or misleading information, or
- (b) if the holder of the permit contravenes a condition of the permit, or
- (c) if the holder of the permit ceases to satisfy the visitor permit eligibility requirements,  
or
- (d) for any other reason prescribed by the regulations.

### **39H Visitor permit to be produced on demand**

The holder of a visitor permit must produce the visitor permit 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 holder has dealings when carrying on a security activity.

Maximum penalty: 50 penalty units.

## **Part 3B Enforcement**

### **Division 1 Powers of entry and search of premises**

#### **39I Powers of enforcement officers to enter premises without warrant**

- (1) An enforcement officer may enter any premises at which a security activity (or an activity ancillary to the carrying on of a security activity) is being carried on, or at which the enforcement officer reasonably believes such an activity is being carried on, at any reasonable time for the following purposes:
  - (a) for determining whether there has been compliance with, or a contravention of, this Act or the regulations,
  - (b) generally for administering this Act.
- (2) This section does not confer a power to enter any premises or part of premises that is

used only for residential purposes without the permission of the occupier or the authority of a search warrant.

### **39J Powers of enforcement officers to enter premises with warrant**

- (1) An enforcement officer may apply to an authorised officer for the issue of a search warrant if the enforcement 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 enforcement officer to enter and search the premises.
- (3) An enforcement officer executing a search warrant issued under this section may:
  - (a) enter the premises specified in the warrant, and
  - (b) search the premises for evidence of a contravention of this Act or the regulations, and
  - (c) exercise any other function of an enforcement officer under this Part.
- (4) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (5) In this section:

**authorised officer** has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

### **39K Powers that can be exercised by enforcement officers on entry**

- (1) An enforcement officer may, at any premises lawfully entered under this Act for a purpose referred to in section 39I, do any or all of the following:
  - (a) examine any registers, books, records or other documents on the premises,
  - (b) make a copy on the premises of any registers, books, records or other documents and retain that copy,
  - (c) require any person to make a copy on the premises of any registers, books, records or other documents and give that copy to the enforcement officer to retain,
  - (d) take such photographs, films, audio, video or other recordings as the enforcement officer considers necessary,
  - (e) require any person to produce any registers, books, records or other documents on the premises,

- (f) require any person to answer any question relating to any registers, books, records or other documents or any other relevant matter,
  - (g) take any registers, books, records or other documents from the premises for the purposes of copying them,
  - (h) seize any registers, books, records or other documents, or any other thing that the enforcement officer believes on reasonable grounds is connected with an offence against this Act or the regulations.
- (2) The power to seize anything connected with an offence includes a power to seize anything that will provide evidence of the commission of an offence.
- (3) Any registers, books, records or other documents taken only for the purpose of copying them must be returned when that copying is completed.

### **39L Obstruction**

- (1) A person must not:
- (a) obstruct, hinder or interfere with an enforcement officer in the exercise of a function under this Part, or
  - (b) fail, without reasonable excuse, to comply with any requirement made of the person by an enforcement officer in the exercise of a function under this Part.

Maximum penalty: 100 penalty units.

- (2) A person is not guilty of an offence of failing to comply with a requirement made of the person by an enforcement officer unless the person was warned on that occasion that a failure to comply is an offence.

### **39M Identification of certain enforcement officers**

- (1) Every enforcement officer, who is not a police officer, is to be provided with an identification card as an enforcement officer by the Commissioner.
- (2) In the course of exercising the functions of an enforcement officer under this Act, an enforcement officer who is not a police officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person the officer's identification card.

## **Division 2 Power to obtain information or records**

### **39N Application of Division**

This Division applies whether or not a power of entry under this Part is being or has been exercised.



### **39O Requirement to provide information and records**

- (1) An enforcement officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice for the following purposes:
  - (a) for determining whether there has been compliance with, or a contravention of, this Act or the regulations,
  - (b) generally for administering this Act.
- (2) A notice under this section must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

### **39P Provisions relating to requirement under section 39O to furnish records**

- (1) A notice under section 39O may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The person to whom any record is furnished under section 39O may take copies of it.
- (3) If any record required to be furnished under section 39O is in electronic, mechanical or other form, the record must, unless the notice otherwise provides, be furnished in written form.

### **39Q Power of enforcement officers to require answers and record evidence**

- (1) An enforcement officer may require a person whom the enforcement officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for a purpose referred to in section 39O to answer questions in relation to those matters.
- (2) The Commissioner may require a corporation to nominate a director or officer of the corporation who is authorised to represent the corporation for the purpose of answering questions under this section.
- (3) An enforcement officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (4) The place and time at which a person may be required to attend under subsection (3) is to be:
  - (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the

enforcement officer that is reasonable in the circumstances.

- (5) An enforcement officer may cause any questions and answers to questions given under this section to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (6) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the enforcement officer.
- (7) A copy of any such record must be provided by the enforcement officer to the person who is questioned as soon as practicable after it is made.
- (8) A record may be made under this section despite the provisions of any other law.

## **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.

### **40A Temporary excess provision of services permits**

- (1) A master licensee may apply to the Commissioner for the grant of a permit (a **temporary excess provision of services permit**) authorising the holder of the permit to provide more persons than the number of persons authorised by the master

licence on any specified day or on each day within a period specified in the permit.

- (2) The application must be in the approved form and be accompanied by the fee and any information and particulars prescribed by the regulations.
- (3) The Commissioner may, after considering an application for a temporary excess provision of services permit:
  - (a) grant the permit, or
  - (b) refuse to grant the permit.
- (4) A permit is to be in the approved form.
- (5) A permit is subject to such conditions as may be imposed by the Commissioner (whether at the time the permit is granted or at any later time).
- (6) The Commissioner may revoke a permit if the holder contravenes any condition to which the permit is subject.

#### **41 Payment of fees charged by unauthorised 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 or visitor permit 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, 42A (Repealed)**

#### **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 (Repealed)**

#### **44 Liability of directors etc for offences by corporation—accessory to the commission of**

### **the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### **45 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be disposed of summarily before the 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) (Repealed)
  - (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,
- (j) any matter relating to visitor permits.

(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\*](#)

[\*Security Industry Amendment Act 2012\*](#)

- (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](#).

#### **18 Special condition—class P1D licences**

- (1) Section 23D (2), as inserted by the amending Act, extends to a licence in force immediately before the commencement of the insertion as if it required the licensee to successfully complete the approved training referred to in that section within such period after the commencement as is determined by the Commissioner and notified to the licensee.
- (2) Section 23D (3) does not operate to require the Commissioner to revoke a licence

referred to in subclause (1) unless the licensee fails to successfully complete the approved training within the period determined by the Commissioner.

## **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.

## **Part 6 Provisions consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011](#)**

### **20 Licences not affected**

The amendments made to sections 11 and 12A of this Act by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011](#) do not affect the authority conferred by a licence under this Act.

## **Part 7 Provisions consequent on establishment of Security Licensing and Enforcement Directorate**

### **21 Delegations**

The delegation by the Commissioner under section 43 (1) of this Act dated 22 February 2010 is taken to include, and to have included from 21 March 2011, a delegation to the persons holding the following offices:

- (a) Commander, State Crime Command, NSW Police Force,
- (b) Director, Security Licensing and Enforcement Directorate, State Crime Command, NSW Police Force.

### **22 Sub-delegations**

The sub-delegation by the Registrar of the Security Industry Registry under section 43 (2) of this Act dated 25 February 2010 is taken to include, and to have included from 21 March 2011, a sub-delegation to the persons holding the following offices in the Security Licensing and Enforcement Directorate, State Crime Command, NSW Police Force:

- (a) General Manager, Industry Regulation,
- (b) General Manager, Operations,
- (c) Manager, Adjudication,
- (d) Manager, Approved Training,
- (e) Manager, Assessment and Prevention,

- (f) Manager, Compliance and Enforcement,
- (g) Manager, Customer Relations,
- (h) Manager, Licensing Services,
- (i) Senior Auditor,
- (j) Auditor,
- (k) Senior Compliance Enforcement Officer,
- (l) Compliance and Enforcement Officer,
- (m) Corruption Prevention and Risk Management Officer,
- (n) Senior Assessment Officer,
- (o) Assessment Officer,
- (p) Adjudication Officer.

## **Part 8 Provisions consequent on enactment of [Security Industry Amendment Act 2012](#)**

### **23 Definitions**

In this Part:

**amending Act** means the [Security Industry Amendment Act 2012](#).

**converted licence** means a licence that is taken by the operation of this Part to be a licence of a different class or subclass of licence.

### **24 Conversion of certain existing subclasses of master licence to new subclasses of master licence**

On the commencement of this clause, a master licence that, immediately before the amendment made to section 10 (1) by the amending Act, was:

- (a) a class MB licence—is taken to be, and to have the authority conferred by, a class MC licence granted under this Act (as amended by the amending Act), and
- (b) a class MC licence—is taken to be, and to have the authority conferred by, a class MD licence granted under this Act (as amended by the amending Act), and
- (c) a class MD licence—is taken to be, and to have the authority conferred by, a class ME licence granted under this Act (as amended by the amending Act).

**25 Conversion of existing class 1G licence to new class 1A licence**

On the commencement of this clause, a licence that was a class 1G licence immediately before the repeal of section 11 (1) (g) by the amending Act is taken to be, and to have the authority conferred by, a class 1A licence.

**26 Conversion of existing class 2E licence to class 2C licence**

On the commencement of this clause, a licence that was a class 2E licence immediately before the repeal of section 12 (1) (e) by the amending Act is taken to be, and to have the authority conferred by, a class 2C licence.

**27 Conversion of existing class 2F licence to class 2C licence**

On the commencement of this clause, a licence that was a class 2F licence immediately before the repeal of section 12 (1) (f) by the amending Act is taken to be, and to have the authority conferred by, a class 2C licence.

**28 Conversion of existing provisional licences to class 1 licences**

- (1) On the commencement of this clause, a licence that, immediately before the repeal of section 12A by the amending Act, was:
  - (a) a class P1A licence—is taken to be, and to have the authority conferred by, a class 1A licence granted under this Act, and
  - (b) a class P1B licence—is taken to be, and to have the authority conferred by, a class 1B licence granted under this Act, and
  - (c) a class P1C licence—is taken to be, and to have the authority conferred by, a class 1C licence granted under this Act, and
  - (d) a class P1D licence—is taken to be, and to have the authority conferred by, a class 1D licence granted under this Act, and
  - (e) a class P1E licence—is taken to be, and to have the authority conferred by, a class 1E licence granted under this Act, and
  - (f) a class P1F licence—is taken to be, and to have the authority conferred by, a class 1F licence granted under this Act, and
  - (g) a class P1G licence—is taken to be, and to have the authority conferred by, a class 1A licence granted under this Act.
- (2) The holder of a licence referred to in subclause (1) is taken to be a person who has not previously been authorised by a class 1 licence to carry on the security activity to which the licence relates and, accordingly, is subject to section 23E as inserted by the amending Act.



- (3) The holder must comply with the conditions set out in section 23E within 12 months of the commencement of that section.

## **29 Duration of converted licence**

- (1) A licence converted by the operation of this Part to another class or subclass of licence remains in force (unless sooner surrendered, suspended or revoked) until the end of the period that it would have remained in force under section 24 but for the conversion.
- (2) The holder of a converted licence may renew the converted licence in accordance with section 17.

## **30 Form of converted licence**

- (1) Section 22 (2) (b), as inserted by the amending Act, does not apply to a converted licence.
- (2) The Commissioner may reissue any converted licence with such alterations or endorsements as the Commissioner considers appropriate having regard to the provisions and operation of the amending Act.

## **31 References to converted licences**

- (1) A reference in any Act (other than this Act) or statutory instrument, or in any other instrument, or in any contract or agreement, to a licence of a particular class or subclass of licence is to be construed as a reference to the class or subclass of the licence as converted by the operation of this Part.
- (2) The conditions to which a converted 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) applicable to the class or subclass of the licence on conversion and any such condition may be varied or revoked in accordance with this Act.

## **32 Proceedings for abolished offences relating to provisional licensees**

Any proceedings for an offence under a provision of this Act repealed by the amending Act that have been commenced but not finally determined before the repeal of the provision may continue to be dealt with as if the provision had not been repealed.

## **33 Restriction on granting licence to applicant providing false or misleading information**

Section 15 (2C), as inserted by the amending Act, applies to applications that have been made but not yet determined by the Commissioner before the insertion of that subsection.

## **34 Investigation of licence applications—taking of palm prints**

Anything done or omitted to be done by the Commissioner that would have been validly done or omitted had the amendments made to section 18 of this Act by the amending Act

been in force at the time that the thing was done or omitted, is taken to have been validly done or omitted.

### **35 Licence renewals**

Section 17, as inserted by the amending Act, extends to licences granted before the insertion of that section.