

Court Security Bill 2005

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the appointment of security officers for court premises,
- (b) to confer certain functions on security officers and on judicial officers to facilitate the secure and orderly operation of courts and court premises,
- (c) to confirm that members of the public have a right, subject to certain qualifications, to enter and remain in areas of court premises that are open to the public,
- (d) to make a consequential amendment to the *Fines Act 1996*.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act, including particularly the following 4 terms.

A **court** is defined to mean any of the following:

- (a) the Supreme Court,
- (b) the Industrial Relations Commission,
- (c) the Land and Environment Court,
- (d) the District Court,
- (e) the Drug Court,
- (f) the Children's Court,
- (g) a Local Court (including a Local Court constituted by an Industrial Magistrate),
- (h) the Dust Diseases Tribunal,
- (i) a Warden's Court,
- (j) the Licensing Court,
- (k) a person who exercises or performs the functions of a coroner under the *Coroners Act 1980*,
- (l) the Administrative Decisions Tribunal,
- (m) the Parole Board,
- (n) any other tribunal, body or person prescribed by the regulations that is authorised by law to conduct proceedings for the purpose of the determination of any matter or thing.

Court premises are defined to mean the premises or place where a court is held or that is used in relation to the operations of a court, and (without limitation) to include:

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

An **offensive implement** is defined to mean any thing (other than a restricted item):

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

Finally, a **security officer** is defined to mean the Sheriff or a person appointed by the Sheriff under proposed section 21.

Clause 5 makes it clear that the powers conferred by the proposed Act are additional to, and do not derogate from, any other power of a court, judicial officer or other person (including a correctional officer) in relation to the conduct of court proceedings or regulating the conduct of persons in court premises.

Part 2 Entry and use of court premises

Clause 6 provides that a person has a right to enter and remain in an area of court premises that is open to the public if the person has complied with all relevant orders, directions and requirements made by a judicial officer or security officer in respect of the person.

The proposed section also provides that a journalist has a right to enter and remain in an area of court premises open to the public that is located outside of a building in which the court is housed or is sitting for the purpose of making a media report provided that the journalist is not obstructing or otherwise impeding access to the building.

However, the proposed section makes it clear that the rights conferred by the section have effect subject to the provisions of the proposed Act and any other Act or law and to the inherent or implied jurisdiction of a court to regulate its proceedings.

Clause 7 enables a judicial officer to order court premises, or a part of court premises, to be closed to the public if the judicial officer considers it necessary for securing order and safety in the premises.

The proposed section also makes it an offence for a person to contravene such an order. The maximum penalty for such an offence will be 50 penalty units (currently, \$5,500).

Clause 8 makes it an offence for a person to be in possession of a restricted item in court premises without a reasonable excuse. A **restricted item** is defined in proposed section 4 to mean any of the following:

(a) any prohibited weapon within the meaning of the *Weapons Prohibition Act 1998*,

(b) any firearm within the meaning of the *Firearms Act 1996*,

(c) any knife (whether or not a prohibited weapon within the meaning of the *Weapons Prohibition Act 1998*).

The maximum penalty for such an offence will be:

(a) in the case of a restricted item that is a prohibited weapon within the meaning of the *Weapons Prohibition Act 1998* or a firearm within the meaning of the *Firearms Act 1996*—100 penalty units (currently, \$11,000) or imprisonment for 2 years, or both, or

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

(i) if the person has not previously been convicted of an offence (whether under the proposed Act or any other law) involving the possession or use of a knife—5 penalty units (currently, \$550), or

(ii) if the person has previously been convicted of only one offence (whether under the proposed Act or any other law) involving the possession or use of a knife—10 penalty units (currently, \$1,100) or imprisonment for 12 months, or both, or

(iii) if the person has previously been convicted of more than one offence (whether under the proposed Act or any other law) involving the possession or use of a knife—20 penalty units (currently, \$2,200) or imprisonment for 2 years, or both.

However, the following kinds of possession of restricted items will not be prohibited by the proposed section:

(a) the possession of any restricted item that is (or is to be) an exhibit in proceedings before a court in court premises if:

(i) the item is in the possession of a person who is involved in the conduct

of, or appearing in, the proceedings, and

(ii) the item is enclosed in a bag or other container of a kind prescribed by the regulations,

(b) the possession of any restricted item that a judicial officer has directed should be allowed to be brought into court premises,

(c) the possession by a security officer of any restricted item that has been taken into possession or confiscated under the proposed Act,

(d) the possession by a police officer or custodial officer of any restricted item in the exercise of the officer's functions under any Act or law,

(e) the possession of such restricted items in such other kinds of circumstances as may be prescribed by the regulations.

Clause 9 makes it an offence for a person to use a recording device to record images or sound (or both) in court premises. The maximum penalty for such an offence will be 200 penalty units (currently, \$22,000) or imprisonment for 12 months (or both).

A **recording device** is defined in proposed section 4 to mean any device that is capable of being used to record images or sound (or both), including any of the following devices:

(a) a camera (including a video camera),

(b) a mobile phone that is capable of recording images or sound (or both),

(c) a tape recorder or digital audio recorder.

However, the following uses of recording devices in court premises will not be prohibited by the proposed section:

(a) the use of a recording device that has been expressly permitted by a judicial officer,

(b) the use by a lawyer of a recording device to record the lawyer's own voice in a part of court premises other than a room where a court is sitting,

(c) the use of a recording device by a person for the purpose of transcribing court proceedings for a court,

(d) the use of a recording device by a journalist while exercising a right referred to in proposed section 6 (2),

(e) the use of such recording devices in such other kinds of circumstances as may be prescribed by the regulations.

Part 3 Court security powers

Division 1 Search and seizure

Clause 10 enables a security officer to exercise certain search powers in respect of persons or vehicles entering or in court premises. The proposed section also contains a number of safeguards concerning the conduct of searches.

A failure to comply with a requirement made by a security officer under the proposed section, or immediately to leave the court premises, after the officer has provided certain warnings and other information will constitute an offence. The maximum penalty for such an offence will be 5 penalty units (currently, \$550).

Clause 11 enables a security officer to require a person entering or in court premises to deposit restricted items and offensive implements with the officer for safekeeping while the person remains in the premises.

A failure to comply with a requirement made by a security officer under the proposed section, or immediately to leave the court premises, after the officer has provided certain warnings and other information will constitute an offence. The maximum penalty for such an offence will be 5 penalty units (currently, \$550).

Clause 12 enables a security officer to take possession of, and to confiscate, any thing that the officer has reasonable grounds to believe is:

(a) a restricted item, or

(b) an offensive implement, or

(c) a recording device that has been used in contravention of proposed section 9,
or

(d) any film, tape or other recording medium in a recording device used in contravention of proposed section 9.

The proposed section makes special provision for the procedure to be followed in seeking the return of a confiscated thing and for a Local Court to order the forfeiture of such a thing to the Crown in appropriate cases.

Division 2 Identification of persons

Clause 13 enables a security officer in certain limited circumstances to require a person who is entering or in court premises and whose name or residential address is unknown to the officer:

(a) to disclose the person's name and residential address, and

(b) to disclose the reason for the person's visit to the court premises.

The circumstances in which a security officer will be able to exercise this power is limited to when the officer believes on reasonable grounds that the person concerned is carrying a restricted item or offensive implement or has committed an offence in the court premises. However, a security officer will not be able to require a person to provide such information in connection with the possession of a restricted item or offensive implement that the person is permitted to possess under proposed section 8. A person who, after the officer has provided certain warnings and other information, fails to comply with a requirement made by a security officer under the proposed section or provides false or misleading information in response to such a requirement will commit an offence. The maximum penalty for such an offence will be 2 penalty units (currently, \$220).

The proposed section also enables a security officer to request a person of whom a requirement has been made under the proposed section to disclose the person's name and address to provide proof of that name and address. However, a failure to provide such proof will not be an offence.

Division 3 Directions to persons

Clause 14 enables a security officer to give reasonable directions to persons in court premises for the purpose of reducing or eliminating behaviour that the officer has reasonable grounds to believe is causing an obstruction, constitutes harassment or intimidation or is causing (or likely to cause) fear to persons of reasonable firmness. A person who, after the officer has provided certain warnings and other information, fails to comply with a direction made by a security officer under the proposed section will commit an offence. The maximum penalty for such an offence will be 20 penalty units (currently, \$2,200).

Division 4 Security signs and notices

Clause 15 enables a security officer to erect such signs and notices in court premises as the officer considers necessary concerning the provision of court security in the premises.

The proposed section also makes it an offence for a person to remove, alter, damage, deface or destroy any such sign or notice without the permission of a security officer or judicial officer in the court premises. The maximum penalty for such an offence will be 5 penalty units (currently, \$550).

Part 4 Powers of arrest and use of force

Clause 16 enables a security officer to arrest a person without a warrant in court premises if the person is committing or has just committed an offence under the proposed Act or if the officer believes on reasonable grounds that the person has committed such an offence. The proposed section also enables a security officer to effect an arrest outside of court premises in cases where the officer is in hot pursuit of a person who has absconded from the court premises to avoid arrest.

Clause 17 provides that it is lawful for a security officer exercising a court security power or arrest power conferred by the proposed Act in relation to a person or a thing to use such force as is reasonably necessary to exercise the power.

Part 5 Limitations and safeguards on exercise of

certain powers

Clause 18 confines the application of the limitations and safeguards set out in the proposed Part to the following powers (**relevant powers**):

- (a) a power under proposed Part 3 (other than a power conferred by proposed section 15),
- (b) a power of arrest conferred by proposed section 16.

Clause 19 limits the circumstances in which a relevant power may be exercised. For example, a relevant power may not be exercised in respect of a judicial officer or a person being dealt with by a police officer without the police officer's consent. However, even in those circumstances, the power may be exercised at the direction of a judicial officer, to prevent harm or damage or to prevent a person from escaping lawful custody.

Clause 20 sets out certain safeguards for the exercise of most (but not all) relevant powers. Essentially, the proposed section requires a security officer to provide the person who is subject to the exercise of the power with the following information:

- (a) evidence that the officer is a security officer (for example, by showing the person the officer's certificate of identification),
- (b) the name or badge number of the security officer,
- (c) the reason for the exercise of the power,
- (d) a warning that failure or refusal to comply with a direction or requirement of the security officer, in the exercise of the power, may be an offence.

Except for the power of arrest, the information will need to be provided before the exercise of the power. In the case of an arrest, the information may be provided before the arrest, if it is practicable to do so, or as soon as is reasonably practicable after the arrest if it is not practicable to provide it before the arrest.

Part 6 Security officers

Clause 21 enables the Sheriff to appoint only the following kinds of persons as security officers:

- (a) a sheriff's officer,
- (b) any other person who holds a licence under the *Security Industry Act 1997* to carry out security activities of the kind that a security officer may be required to carry out under the proposed Act.

Clause 22 requires certain security officers to carry identification while exercising their functions and to produce the identification on demand. A failure to do so will be an offence, for which the maximum penalty will be 5 penalty units (currently, \$550).

Clause 23 provides that the Sheriff may not delegate his or her power to appoint security officers or any of his or her functions as a security officer.

Part 7 Miscellaneous

Clause 24 makes it an offence for a person wilfully to delay, hinder or obstruct a security officer's exercise of his or her functions or to impersonate a security officer. The maximum penalty for such an offence will be 100 penalty units (currently, \$11,000) or imprisonment for 6 months, or both.

Clause 25 provides security officers, and persons acting under the direction of security officers, with protection from personal liability for anything done, or not done, in good faith for the purpose of exercising a function under the proposed Act.

Clause 26 provides for how documents may be served on, or given to, a person for the purposes of the proposed Act.

Clause 27 provides that the onus of proving, on the balance of probabilities, that a person had a reasonable excuse in proceedings for an offence against a provision of the proposed Act that refers to such an excuse lies with the defendant.

Clause 28 provides that proceedings for offences against the proposed Act may be dealt with summarily by a Local Court or the Supreme Court. However, if proceedings are brought in a Local Court, the maximum monetary penalty that the

Local Court may impose for the offence is 100 penalty units (currently, \$11,000).

Clause 29 enables security officers to issue penalty notices for alleged offences against the proposed Act that are prescribed by the regulations as penalty notice offences.

Clause 30 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 31 gives effect to proposed Schedule 1, which contains savings, transitional and other provisions.

Clause 32 makes an amendment to the *Fines Act 1996* that is consequential on the conferral of a power to issue penalty notices under the proposed Act.

Clause 33 provides for the review of the proposed Act after 5 years of its date of assent to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains provisions enabling the Governor to make regulations of a savings or transitional nature.