



New South Wales

Court Security Bill 2005

Explanatory note

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.

Court Security Bill 2005

Explanatory note

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.



New South Wales

Court Security Bill 2005

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New South Wales

Court Security Bill 2005

No. , 2005

A Bill for

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

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Court Security Act 2005*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6

3 Objects of Act 7

The objects of this Act are: 8

(a) to provide for the secure and orderly operation of courts, and 9

(b) to confer certain functions on judicial officers and security officers for that purpose. 10
11

4 Definitions 12

(1) In this Act: 13

audio link means facilities (including telephone) that enable audio communication between persons at different places. 14
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audio visual link means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places. 16
17
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correctional centre means a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*, and includes a correctional complex within the meaning of that Act. 19
20
21

correctional officer means a correctional officer within the meaning of the *Crimes (Administration of Sentences) Act 1999*. 22
23

court means any of the following: 24

(a) the Supreme Court, 25

(b) the Industrial Relations Commission, 26

(c) the Land and Environment Court, 27

(d) the District Court, 28

(e) the Drug Court, 29

(f) the Children's Court, 30

(g) a Local Court (including a Local Court constituted by an Industrial Magistrate), 31
32

(h) the Dust Diseases Tribunal, 33

(i) a Warden's Court, 34

-
- (j) the Licensing Court, 1
- (k) a person who exercises or performs the functions of a coroner under the *Coroners Act 1980*, 2
3
- (l) the Administrative Decisions Tribunal, 4
- (m) the Parole Board, 5
- (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. 6
7
8
- court premises***, in relation to a court, means the premises or place where a court is held or that is used in relation to the operations of a court, and (without limitation) includes: 9
10
11
- (a) a forecourt, courtyard, yard, parking area, toilet facility, hall, corridor or other area used in conjunction with the premises or place, and 12
13
14
- (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 15
16
17
- (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. 18
19
20
- court security power*** means a power conferred on a security officer by Part 3. 21
22
- custodial officer*** for a person means any of the following: 23
- (a) a police officer who has lawful custody of the person for the time being, 24
25
- (b) a correctional officer or other officer of the Department of Corrective Services who has lawful custody of the person for the time being, 26
27
28
- (c) an officer of the Department of Juvenile Justice who has lawful custody of the person for the time being. 29
30
- exercise*** a function includes perform a duty. 31
- fail to comply*** includes refuse to comply. 32
- function*** includes a power, authority or duty. 33
- journalist*** means a person engaged in the profession or practice of reporting, photographing, editing or recording for a media report of a news, current affairs, information or documentary character. 34
35
36
- judicial officer*** means: 37
- (a) a judicial officer within the meaning of the *Judicial Officers Act 1986*, or 38
39
-

(b) any other person who is, or who alone or with others constitutes, a court. 1
2

media report means an article, program or other report for publication in or broadcast on any of the following: 3
4

(a) a newspaper, magazine, journal or other periodical, 5

(b) a radio or television broadcasting service, 6

(c) an electronic service (including a service provided by the Internet) that is similar to a newspaper, magazine, radio broadcast or television broadcast. 7
8
9

mobile phone includes any device that may be used, in whole or in part, for the purpose of sending or receiving voice or other data over a mobile telephone network, whether or not it may be used for any other purpose. 10
11
12

offensive implement means any thing (other than a restricted item): 13

(a) made or adapted for use for causing injury to a person, or 14

(b) intended, by the person having custody of the thing, to be used to injure or menace a person or damage property. 15
16

personal search means a search (other than a scanner search) of a person or of things in the person's possession or control that may include any of the following: 17
18
19

(a) an examination of any thing worn or carried by the person that is conveniently and voluntarily removed by the person, 20
21

(b) a search of a person conducted by quickly running the hands over the person's outer clothing, 22
23

(c) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat and conducting an examination of those things. 24
25
26

recording device means any device that is capable of being used to record images or sound (or both), including any of the following devices: 27
28
29

(a) a camera (including a video camera), 30

(b) a mobile phone that is capable of recording images or sound (or both), 31
32

(c) a tape recorder or digital audio recorder. 33

restricted item means any of the following: 34

(a) any prohibited weapon within the meaning of the *Weapons Prohibition Act 1998*, 35
36

(b) any firearm within the meaning of the *Firearms Act 1996*, 37

(c) any knife (whether or not a prohibited weapon within the meaning of the *Weapons Prohibition Act 1998*). 38
39

scanner search means a search of a person or of things in the person's possession or control that involves: 1

(a) passing an electronic scanning or screening device over or in close proximity to the person's outer clothing, or 2

(b) requiring the person to pass through, or provide a thing for passage through, an electronic scanning or screening device. 3

security officer means: 4

(a) the Sheriff, or 5

(b) a person appointed by the Sheriff under section 21. 6

(2) Notes included in this Act do not form part of this Act. 7

5 Operation of Act and effect on other powers 8

(1) The powers conferred by this Act are in addition to, and not in derogation of, any other power of a court, judicial officer or other person in relation to the conduct of proceedings in a court or regulating the conduct of persons in court premises. 9

(2) Without limiting subsection (1), this Act does not affect: 10

(a) any power of a court relating to contempt of the court or any other similar power, or 11

(b) any power of a correctional officer under the *Crimes (Administration of Sentences) Act 1999* or any other law with respect to a person in the officer's custody in a court cell complex or other place in court premises. 12

Part 2	Entry and use of court premises	1
6	Right to enter and remain in open areas of court premises	2
(1)	A person has a right to enter and remain in an area of court premises that is open to the public if:	3
	(a) the person has complied with all relevant orders made by a judicial officer (whether under this Act or another law) in respect of the person, and	4
	(b) the person has complied with all directions or requirements made by a security officer under this Act in respect of the person.	5
(2)	Without limiting subsection (1), a journalist has a right to enter and remain in an area of court premises open to the public that is located outside of a building in which the court is housed or is sitting for the purpose of making a media report if the journalist is not obstructing or otherwise impeding access to the building.	6
(3)	This section has effect subject to the following:	7
	(a) the provisions of this Act,	8
	(b) any inherent or implied jurisdiction of a court to regulate its proceedings,	9
	(c) any other Act or law about persons who may be present in a court or court premises.	10
(4)	Nothing in this section confers a right on any person to enter or remain in a correctional centre for the purpose of seeing another person appear before a court by means of an audio link or audio visual link.	11
7	Judicial officer may close court premises for security reasons	12
(1)	If a judicial officer considers it necessary for securing order and safety in court premises or a part of court premises, the judicial officer may:	13
	(a) order members of the public generally, or specified members of the public, to leave the court premises or a part of the court premises, or	14
	(b) order members of the public generally, or specified members of the public, not to be admitted to the court premises or a part of the court premises.	15
(2)	A person must not contravene an order of a judicial officer under this section.	16
	Maximum penalty: 50 penalty units.	17

8 Possession of restricted items in court premises	1
(1) A person must not, without reasonable excuse, be in possession of a restricted item while in court premises.	2
Maximum penalty:	3
(a) in the case of a restricted item that is a prohibited weapon within the meaning of the <i>Weapons Prohibition Act 1998</i> or a firearm within the meaning of the <i>Firearms Act 1996</i> —100 penalty units or imprisonment for 2 years (or both), or	4
(b) in the case of a knife that is not a prohibited weapon within the meaning of the <i>Weapons Prohibition Act 1998</i> :	5
(i) if the person has not previously been convicted of an offence (whether under this Act or any other law) involving the possession or use of a knife—5 penalty units, or	6
(ii) if the person has previously been convicted of only one offence (whether under this Act or any other law) involving the possession or use of a knife—10 penalty units or imprisonment for 12 months (or both), or	7
(iii) if the person has previously been convicted of more than one offence (whether under this Act or any other law) involving the possession or use of a knife—20 penalty units or imprisonment for 2 years (or both).	8
(2) Subsection (1) does not apply with respect to any of the following:	9
(a) the possession of any restricted item that is (or is to be) an exhibit in proceedings before a court in court premises if:	10
(i) the item is in the possession of a person who is involved in the conduct of, or appearing in, the proceedings, and	11
(ii) the item is enclosed in a bag or other container of a kind prescribed by the regulations,	12
(b) the possession of any restricted item that a judicial officer has directed should be allowed to be brought into court premises,	13
(c) the possession by a security officer of any restricted item that has been taken into possession or confiscated under this Act,	14
(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,	15
(e) the possession of such restricted items in such other kinds of circumstances as may be prescribed by the regulations.	16

9 Use of recording devices in court premises	1
(1) A person must not use a recording device to record sound or images (or both) in court premises.	2
Maximum penalty: 200 penalty units or imprisonment for 12 months (or both).	3
Note. This subsection only prohibits the use of a recording device to record sound or images (or both) and not any other use of the device. For example, this subsection would not prohibit a person from using a mobile phone with recording capabilities to make a telephone call, but would prohibit the use of the phone to record court proceedings.	4
(2) Subsection (1) does not apply with respect to any of the following:	5
(a) the use of a recording device that has been expressly permitted by a judicial officer,	6
(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,	7
(c) the use of a recording device by a person for the purpose of transcribing court proceedings for the court,	8
(d) the use of a recording device by a journalist while exercising a right referred to in section 6 (2),	9
(e) the use of such recording devices in such other kinds of circumstances as may be prescribed by the regulations.	10

Part 3 Court security powers

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

Division 1 Search and seizure

10 Power to search persons and vehicles

- (1) A security officer may require a person who is entering or in court premises to do any or all of the following:
- (a) submit to a scanner search of the person (but not if the officer believes that a scanner search would pose a risk to the health of the person) or to provide a thing in the person's possession or control to the security officer for a scanner search,
 - (b) submit to a personal search of the person if the officer believes on reasonable grounds that the person possesses a restricted item or offensive implement,
 - (c) stop any vehicle in the person's possession or control that is about to be driven, or that has been driven, into the court premises,
 - (d) allow a vehicle in the person's possession or control to be searched if the officer believes on reasonable grounds that the person possesses or the vehicle contains a restricted item or offensive implement,
 - (e) produce for inspection any thing that the security officer has detected or seen on or with the person that the security officer believes on reasonable grounds is a restricted item or offensive implement,
 - (f) answer any question that is reasonable in the circumstances concerning the nature of a thing that is being inspected or that has been detected during a search under this section.
- (2) A search of a person conducted under this section must, as far as is reasonably practicable in the circumstances, comply with the following requirements:
- (a) the security officer must inform the person to be searched of the following matters:
 - (i) whether the person will be required to remove clothing during the search,
 - (ii) why it is necessary to remove the clothing,
 - (b) the security officer must ask for the person's co-operation,

(c)	a personal search must be conducted:	1
(i)	in a way that provides reasonable privacy for the person searched, and	2
(ii)	as quickly as is reasonably practicable,	3
(d)	the security officer must conduct the least invasive kind of search practicable in the circumstances,	4
(e)	a personal search of a child under 12 years of age may only be conducted if a responsible person for the child is present during the search,	5
(f)	a personal search of a person (other than a child under 12 years of age) must be conducted by a security officer of the same sex as the person or, if a security officer of that sex is unavailable, by another person of that sex at the direction of a security officer,	6
(g)	a personal search of a child under 12 years of age must be conducted by a female security officer or, if a female security officer is unavailable, by another female person at the direction of a security officer.	7
(3)	If a security officer makes a requirement of a person under subsection (1) and the person fails immediately to comply with that requirement or to leave the court premises, the security officer may again make the requirement and, in that case, must:	8
(a)	warn the person that a failure immediately to comply with the requirement or leave the court premises may be an offence, and	9
(b)	provide the person with the information referred to in section 20 (2) (a)–(c).	10
(4)	If a security officer makes a requirement of a person in accordance with subsection (3), the person must immediately:	11
(a)	comply with the requirement, or	12
(b)	leave the court premises.	13
	Maximum penalty (subsection (4)): 5 penalty units.	14
(5)	In this section:	15
	responsible person for a child means a person (other than a security officer) aged 16 years or more who:	16
(a)	is a parent (including a step-parent), grandparent or sibling (including a half-sibling) of the child, or	17
(b)	is a guardian of the child, or	18
(c)	has custody of the child for the time being, or	19
(d)	is accompanying the child as the child’s legal representative, friend, carer or support person, or	20

(e)	is a person, or person belonging to a class of persons, prescribed by the regulations.	1 2
11	Power to require property and other things to be surrendered for safekeeping	3 4
(1)	A security officer may require a person who is entering or in court premises to deposit with the officer while the person remains in the premises any or all of the following:	5 6 7
(a)	any thing in the person's possession or control that the security officer believes on reasonable grounds is a restricted item or offensive implement,	8 9 10
(b)	any thing in the person's possession or control that is reasonably capable of concealing a thing of the kind referred to in paragraph (a).	11 12 13
(2)	If a security officer makes a requirement of a person under subsection (1) and the person fails immediately to comply with that requirement or to leave the court premises, the security officer may again make the requirement and, in that case, must:	14 15 16 17
(a)	warn the person that a failure immediately to comply with the requirement or leave the court premises may be an offence, and	18 19
(b)	provide the person with the information referred to in section 20 (2) (a)–(c).	20 21
(3)	If a security officer makes a requirement of a person in accordance with subsection (2), the person must immediately:	22 23
(a)	comply with the requirement, or	24
(b)	leave the court premises.	25
	Maximum penalty (subsection (3)): 5 penalty units.	26
(4)	Subject to section 12, if a person deposits a thing with a security officer under subsection (1), the security officer must ensure that the thing is returned to the person if:	27 28 29
(a)	the person requests the return of the thing, and	30
(b)	the security officer is satisfied, on reasonable grounds, that the person is about to leave the court premises.	31 32
12	Power to confiscate restricted items and other things	33
(1)	Power to take into possession and confiscate certain things	34
	A security officer may in any court premises:	35
(a)	take possession of any thing that the security officer has reasonable grounds to believe is:	36 37

(i)	a restricted item, or	1
(ii)	an offensive implement, or	2
(iii)	a recording device that has been used in contravention of section 9, or	3 4
(iv)	any film, tape or other recording medium in a recording device used in contravention of section 9, and	5 6
(b)	confiscate the thing.	7
(2)	Confiscated thing to be returned or handed to police	8
	A security officer who confiscates a thing under this section (the <i>confiscated thing</i>) must:	9 10
(a)	if the officer is satisfied after examining the thing that its retention as evidence is not required and that it is lawful for the person to have possession of the thing—return the thing to the person from whom it was confiscated, or	11 12 13 14
(b)	if the officer is not so satisfied—give the thing (or cause the thing to be given) to the Local Area Commander of Police for the area in which the court premises are located as soon as is reasonably practicable after its confiscation.	15 16 17 18
(3)	The Local Area Commander of Police to whom a confiscated thing is given must return the thing to the person from whom it was confiscated or to its owner if satisfied after examining the thing that its retention as evidence is not required and that it is lawful for the person to have possession of the thing.	19 20 21 22 23
(4)	Applications for return of confiscated things	24
	The person from whom a thing is confiscated under this section or its owner may, within the period of 28 days after it is confiscated (the <i>initial confiscation period</i>), apply to the Local Area Commander of Police for its return.	25 26 27 28
(5)	An application for the return of the confiscated thing must be in writing and state why the thing should in all the circumstances be returned.	29 30
(6)	If the person seeking the return of the confiscated thing is under the age of 18 years, the application for its return may be made only by a parent or guardian of the person, or a person who has lawful care or custody of the person, on his or her behalf.	31 32 33 34
(7)	Appeals to Local Court against refusals to return confiscated things	35
	If the Local Area Commander of Police fails or refuses to return a confiscated thing at the expiration of the initial confiscation period to a person who has made an application for its return under this section, the	36 37 38

person may appeal against the failure or refusal to a Local Court within 28 days of the expiration of the initial confiscation period.	1 2
(8) On hearing such an appeal, a Local Court may order that the confiscated thing:	3 4
(a) be forfeited to the Crown, or	5
(b) be returned to the applicant or some other appropriate person.	6
(9) Without limiting subsection (8), the Local Court may, if the confiscated thing is a recording device, limit any order for forfeiture to the film, tape or other recording medium used in the device.	7 8 9
(10) Forfeiture of confiscated things	10
A confiscated thing is forfeited to the Crown:	11
(a) if an application for the return of the thing is not made within the initial confiscation period—at the expiration of that period, or	12 13
(b) in a case where such an application is made within the initial confiscation period and the thing is not returned within that period:	14 15 16
(i) if an appeal under this section is not made within 28 days after the expiration of the initial confiscation period—at the expiration of that period, or	17 18 19
(ii) if an appeal under this section is made within 28 days after the expiration of the initial confiscation period—when an order made under subsection (8) (a) in respect of the thing takes effect.	20 21 22 23
(11) The Local Area Commander of Police (or such other person as the Commissioner of Police may direct) may destroy or otherwise dispose of a confiscated thing forfeited to the Crown under this section in accordance with the directions of the Commissioner of Police.	24 25 26 27
(12) Confiscated thing may be destroyed	28
In this section, a reference to the disposal of a thing includes a reference to its destruction.	29 30
Division 2 Identification of persons	31
13 Power to ask for identification particulars	32
(1) A security officer may require a person who is entering or in court premises and whose name or residential address is unknown to the officer to disclose the person's name and residential address or to disclose the reason for the person's visit to the court premises, or both, if the officer believes on reasonable grounds that:	33 34 35 36 37

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- (a) the person is carrying a restricted item or offensive implement, or 1
(b) the person has committed an offence in the court premises. 2
- (2) However, a security officer may not require a person who is in 3
possession of a restricted item or offensive implement to provide 4
information of the kind referred to in subsection (1) if: 5
- (a) in the case of a restricted item—the officer has reasonable 6
grounds to believe that the person is permitted to possess the item 7
in court premises under section 8 (2), or 8
- (b) in the case of an offensive implement—the officer has reasonable 9
grounds to believe that the person would have been permitted to 10
possess the implement in court premises under section 8 (2) if the 11
implement had been a restricted item. 12
- (3) A person: 13
- (a) must not, without reasonable excuse, fail to comply with a 14
requirement made by a security officer in accordance with 15
subsection (1) and section 20, or 16
- (b) must not attempt to comply with a requirement made by a 17
security officer in accordance with subsection (1) and section 20 18
by: 19
- (i) stating a reason that is false or misleading in a material 20
particular, or 21
- (ii) providing a name or address that is false or misleading in 22
a material particular. 23
- Maximum penalty: 2 penalty units. 24
- Note.** Section 20 requires a security officer to provide certain information and a 25
warning before exercising a power under this section. 26
- (4) A security officer may request a person who is required by the officer 27
in accordance with subsection (1) and section 20 to disclose the 28
person's name and address to provide proof of the person's name and 29
address. 30

Division 3 Directions to persons 31

14 Power to give reasonable directions 32

- (1) A security officer may give a direction to a person in court premises if 33
the security officer has reasonable grounds to believe that the person's 34
behaviour in the premises (referred to in this section as *relevant* 35
conduct): 36
- (a) is obstructing another person or persons, or 37

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|--|---------------------------------|
| (b) constitutes harassment or intimidation of another person or persons, or | 1
2 |
| (c) is causing or is likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness. | 3
4
5 |
| (2) Such a direction must be reasonable in the circumstances for the purpose of reducing or eliminating the obstruction, harassment, intimidation or fear. | 6
7
8 |
| (3) If a security officer has complied with section 20 in giving a direction to a person and the person fails to comply with the direction, the security officer may again give the direction and, in that case, must again warn the person that failure to comply with the direction may be an offence.
Note. Section 20 requires a security officer to provide certain information and a warning before exercising a power under this section. | 9
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| (4) A person must not, without reasonable excuse, fail to comply with a direction given in accordance with subsection (3).
Maximum penalty (subsection (4)): 20 penalty units. | 15
16
17 |
| (5) A person is not guilty of an offence under subsection (4) unless it is established that the person persisted, after the direction concerned was given, to engage in the relevant conduct. | 18
19
20 |
| (6) A security officer may give a direction under this section to persons comprising a group. | 21
22 |
| (7) In the case of a direction that is given to a group of persons in accordance with subsection (1), the security officer is not required to repeat the direction, or to repeat the information and warning referred to in section 20, to each person in the group. | 23
24
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| (8) In the case of a direction that is given to a group of persons in accordance with subsection (3), the security officer is not required to repeat the direction, or to repeat the warning referred to in that subsection, to each person in the group. | 27
28
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30 |
| (9) However, just because the security officer is not required to repeat any such direction, information or warning does not in itself give rise to any presumption that each person in the group has received the direction, information or warning. | 31
32
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34 |
| (10) The other person or persons referred to in subsection (1) need not be in the court premises but must be near the premises at the time the relevant conduct is being engaged in. | 35
36
37 |
| (11) For the purposes of subsection (1) (c), no person of reasonable firmness need actually be, or be likely to be, present at the scene. | 38
39 |
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Clause 15 Court Security Bill 2005

Part 3 Court security powers

Division 4 Security signs and notices 1

15 Power to erect security signs and notices in court premises 2

(1) A security officer may erect such signs or notices in the court premises 3
as the security officer considers necessary concerning the provision of 4
security in the court premises. 5

(2) A person must not remove, alter, damage, deface or destroy any such 6
sign or notice without the permission of a security officer or judicial 7
officer in the court premises. 8

Maximum penalty: 5 penalty units. 9

Part 4 Powers of arrest and use of force

16 Powers of arrest

- (1) A security officer may, without a warrant, arrest a person in court premises if:
- (a) the person is in the act of committing an offence under this Act or has just committed such an offence, or
 - (b) the security officer believes on reasonable grounds that the person has committed an offence under this Act.
- Note.** Section 20 requires a security officer to provide certain information and a warning before or at the time of exercising, or as soon as is reasonably practicable after exercising, a power under this section. Section 19 limits the circumstances in which a power under this section may be exercised.
- (2) A security officer may exercise the power conferred on the officer by subsection (1) in respect of a person at a place outside of the court premises if:
- (a) the person absconded from the court premises in an attempt to avoid arrest, and
 - (b) the officer pursued the person from the court premises and the pursuit was not stopped or interrupted at any time before the officer concerned arrived at the place for the purpose of exercising the power.
- (3) For the purposes of subsection (2), a pursuit of a person is taken not to have stopped or to have been interrupted only because the security officer concerned has temporarily lost sight of the person.
- (4) A security officer who arrests a person under this section must, as soon as practicable, take the person:
- (a) to a police officer to be dealt with according to law, or
 - (b) before an authorised officer to be dealt with according to law.
- (5) In this section:
- authorised officer** means:
- (a) before the commencement of section 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002*—an authorised justice within the meaning of the *Search Warrants Act 1985*, or
 - (b) on or after the commencement of section 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002*—an authorised officer within the meaning of that Act.

Clause 17 Court Security Bill 2005

Part 4 Powers of arrest and use of force

17 Use of force generally by security officers	1
(1) It is lawful for a security officer exercising a court security power in relation to a person or a thing to use such force as is reasonably necessary to exercise the power.	2 3 4
(2) Without limiting subsection (1), a security officer who exercises a power to arrest under this Part may use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.	5 6 7 8

Part 5	Limitations and safeguards on exercise of certain powers	1
		2
18	Powers to which this Part applies	3
(1)	This Part applies to the exercise of any of the following powers:	4
(a)	a court security power (other than a power conferred by section 15),	5
		6
(b)	a power of arrest conferred by section 16.	7
(2)	In this Part, <i>relevant power</i> means a power to which this Part applies.	8
19	Limitations on exercise of relevant powers	9
(1)	The following limitations apply to the exercise of a relevant power:	10
(a)	a relevant power may not be exercised in respect of a judicial officer,	11
		12
(b)	a relevant power may not be exercised within a room in which a court is sitting unless the security officer seeking to exercise the power is satisfied that:	13
		14
		15
(i)	there is an emergency, and	16
(ii)	there is insufficient time in the circumstances to obtain a direction from the presiding judicial officer,	17
		18
(c)	a relevant power may not be exercised in respect of a person who is being dealt with by a police officer unless the police officer has requested the security officer's assistance,	19
		20
		21
(d)	a relevant power may not be exercised in respect of a person who is in the custody of a custodial officer for the person unless the custodial officer has requested the security officer's assistance,	22
		23
		24
(e)	a relevant power may not be exercised in respect of such persons or in such circumstances (or both) as may be prescribed by the regulations.	25
		26
		27
(2)	Despite subsection (1), a security officer may exercise a relevant power in respect of a person or in a circumstance referred to in that subsection if:	28
		29
		30
(a)	a judicial officer directs the security officer to exercise the power,	31
	or	32
(b)	the security officer is exercising the power to prevent the person from causing harm to himself or herself or to another person or causing damage to property, or	33
		34
		35
(c)	the security officer is assisting a custodial officer for the person to prevent the person from escaping from lawful custody.	36
		37

20	Safeguards concerning exercise of relevant powers	1
(1)	This section:	2
	(a) does not apply to the exercise of a power under section 10 or 11, and	3
		4
	(b) applies in addition to, and not in derogation of, the provisions of section 14.	5
		6
	Note. Sections 10 and 11 make special provision for the giving of the kind of information referred to in this section.	7
		8
	Section 14, which confers a power on security officers to give persons in court premises reasonable directions, contains a number of safeguards in relation to the exercise of the power.	9
		10
		11
(2)	A security officer must provide the person who is subject to the exercise of a relevant power with the following information within the time specified by subsection (3):	12
		13
		14
	(a) evidence that the officer is a security officer (for example, by showing the person the officer's certificate of identification),	15
		16
	(b) the name or badge number of the security officer,	17
	(c) the reason for the exercise of the power,	18
	(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.	19
		20
		21
(3)	The information referred to in subsection (2) must be provided:	22
	(a) in the case of the exercise of a power of arrest:	23
		24
	(i) if it is practicable to do so, before or at the time of exercising the power, or	25
		26
	(ii) if it is not practicable to do so, as soon as is reasonably practicable after exercising the power, or	27
		28
	(b) in any other case—before exercising the power concerned.	28
(4)	The information referred to in subsection (2) may, but need not, be provided in writing.	29
		30
(5)	If 2 or more security officers are exercising a relevant power, only one officer present is required to comply with this section.	31
		32
(6)	However, if a person asks another security officer present for information as to the name or badge number of the security officer, the security officer must give to the person the information requested.	33
		34
		35

Part 6 Security officers

21 Security officers

- (1) The Sheriff may, by instrument in writing, appoint any of the following persons to be a security officer:
- (a) a sheriff's officer,
 - (b) any other person who holds a licence under the *Security Industry Act 1997* to carry out security activities of the kind that a security officer may be required to carry out under this Act.
- (2) The Sheriff may, at any time and for any reason, revoke an appointment of a person made under subsection (1) by notice in writing given to the person.
- (3) A security officer appointed under subsection (1) (b) is to be provided by the Sheriff with a certificate of identification in the form prescribed by the regulations.

22 Security officer to carry identification

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

Maximum penalty: 5 penalty units.

23 Delegation of Sheriff's functions not permitted

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

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

Part 7	Miscellaneous	1
24	Obstruction and impersonation of security officer	2
	A person must not:	3
	(a) wilfully delay, hinder or obstruct a security officer in the exercise of the officer's functions under this Act, or	4 5
	(b) falsely represent himself or herself to be a security officer in court premises.	6 7
	Maximum penalty: 100 penalty units or imprisonment for 6 months (or both).	8 9
25	Exclusion of liability	10
	An act or omission of a security officer, or any person acting under the direction of a security officer, does not subject the security officer or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of exercising a function under this Act.	11 12 13 14 15
26	Service of documents	16
(1)	A document that is authorised or required by this Act or the regulations to be given or served on any person may be given or served by:	17 18
	(a) in the case of a natural person:	19
	(i) delivering it to the person personally, or	20
	(ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or	21 22 23 24 25
	(iii) sending it by facsimile transmission to the facsimile number of the person, or	26 27
	(b) in the case of a body corporate:	28
	(i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or	29 30 31 32 33
	(ii) sending it by facsimile transmission to the facsimile number of the body corporate.	34 35
(2)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	36 37 38

27	Onus of proof concerning reasonable excuse	1
	In any proceedings for an offence against a provision of this Act, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant and must be proved on the balance of probabilities.	2 3 4 5
28	Nature of proceedings for offences	6
	(1) Proceedings for an offence under this Act may be dealt with:	7
	(a) summarily before a Local Court, or	8
	(b) summarily before the Supreme Court in its summary jurisdiction.	9
	(2) 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, despite any higher maximum monetary penalty provided in respect of the offence.	10 11 12 13
29	Penalty notices	14
	(1) A security officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act, being an offence prescribed by the regulations as a penalty notice offence.	15 16 17 18
	(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.	19 20 21 22 23
	(3) A penalty notice may be served personally or by post.	24
	(4) If the amount of a penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.	25 26 27
	(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.	28 29 30
	(6) The regulations may:	31
	(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and	32 33 34
	(b) prescribe the amount of penalty payable for the offence if dealt with under this section, and	35 36
	(c) prescribe different amounts of penalties for different offences or classes of offences.	37 38

Clause 30 Court Security Bill 2005

Part 7 Miscellaneous

(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.	1 2 3
(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.	4 5 6
30	Regulations	7
	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.	8 9 10 11
31	Savings, transitional and other provisions	12
	Schedule 1 has effect.	13
32	Amendment of Fines Act 1996 No 99	14
	Insert in alphabetical order in Schedule 1 to the <i>Fines Act 1996</i> : <i>Court Security Act 2005</i> , section 29	15 16
33	Review of Act	17
(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.	18 19 20
(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.	21 22
(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.	23 24

Schedule 1	Savings, transitional and other provisions	1
		2
	(Section 31)	3
Part 1	General	4
1	Regulations	5
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	6 7 8
(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.	9 10
(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:	11 12 13
(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	14 15 16
(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.	17 18 19