



New South Wales

Security Industry Amendment Bill 2002

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Security Industry Act 1997* (*the Principal Act*) as follows:

- (a) to provide that security industry licensees must be Australian citizens or permanent Australian residents,
- (b) to provide that the Commissioner of Police (*the Commissioner*) may have regard to any criminal intelligence report or other criminal information held in relation to an applicant for a security industry licence when determining whether the applicant is a fit and proper person to hold the licence,
- (c) to provide that the Commissioner may require an applicant for a security industry licence to provide a photograph of the applicant or consent to having his or her photograph or fingerprints taken in order to confirm the applicant's identity and that the application must be refused if the applicant fails to comply,

- (d) to provide that security industry licensees who are armed security guards must wear recognisable security guard uniforms while carrying firearms,
- (e) to provide that security industry master licence holders who employ armed security guards must on request submit their firearms to the Commissioner for ballistics testing,
- (f) to make further provision relating to the powers of entry to premises and seizure of documents by police officers acting under the Principal Act,
- (g) to provide that proceedings for any offence under the Principal Act or the regulations may be commenced within 3 years (rather than 6 months) from when the offence was alleged to have been committed,
- (h) to provide that offences under the Principal Act or the regulations may be dealt with by way of penalty notice.

This Bill also:

- (a) makes a consequential amendment to the *Fines Act 1996*, and
- (b) amends the *Firearms Act 1996* to enable police officers to inspect the firearms (and the security and safe storage of those firearms) held by security industry master licensees who are armed security guards or employ armed security guards, and
- (c) makes amendments to the *Road Transport (Driver Licensing) Act 1998* relating to the use of photographs of security industry licensees.

Outline of provisions

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

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Security Industry Act 1997* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments set out in Schedule 2 to the Acts specified in that Schedule.

Schedule 1 Amendment of Security Industry Act 1997

Schedule 1 [2] inserts proposed section 15 (1) (e) into the Principal Act to provide that the Commissioner must not grant a licence under that Act unless the applicant is an Australian citizen or a permanent Australian resident.

Schedule 1 [1] amends section 3 (1) of the Principal Act to provide for a definition of *permanent Australian resident*.

Schedule 1 [3] inserts proposed section 15 (6) into the Principal Act to provide that for the purpose of determining whether an applicant for a licence under that Act is a fit and proper person, 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.

Proposed section 15 (7) provides that the Commissioner is not, under the Principal Act 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 that criminal intelligence report or other criminal information.

Schedule 1 [4] amends section 18 of the Principal Act to provide that the Commissioner may require an applicant for a licence to provide the Commissioner with a photograph of the applicant or consent to having his or her photograph or fingerprints taken in order to confirm the applicant's identity. The Commissioner must refuse to grant the licence if the applicant has not provided a photograph or been photographed or fingerprinted in accordance with any such requirement. 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 such photographs or fingerprints destroyed. The Commissioner may grant or refuse the application as the Commissioner sees fit.

Schedule 1 [7] inserts proposed section 23A into the Principal Act. The proposed section imposes conditions on security guard licence holders and master licence holders under the Principal Act to require security guards who are licensed under the *Firearms Act 1996* to wear recognisable security guard uniforms while carrying firearms. The proposed section also provides for the consequences of a breach of any of these conditions and allows the Commissioner to exempt a security guard from the operation of the provisions if the Commissioner is satisfied there is a genuine reason. **Schedule 1 [1]** amends section 3 (1) of the Principal Act to provide for a definition of *armed security guard*.

Schedule 1 [5] and [6] make consequential amendments.

Section 26 (1) (a) of the Principal Act currently provides that a licence may be revoked for any reason for which the licensee would be required by the Principal Act to be refused a licence of that class. **Schedule 1 [8] and [9]** omit that paragraph and insert section 26 (1A) into the Principal Act to provide that the Commissioner must revoke a licence for any of those reasons.

Schedule 1 [10] inserts proposed section 39A into the Principal Act. The proposed section provides that if a master licensee under the Principal Act is authorised under the *Firearms Act 1996* to possess any firearms by reason of holding that master licence (that is, the master licensee has a firearms licence for the purposes of the master licensee's security industry business), the master licensee must, on request by the Commissioner, submit all the master licensee's firearms to a police officer for ballistics testing. The proposed section also provides that if a firearm so tested is modified in a manner that would change the characteristics of the firearm's firing, 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. Failure to comply with these provisions will constitute an offence with a maximum penalty of 50 penalty units or 2 years imprisonment, or both.

Schedule 1 [11] inserts proposed section 42A into the Principal Act. The proposed section provides that, in the exercise of any power to enter the premises of a master licensee under the Principal Act or any other Act, a police officer may, if the police officer considers it necessary to do so for the purposes of obtaining evidence of the commission of an offence, seize any registers, books, records or other documents relating to the business being carried on under the authority of the master licence. The proposed section also provides that a police officer may, if the police officer considers it necessary to do so for the purposes of obtaining evidence of the commission of an offence, require any person to answer questions relating to any registers, books, records or other documents or any other relevant matter required to be kept by a licensee by or under the Principal Act. The proposed section makes it clear that if a police officer is authorised under the Principal Act or any other Act to make copies of entries in the registers, books, records or other documents, the police officer may take those registers, books, records or other documents from the premises for the purpose of copying them and must return them after that copying is completed.

Schedule 1 [12] amends section 45 of the Principal Act to provide that proceedings for offences under the Principal Act or the regulations must be commenced within 3 years (rather than 6 months) from when the offence was alleged to have been committed.

Schedule 1 [13] inserts proposed section 45A into the Principal Act to provide that prescribed offences against the Principal Act or the regulations may be dealt with by way of penalty notice.

Schedule 1 [14], [15] and [16] make amendments of a savings and transitional nature.

Schedule 2 Amendment of other Acts

Schedule 2.1 makes a consequential amendment to the *Fines Act 1996*.

Schedule 2.2 [1] inserts proposed section 24 (1A) into the *Firearms Act 1996*. The proposed subsection provides that the Commissioner must revoke a firearms licence that is held for the purpose of employment as a security guard if the licensee has failed to undertake any firearm safety training required under the *Firearms Act 1996* or the regulations under that Act.

Schedule 2.2 [2] inserts proposed section 42A into the *Firearms Act 1996*. The proposed section provides that a police officer may, at any time of the day or night, enter the premises of a master licensee under the Principal Act who is licensed under that Act to possess firearms for the purposes of conducting a security business and inspect that master licensee's firearms and the security and safe storage of those firearms. A police officer conducting an inspection under the proposed section is authorised to enter any part of the premises where firearms are being stored (including a part of a building used for residential purposes) and any part of the premises required to give access to those areas. It is an offence with a maximum penalty of 50 penalty units to obstruct, hinder, prevent or interfere with a police officer in the exercise of a power under the proposed section.

Schedule 2.2 [3] makes a consequential amendment to section 80 of the *Firearms Act 1996* which deals with the disposal of surrendered or seized firearms.

Schedule 2.3 [1] omits and replaces section 39 (c) of the *Road Transport (Driver Licensing) Act 1998* to clarify that Part 5 of that Act (Protection of stored photographs) applies to all photographs in the possession of the Roads and Traffic Authority that were taken or provided for the purpose of applications for the issue or renewal by the Commissioner of a licence under the *Firearms Act 1996* or the Principal Act.

Schedule 2.3 [2] inserts proposed section 41 (3) into the *Road Transport (Driver Licensing) Act 1998* to provide that photographs to which Part 5 of that Act applies, and any photographic image or other matter contained in any database of such photographs, must be provided to the Commissioner on request if the request relates to the administration of the Principal Act.

First print



New South Wales

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New South Wales

Security Industry Amendment Bill 2002

No. , 2002

A Bill for

An Act to amend the *Security Industry Act 1997* to make further provision for the licensing and regulation of persons in the security industry; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Security Industry Amendment Act 2002</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Security Industry Act 1997 No 157	7
The <i>Security Industry Act 1997</i> is amended as set out in Schedule 1.	8
4 Amendment of other Acts	9
The Acts specified in Schedule 2 are amended as set out in that Schedule.	10 11

Schedule 1 Amendment of Security Industry Act 1997 1
(Section 3) 2

[1] Section 3 Definitions 3

Insert in alphabetical order in section 3 (1): 4

armed security guard means a person who: 5

- (a) is employed to carry on a security activity referred to in 6
section 4 (b), and 7
- (b) is the holder of a class 1A licence, and 8
- (c) in carrying out the activities authorised by that licence, 9
is authorised by a licence under the *Firearms Act 1996* 10
to use and possess firearms. 11

licensee means the holder of a licence. 12

master licensee means the holder of a master licence. 13

permanent Australian resident means a person resident in 14
Australia whose continued presence in Australia is not subject 15
to any limitation as to time imposed by or in accordance with 16
law. 17

**[2] Section 15 Restrictions on granting licence—general suitability 18
criteria** 19

Insert at the end of section 15 (1) (d): 20

, or 21

- (e) is not an Australian citizen or a permanent Australian 22
resident. 23

[3] Section 15 (6) and (7) 24

Insert after section 15 (5): 25

- (6) For the purpose of determining whether an applicant is a fit 26
and proper person to hold the class of licence sought by the 27
applicant, the Commissioner may have regard to any criminal 28
intelligence report or other criminal information held in 29
relation to the applicant that: 30
 - (a) is relevant to the activities carried out under the class of 31
licence sought by the applicant, or 32

- (b) causes the Commissioner to conclude that improper conduct is likely to occur if the applicant were granted the licence, or 1
 - (c) causes the Commissioner not to have confidence that improper conduct will not occur if the applicant were granted the licence. 2
 - (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). 3
- [4] Section 18 Investigation of licence application** 4
- Omit section 18 (2)–(5). Insert instead: 5
- (2) The Commissioner: 6
 - (a) may require an applicant for a licence to consent to having his or her fingerprints taken by an authorised officer in order to confirm the applicant’s identity, and 7
 - (b) must refuse to grant the licence unless the applicant has been fingerprinted in accordance with any such requirement. 8
 - (3) The Commissioner: 9
 - (a) may require an applicant for a licence to provide the Commissioner with a photograph of the applicant or consent to having his or her photograph taken by an authorised officer in order to confirm the applicant’s identity, and 10
 - (b) must refuse to grant the licence unless the applicant has provided a photograph or been photographed in accordance with any such requirement. 11
 - (4) Any fingerprint or photograph obtained in accordance with this section may be used by the Commissioner for any purpose as the Commissioner sees fit. 12
 - (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: 13

(a) the person’s fingerprints obtained in accordance with a requirement under subsection (2) and any copies of them,	1 2 3
(b) the person’s photograph obtained in accordance with a requirement under subsection (3) and any copies of it.	4 5
(6) The Commissioner may grant or refuse the application as the Commissioner sees fit.	6 7
(7) In this section, <i>authorised officer</i> means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this section:	8 9 10
(a) a police officer or any other member of NSW Police,	11
(b) a member of staff of a Department within the meaning of the <i>Public Sector Employment and Management Act 2002</i> ,	12 13 14
(c) any other person prescribed by the regulations.	15
[5] Section 21 Grant of licence	16
Insert “as are set out in this Act or” after “other conditions” in section 21 (3).	17 18
[6] Section 23 Master licence—condition relating to certain employees	19 20
Omit “Without limiting the conditions to which a master licence may be subject, any such licence is subject to the condition” from section 23 (1).	21 22
Insert instead “It is a condition of every master licence”.	23
[7] Section 23A	24
Insert after section 23:	25
23A Special conditions—uniforms must be worn when carrying firearms	26 27
(1) It is a condition of every class 1A 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.	28 29 30 31
(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	32 33 34

- 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. 1
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- (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. 5
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- (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. 12
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- (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: 16
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- (a) suspend, in accordance with section 25, the armed security guard's class 1A licence, and 19
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- (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: 21
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- (i) stating that the armed security guard's class 1A licence has been suspended and the reasons for suspending it, and 26
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- (ii) requesting that the master licensee provide the Commissioner with reasons why the master licence should not be revoked. 29
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- (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. 32
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- (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. 36
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(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.	1 2 3 4
[8]	Section 26 Revocation of licence	5
	Omit section 26 (1) (a).	6
[9]	Section 26 (1A)	7
	Insert after section 26 (1):	8
(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.	9 10 11 12
[10]	Section 39A	13
	Insert after section 39:	14
39A	Master licensee to submit any firearms for ballistics tests	15
(1)	If a master licensee is authorised under the <i>Firearms Act 1996</i> 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.	16 17 18 19 20
	Maximum penalty: 50 penalty units or 2 years imprisonment, or both.	21 22
(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.	23 24 25 26 27 28 29 30 31 32
	Maximum penalty: 50 penalty units or 2 years imprisonment, or both.	33 34

- (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. 1
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[11] Section 42A 5

Insert after section 42: 6

42A Further powers of inspection and seizure 7

- (1) In the exercise of any power to enter the premises of a master licensee under this or any other Act, a police officer may, if the police officer considers it necessary to do so for the purposes of obtaining evidence of the commission of an offence, seize any registers, books, records or other documents relating to the business being carried on under the authority of the master licence. 8
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- (2) A police officer may, if the police officer considers it necessary to do so for the purposes of obtaining evidence of the commission of an offence, require any person to answer any question relating to any registers, books, records or other documents or any other relevant matter required to be kept by a licensee by or under this Act. 15
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- (3) If a police officer is authorised under this or any other Act to make copies of entries in the registers, books, records or other documents of any person, the police officer may take those registers, books, records or other documents from the premises for the purpose of copying them and must return them after that copying is completed. 21
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- (4) A person must not: 27
- (a) obstruct, hinder, prevent or interfere with a police officer in the exercise of a power under this section, or 28
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 - (b) fail without reasonable excuse to answer any question relating to any register, book, record or other document or any other relevant matter when required to do so by a police officer in accordance with subsection (2). 30
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Maximum penalty (subsection (4)): 50 penalty units. 34

[12] Section 45 Proceedings for offences	1
Insert at the end of the section:	2
(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.	3 4 5
[13] Section 45A	6
Insert after section 45:	7
45A Penalty notices	8
(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.	9 10 11 12
(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.	13 14 15 16 17
(3) A penalty notice may be served personally or by post.	18
(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.	19 20 21
(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.	22 23 24 25
(6) The regulations may:	26
(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and	27 28 29
(b) prescribe the amount of penalty payable for the offence if dealt with under this section, and	30 31
(c) prescribe different amounts of penalties for different offences or classes of offences.	32 33

(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
(9)	In this section, <i>authorised officer</i> means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this section:	7 8 9
(a)	a police officer or any other member of the NSW Police,	10 11
(b)	a member of staff of a Department within the meaning of the <i>Public Sector Employment and Management Act 2002</i> ,	12 13 14
(c)	any other person prescribed by the regulations.	15
[14]	Schedule 2 Savings and transitional provisions	16
	Omit “of this Act.” from clause 1 (1).	17
	Insert instead:	18
	of the following:	19
	this Act	20
	<i>Security Industry Amendment Act 2002</i>	21
[15]	Schedule 2, clause 1 (2)	22
	Omit “this Act”. Insert instead “the Act concerned”.	23
[16]	Schedule 2, Part 3	24
	Insert after clause 7:	25
	Part 3 Provisions consequent on enactment of Security Industry Amendment Act 2002	26 27
	8 Requirement as to Australian citizenship or residence not to apply to current licences	28 29
(1)	Sections 15 (1) (e) and 26 (1A), as inserted by the <i>Security Industry Amendment Act 2002</i> , do not operate to require the	30 31

Commissioner to revoke a licence that is in force on the commencement of those provisions.	1 2
(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 4 5
(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.	6 7 8
9 Fingerprints held by Commissioner	9
Section 18 (4)–(6), as inserted by the <i>Security Industry Amendment Act 2002</i> , 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 11 12 13 14
10 Proceedings for offences	15
Section 45 (2), as inserted by the <i>Security Industry Amendment Act 2002</i> , does not apply to an offence committed before the commencement of that subsection.	16 17 18

Schedule 2 Amendment of other Acts	1
(Section 4)	2
2.1 Fines Act 1996 No 99	3
Schedule 1 Statutory provisions under which penalty notices issued	4
Insert in appropriate order:	5
<i>Security Industry Act 1997</i> , section 45A	6
2.2 Firearms Act 1996 No 46	7
[1] Section 24 Revocation of licence	8
Insert after section 24 (1):	9
(1A) The Commissioner must revoke a licence that is held for the purpose of employment as an armed security guard (within the meaning of the <i>Security Industry Act 1997</i>) if the licensee has failed to undertake any firearm safety training required under this Act or the regulations.	10
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[2] Section 42A	16
Insert after section 42:	17
42A Inspections of storage of firearms held by security guard employers	18
(1) A police officer may, at any time of the day or night, enter the premises of a master licensee under the <i>Security Industry Act 1997</i> who is licensed under this Act to possess firearms for the conduct of a security business and inspect that master licensee's firearms and the security and safe storage of those firearms.	19
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(2) A police officer conducting an inspection under this section is authorised to enter any part of the premises where firearms are being stored (including a part of a building used for residential purposes) and any part of the premises required to give access to those areas.	26
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(3) A person must not obstruct, hinder, prevent or interfere with a police officer in the exercise of a power under this section.	31
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Maximum penalty (subsection (3)): 50 penalty units.	33

[3] Section 80 Disposal of surrendered or seized firearms	1
Insert “or section 23A (4) of the <i>Security Industry Act 1997</i> ” after “this Act” in section 80 (1).	2 3
2.3 Road Transport (Driver Licensing) Act 1998 No 99	4
[1] Section 39 Photographs to which this Part applies	5
Omit section 39 (c). Insert instead:	6
(c) photographs in the possession of the Authority that were taken or provided for the purpose of applications for the issue or renewal by the Commissioner of Police of a licence under the <i>Firearms Act 1996</i> or the <i>Security Industry Act 1997</i> .	7 8 9 10 11
[2] Section 41 Release of photographs prohibited	12
Insert after section 41 (2):	13
(3) Despite this section, photographs to which this Part applies, and any photographic image or other matter contained in any database of such photographs, must be provided to the Commissioner of Police on request if the request relates to the administration of the <i>Security Industry Act 1997</i> .	14 15 16 17 18