

First print



New South Wales

Security Industry Bill 1997

Explanatory note

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

Overview of Bill

The object of this Bill is to replace the *Security (Protection) Industry Act 1985* with a legislative scheme that reflects the expansion and changing nature of the security industry.

The main feature of the proposed Act is a modified licensing scheme that is designed to provide greater control over persons who work in the security industry or who conduct a business in the security industry. Under the proposed Act, a person will require a licence if the person intends to work in the security industry (eg as a security guard, bouncer or security consultant) or to conduct a business in the security industry. A licence applicant will need to satisfy stringent probity assessments and suitability criteria in order to obtain a licence.

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 defines certain words and expressions used in the proposed Act. The term *Commissioner* refers to the Commissioner of Police who will be the licensing authority under the proposed Act.

Clause 4 describes the various activities that are *security activities* for the purposes of the proposed Act (ie those activities for which a person will need to be licensed). These activities include acting as a bodyguard or bouncer, patrolling or guarding property (eg security guards), acting as a security consultant, installing security equipment, providing security industry training or instruction, and conducting a business that involves providing persons to carry on security activities. A person will only need to be licensed if the person is employed to carry on a security activity or if the person is conducting a business.

Clause 5 describes those persons who are *close associates* of a licence applicant for the purposes of the proposed Act. They include persons having relevant financial interests in the applicant's business, and persons such as directors or chief executives. Close associates of a licence applicant will be subject to the same stringent probity assessment as will apply to the applicant.

Clause 6 provides that the proposed Act will bind the Crown, but will not apply to certain classes of persons (eg police officers and military personnel).

Part 2 Licences

Division 1 Requirement for licence

Clause 7 requires a person who carries on a security activity to be licensed under the proposed Act.

Clause 8 provides that a licence does not authorise the licensee to exercise functions apart from those authorised by the licence.

Division 2 Licence classification

Clause 9 specifies 3 classes of licence, namely master licences, class 1 licences and class 2 licences.

Clause 10 provides that a master licence authorises the licensee to conduct a business of providing persons to work in the security industry (so long as those persons are licensed under the proposed Act).

Clause 11 provides that class 1 licences will be classified into subclasses 1A, 1B and 1C. A class 1 licence will apply to security industry personnel such as security guards and bouncers.

Clause 12 provides that class 2 licences will be classified into subclasses 2A, 2B, 2C and 2D. A class 2 licence will apply to such persons as security consultants, persons who sell, install or repair security equipment, and security industry trainers and instructors.

Clause 13 provides that only an individual can hold a class 1 or class 2 licence.

Division 3 Licensing procedures and criteria

Clause 14 provides for the making of applications for licences.

Clause 15 specifies mandatory and discretionary grounds for refusing a licence application (eg the applicant must be a fit and proper person, must be over 18 and must be competent to carry on the security activity to which the proposed licence relates. In the case of an application for a master licence, these grounds will extend to close associates of the applicant).

Clause 16 provides mandatory grounds for refusing a licence application because of the applicant's criminal history or corrupt behaviour (or because of bankruptcy in the case of a master licence).

Clause 17 requires class 1 or class 2 licence applicants to complete relevant training courses before being granted a licence.

Clause 18 requires the Commissioner to investigate and inquire into licence applications, and enables the Commissioner to obtain an applicant's fingerprints if the applicant's identity is in doubt.

Clause 19 provides that applications by former police officers are to be referred to the Internal Affairs Branch of the NSW Police Service.

Clause 20 enables the Commissioner to obtain further information in connection with licence applications.

Clause 21 provides for the grant of licences by the Commissioner. A licence may be granted subject to conditions.

Clause 22 provides that licences must contain a recent photograph of the licensee and specify certain other detail.

Clause 23 prevents the holder of a master licence from employing any person to work in the cash-in-transit sector, or in an area that involves the person having access to operational information, if the person would be refused a licence because of his or her criminal history.

Clause 24 provides that the term of a licence is 5 years and that the licence cannot be renewed.

Clause 25 enables the Commissioner to suspend a licence.

Clause 26 enables the Commissioner to revoke a licence on certain grounds (eg for any reason for which the licensee would be refused a licence).

Clause 27 enables the holder of a class 1 or class 2 licence to apply for a variation of the kinds of security activity authorised by the licence.

Clause 28 provides that an applicant for a new licence will have to demonstrate an active involvement in the security industry during the term of the previous licence.

Division 4 Review of licensing decisions

Clause 29 confers jurisdiction on the Administrative Decisions Tribunal to review licensing decisions of the Commissioner under the proposed Act.

Part 3 Miscellaneous offences relating to licences

Clause 30 creates an offence of contravening the conditions of a licence.

Clause 31 requires a licence to be surrendered if it is suspended or revoked.

Clause 32 contains offences in relation to advertising.

Clause 33 prohibits the making of misrepresentations in connection with agreements and the making of false statements in connection with licence applications.

Clause 34 prohibits a licensee from suggesting that the licence authorises the licensee to do things other than those authorised by the licence.

Clause 35 requires licensees to produce their licence when requested to do so by a police officer or by persons having dealings with the licensee concerned.

Clause 36 requires the holder of a class 1 or class 2 licence to wear their photo-licence when on duty.

Clause 37 prohibits a licensee from selling the licence or permitting another person to use it.

Clause 38 prohibits a licensee from delegating the performance of any security activity to a person who does not hold a licence.

Clause 39 prohibits the holder of a master licence from employing unlicensed persons.

Part 4 Miscellaneous provisions

Clause 40 enables a court to order a licensee to surrender the licence to the court if the licensee is convicted of an offence by the court.

Clause 41 prevents an unlicensed person from charging another person a fee for any security work.

Clause 42 provides for the issue of search warrants in connection with offences under the proposed Act.

Clause 43 enables the Commissioner to delegate functions under the proposed Act to police officers and other authorised persons.

Clause 44 makes directors of corporations liable for offences under the proposed Act that are committed by corporations.

Clause 45 provides that proceedings for offences under the proposed Act are to be dealt with summarily before a Local Court.

Clause 46 provides for the service of notices under the proposed Act.

Clause 47 provides for certificate evidence in relation to certain matters under the proposed Act.

Clause 48 empowers the making of regulations for the purposes of the proposed Act.

Clause 49 gives effect to the amendment to the *Administrative Decisions Tribunal Act 1997* set out in Schedule 1 to the proposed Act.

Clause 50 repeals the *Security (Protection) Industry Act 1985* and the regulations under that Act.

Clause 51 gives effect to the Schedule of savings and transitional provisions.

Clause 52 provides for a review of the proposed Act after 5 years.

Schedules

Schedule 1 amends the *Administrative Decisions Tribunal Act 1997* to provide that the Administrative Decisions Tribunal is to be constituted by a judicial member for the purposes of determining applications made under the proposed Act to the Tribunal.

Schedule 2 contains savings and transitional provisions, including a power to make regulations of a savings or transitional nature, consequent on the enactment of the proposed Act. In particular, the Schedule provides that existing licences under the repealed Act will be continued under the proposed Act until they expire (the term of existing licences is 1 year).



New South Wales

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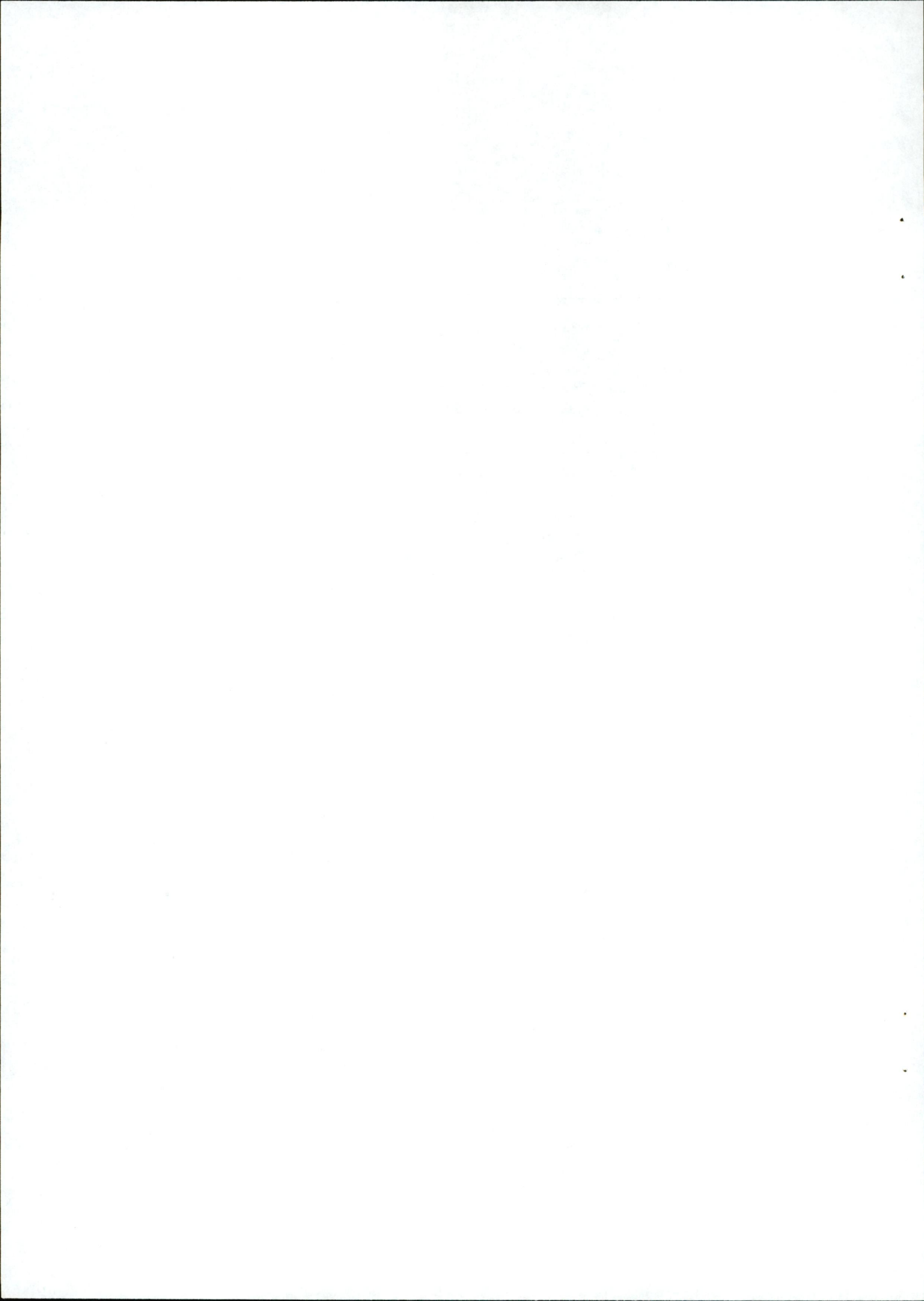
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New South Wales

Security Industry Bill 1997

No. , 1997

A Bill for

An Act to provide for the licensing and regulation of persons in the security industry; to repeal the *Security (Protection) Industry Act 1985*; and for related purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Security Industry Act 1997*.

2 Commencement

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

3 Definitions

(1) In this Act:

approved means approved by the Commissioner from time to time. 10

close associate is defined in section 5.

Commissioner means the Commissioner of Police.

employ includes engage.

exercise a function includes perform a duty. 15

function includes a power, authority or duty.

licence means a licence in force under this Act.

property includes money and other valuables.

security activity is defined in section 4.

security equipment means any of the following: 20

(a) any type of safe or vault,

(b) any mechanical, electronic, acoustic or other equipment designed or adapted to provide or enhance security or for the protection or watching of any property,

(c) any type of device or equipment prescribed by the regulations for the purposes of this definition, 25

but does not include any type of device or equipment declared not to be security equipment by the regulations.

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

4 Carrying on “security activities”

For the purposes of this Act, a person carries on a *security activity* if the person carries on any one or more of the following activities in the course of conducting a business or in the course of the person’s employment:

- (a) acting as a bodyguard, crowd controller or bouncer, 5
- (b) patrolling, protecting, watching or guarding any property (including cash in transit),
- (c) installing, maintaining, repairing or servicing security equipment, 10
- (d) providing advice in relation to security equipment or security methods or principles,
- (e) an activity, or class of activities, that is connected with security or the protection of persons or property and that is prescribed by the regulations for the purposes of this section, 15
- (f) providing training or instruction in relation to any activity referred to in paragraphs (a)–(e),
- (g) providing persons to carry on any activity referred to in paragraphs (a)–(f). 20

5 Meaning of “close associate”

- (1) For the purposes of this Act, a person is a *close associate* of an applicant for, or the holder of, a licence if the person:
 - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the licence applicant or holder, and by virtue of that interest or power is or will be able (in the opinion of the Commissioner) to exercise a significant influence over or with respect to the conduct of that business, or 25
 - (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the licence applicant or holder. 30

(2) In this section:

relevant financial interest in relation to a business means:

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise. 5

relevant position means the position of director, manager, and other executive positions and secretary, however those positions are designated, and such other positions as may be prescribed by the regulations for the purposes of this definition. 10

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or 15
- (b) to elect or appoint any person to any relevant position.

6 Application of Act

(1) Except to the extent provided by subsection (2), this Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities. 20

(2) This Act does not apply to or in respect of any person who is employed in the capacity of:

- (a) a police officer, or
- (b) a police officer of the Commonwealth, another State or a Territory, or 25
- (c) a member of the armed forces of the Commonwealth, or
- (d) a special constable appointed under Part 4 of the *Police Offences Act 1901* and employed by the Commissioner,

while, and to the extent that, the person is performing official duties in that capacity. 30

- (3) The regulations may exempt any person or class of persons from the operation of this Act in such circumstances, and subject to such conditions, as may be specified in the regulations. Any such regulation may create offences in relation to a failure to comply with a condition prescribed in relation to an exemption.

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Part 2 Licences

Division 1 Requirement for licence

7 Offence of carrying on unauthorised security activity

A person must not carry on a security activity unless the person is the holder of a licence authorising the person to carry on the activity. 5

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in the case of an individual—50 penalty units or imprisonment for 6 months, or both. 10

8 Licences do not confer additional powers

A licence does not confer on the licensee any function apart from a function authorised by the licence.

Division 2 Licence classification

9 Classes of licences 15

A licence may be of one of the following classes:

- (a) a master licence,
- (b) a class 1 licence,
- (c) a class 2 licence.

10 Master licences 20

- (1) A master licence authorises the licensee to conduct a business of providing persons to carry on security activities.
- (2) In the conduct of that business, the authority conferred by a master licence only allows the providing of persons who are the holders of a licence. 25

- (3) A master licence does not authorise the licensee to enter into any arrangement, by contract, franchise or otherwise, with another person for the purpose of providing persons to carry on security activities unless the other person is the holder of a master licence.

11 Class 1 licences

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- (1) Class 1 licences are to be classified into subclasses. Those subclasses, and the authority they confer, are as follows:
- (a) class 1A—authorises the licensee to patrol, guard, watch or protect property (including the guarding of cash in transit) or to carry on such other activities as may be prescribed by the regulations, 10
 - (b) class 1B—authorises the licensee to act as a bodyguard,
 - (c) class 1C—authorises the licensee to act as a crowd controller or bouncer.
- (2) The relevant subclass is to be endorsed on each class 1 licence. More than one such subclass may be endorsed on a class 1 licence. 15

12 Class 2 licences

- (1) Class 2 licences are to be classified into subclasses. Those subclasses, and the authority they confer, are as follows: 20
- (a) class 2A—authorises the licensee to act as a security consultant,
 - (b) class 2B—authorises the licensee to sell security equipment, to carry out surveys and inspections of security equipment and to give advice about security equipment, 25
 - (c) class 2C—authorises the licensee to install, repair, service or maintain security equipment,
 - (d) class 2D—authorises the licensee to provide training or instruction in relation to any security activity.
- (2) The relevant subclass is to be endorsed on each class 2 licence. More than one such subclass may be endorsed on a class 2 licence. 30

- (3) The authority conferred by a class 2D licence does not extend to training or instruction in the use of firearms.

Note. Trainers and instructors of security guards and security personnel who use firearms in their employment are approved by the Commissioner under the *Firearms (General) Regulation 1997* and are required to be licensed under the *Firearms Act 1996*.

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- (4) A class 2D licence may, in accordance with the regulations, be combined with a class 1 licence into a single composite licence that authorises the licensee to carry on more than one kind of security activity.

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13 Persons who may hold class 1 and class 2 licences

A person is eligible to hold a class 1 or class 2 licence only if the person is an individual who:

- (a) is employed by the holder of a master licence, or
(b) is self-employed and the holder of a master licence.

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Division 3 Licensing procedures and criteria

14 Application for licence

- (1) A person may apply to the Commissioner for the grant of a licence.

- (2) An application must be in the approved form and be accompanied:

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- (a) by the fee prescribed by the regulations, and
(b) by such information and particulars as may be prescribed by the regulations.

- (3) In the case of an application for a class 1 or class 2 licence, the applicant must:

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- (a) specify the name and business address of the applicant's employer (except in the case of an applicant who is the holder of a master licence and who is self-employed), and

- (b) provide 2 written references from such class or classes of persons as are prescribed by the regulations to the effect that the applicant is a fit and proper person to work in the security industry.

15 Restrictions on granting licence—general suitability criteria 5

- (1) The Commissioner must refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:
- (a) is not a fit and proper person to hold the class of licence sought by the applicant, or
 - (b) is not of or above the age of 18, or 10
 - (c) does not hold the qualifications and experience prescribed by the regulations in respect of the class of licence sought by the applicant, or
 - (d) is not competent to carry on the security activity to which the proposed licence relates. 15
- (2) The Commissioner must refuse to grant an application for a licence to carry on a security activity that involves the possession of a firearm if the applicant is not authorised by a licence or permit under the *Firearms Act 1996* to possess or use the firearm.
- (3) The Commissioner may refuse to grant an application for a licence if the Commissioner considers that the grant of the licence would be contrary to the public interest. 20
- (4) The regulations may provide additional mandatory or discretionary grounds for refusing the granting of an application for a licence. 25
- (5) A reference in this section to an applicant includes, in the case of an application for a master licence, a reference to each close associate of the applicant.

16 Restrictions on granting licence—criminal and other related history 30

- (1) The Commissioner must refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:
- (a) has, within the period of 10 years before the application for the licence was made, been convicted in New South

- Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or
- (b) has, within the period of 5 years before the application for the licence was made, been found guilty (but with no conviction being recorded) by a court in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or 5
- (c) has, within the period of 10 years before the application for the licence was made, been removed or dismissed from the Police Service of New South Wales or from the Police Force of any other jurisdiction (whether in Australia or overseas). 10
- (2) The Commissioner must refuse to grant an application for a licence if the Commissioner is of the opinion that the applicant is not suitable to hold a licence because the applicant has been involved in corrupt conduct. 15
- (3) The Commissioner must refuse to grant an application for a master licence if the Commissioner is of the opinion that the applicant (or, if the applicant is a corporation, any person who is a director or who is concerned in the management of the corporation) has, within the period of 5 years before the application was made, been declared bankrupt. 20
- (4) A reference in subsection (1) or (2) to an applicant includes, in the case of an application for a master licence, a reference to each close associate of the applicant. 25

17 Training requirements—class 1 or class 2 licence

- (1) The Commissioner must not grant an application for a class 1 or class 2 licence unless the applicant has completed, to the satisfaction of the Commissioner, an approved security industry training course relevant to the class of licence sought by the applicant. 30
- (2) A person is not eligible to undertake any such approved security industry training course if the person would be refused a licence because of section 16. 35

18 Investigation of licence application

- (1) On receiving an application for a licence, the Commissioner may carry out all such investigations and inquiries as the Commissioner considers necessary to enable the Commissioner to consider the application properly. 5
- (2) The Commissioner may:
- (a) require an applicant for a licence to consent to having his or her fingerprints taken by a police officer in order to confirm the applicant's identity, and
 - (b) refuse to grant the licence unless the applicant has been fingerprinted in accordance with any such requirement. 10
- (3) A requirement under subsection (2) may only be made if:
- (a) there is a reasonable doubt as to the applicant's identity, and
 - (b) proof of the applicant's identity cannot be confirmed by any other means that are available in the circumstances. 15
- (4) The Commissioner is to ensure that any fingerprints that are obtained in accordance with a requirement under subsection (2), and any copies of them, are destroyed as soon as they are no longer needed in connection with the application to which they relate. 20
- (5) As soon as practicable after any fingerprints (or any copies of them) are destroyed in accordance with subsection (4), the Commissioner is to notify the applicant in writing that those fingerprints (and those copies, if any) have been destroyed. 25

19 Applications by former police officers

Any application for a licence made by any person who was at any time a police officer or a member of the police force of any other jurisdiction (whether in Australia or overseas) must be referred to the Internal Affairs Branch of the Police Service of New South Wales. That branch may seek further advice from the Police Integrity Commission as to the suitability of the applicant to hold a licence. 30

20 Commissioner may require further information

- (1) The Commissioner may, by notice in writing, require a person who is an applicant for a licence or who, in the opinion of the Commissioner, has some association or connection with the applicant that is relevant to the application to do any one or more of the following things: 5
- (a) to provide, in accordance with directions in the notice, such information, verified by statutory declaration, as is relevant to the investigation of the application and is specified in the notice, 10
 - (b) to produce, in accordance with directions in the notice, such records relevant to the investigation of the application as are specified in the notice and to permit examination of the records, the taking of extracts from them and the making of copies of them, 15
 - (c) to authorise a person described in the notice to comply with a specified requirement of the kind referred to in paragraph (a) or (b),
 - (d) to furnish to the Commissioner such authorities and consents as the Commissioner directs for the purpose of enabling the Commissioner to obtain information (including financial and other confidential information) from other persons concerning the person and his or her associates or relations. 20
- (2) If a requirement made under this section is not complied with, the Commissioner may refuse to consider the application concerned. 25
- (3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.
- (4) The reasonable costs incurred by the Commissioner in investigating and inquiring into an application for a licence are payable to the Commissioner by the applicant, unless the Commissioner determines otherwise in a particular case. 30
- (5) The Commissioner may require part or full payment in advance of the amount the Commissioner estimates will be payable by the applicant and may refuse to deal with the application until the required payment is made. 35

- (6) Investigation and inquiry costs may include reasonable travelling expenses within or outside the State.
- (7) It is a condition of any licence granted to the applicant that any amount payable under this section is paid.

21 Grant of licence 5

- (1) The Commissioner may, after considering an application:
 - (a) grant a licence to the person making the application, or
 - (b) refuse to grant a licence.
- (2) A licence confers no right of property and is incapable of being transferred, assigned or mortgaged, charged or otherwise encumbered. 10
- (3) A licence may be granted by the Commissioner subject to such conditions as the Commissioner thinks fit to impose and that are specified in the licence. A licence is subject to such other conditions as may be prescribed by the regulations. 15

22 Form of licence

- (1) A licence is to be in any one or more approved forms.
- (2) A licence must:
 - (a) contain a recent photograph of the person to whom it is granted (such photograph being obtained in accordance with arrangements determined by the Commissioner), and 20
 - (b) bear the signature of the licensee, and
 - (c) specify the class (or subclass) of licence, and
 - (d) contain the number of the licence, and
 - (e) contain such other details as may be prescribed by the regulations. 25

23 Master licence—condition relating to certain employees

Without limiting the conditions to which a master licence may be subject, any such licence is subject to the condition that the licensee must not employ any person: 30

- (a) to work in the cash-in-transit sector of the security industry, or

- (b) to work in any area which involves access to any operational information relating to the licensee's security business,

if that person would be refused a licence because of section 16.

24 Term of licence 5

- (1) A licence remains in force for a period of 5 years (or such shorter period as may be prescribed by the regulations) from the day on which it was granted, unless sooner surrendered or revoked or it otherwise ceases to be in force.
- (2) A licence cannot be renewed, but an application for a new licence may be made in accordance with this Act. 10

25 Suspension of licence

- (1) The Commissioner may, if the Commissioner is satisfied there may be grounds for revoking a licence, suspend the licence by serving on the licensee, personally or by post, a notice: 15
 - (a) stating that the licence is suspended and the reasons for suspending it, and
 - (b) requesting that the licensee provide the Commissioner with reasons why the licence should not be revoked.
- (2) A suspended licence does not authorise the licensee to carry on any security activity during the period specified in the notice suspending it. 20

26 Revocation of licence

- (1) A licence may be revoked:
 - (a) for any reason for which the licensee would be required to be refused a licence of that class, or 25
 - (b) if the licensee:
 - (i) supplied information that was (to the licensee's knowledge) false or misleading in a material particular in, or in connection with, the application for the licence, or 30

-
- (ii) contravenes any provision of this Act or the regulations, whether or not the licensee has been convicted of an offence for the contravention, or
- (iii) contravenes any condition of the licence, or
- (c) if the Commissioner is of the opinion that the licensee is no longer a fit and proper person to hold a licence, or 5
- (d) for any other reason prescribed by the regulations.
- (2) The Commissioner may revoke a licence by serving on the licensee, personally or by post, a notice stating that the licence is revoked and the reasons for revoking it. 10
- (3) The revocation of a licence by such a notice takes effect when the notice is served or on a later date specified in the notice.
- Note.** Section 31 requires the licensee to immediately surrender the licence if the licence is revoked.
- (4) The Commissioner may, by serving a further notice on the holder of a licence, cancel a notice revoking a licence before the notice takes effect. 15
- 27 Variation of licence**
- (1) The holder of a class 1 or class 2 licence may apply to the Commissioner for a variation of the kind or kinds of security activity authorised by the licence. 20
- (2) An application for a licence variation is to be treated in the same way as an application for the grant of a licence.
- 28 Application for new licence**
- In making an application for a new licence, the applicant must demonstrate, to the satisfaction of the Commissioner, that the applicant has been actively involved in the security industry during the term of the previous licence. 25
- Division 4 Review of licensing decisions**
- 29 Right to seek review from Administrative Decisions Tribunal** 30
- (1) A person may apply to the Administrative Decisions Tribunal for a review of the following decisions:
- (a) the refusal or failure by the Commissioner to grant a licence to the person,

- (b) a condition imposed by the Commissioner on a licence granted to the person,
 - (c) the revocation or suspension of a licence granted to the person.
- (2) For the purposes of this section, an application for the grant of a licence is taken to have been refused if the licence is not granted within 60 days after the application is made in accordance with this Act. 5

Note. Under the *Administrative Decisions Tribunal Act 1997*, if the ADT has reviewed a "reviewable decision" (such as a decision referred to in the above section), a party to the proceedings may appeal to an Appeal Panel of the ADT. An appeal on a question of law may then lie to the Supreme Court. 10

Part 3 Miscellaneous offences relating to licences

30 Contravention of licence conditions

A licensee must not contravene any condition of the licence.

Maximum penalty: 40 penalty units.

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31 Surrender of suspended or revoked licence

If a licence is suspended or revoked, the person to whom it was granted must immediately surrender the licence in accordance with the regulations.

Maximum penalty: 20 penalty units.

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32 Advertising

- (1) A person must not advertise that the person carries on or is willing to carry on any security activity referred to in the advertisement unless the person is the holder of a licence that authorises the person to carry on that security activity.

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Maximum penalty:

(a) in the case of a corporation—40 penalty units, or

(b) in the case of an individual—20 penalty units.

- (2) A licensee must ensure that any advertisement in relation to any security activity carried on by the licensee contains the number of the licence.

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Maximum penalty:

(a) in the case of a corporation—40 penalty units, or

(b) in the case of an individual—20 penalty units.

- (3) A reference in this section to an advertisement includes a reference to any form of notice or statement in the nature of an advertisement.

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33 Misrepresentation and related offences

- (1) A licensee must not:
- (a) by any false, misleading or deceptive statement, representation or promise, or
 - (b) by any wilful concealment of a material fact, 5
- induce, or attempt to induce, any person to enter into an agreement or contract in connection with the carrying on of any security activity.
- Maximum penalty: 20 penalty units.
- (2) A person must not: 10
- (a) in relation to any application for the purposes of this Act or the regulations, or
 - (b) in relation to any information or particulars that the person is required to furnish under this Act or the regulations, 15
- make any representation or statement that the person knows is false or misleading in a material particular.
- Maximum penalty: 20 penalty units.

34 Abuse of authority conferred by licence

- A licensee must not in any way:
- (a) suggest or imply that the licensee may, because of the licence, exercise any function apart from a function authorised by the licence, or 20
 - (b) use or attempt to use the licence to exercise any function apart from a function authorised by the licence.
- Maximum penalty: 40 penalty units. 25

35 Licence to be produced on demand

- A licensee must produce the licence for inspection on demand by:
- (a) a police officer or any other member of the Police Service, or 30
 - (b) any person with whom the licensee has dealings when carrying on any security activity.
- Maximum penalty: 20 penalty units.

36 Licence to be worn by licensee

- (1) The holder of a class 1 or class 2 licence must, at all times while carrying on a security activity, wear the form of the licence that contains a photograph of the licensee.

Maximum penalty: 40 penalty units.

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- (2) This section does not apply to a licensee who is exempted by the Commissioner in writing from the requirement to wear the licence because of the special nature of the licensee's duties.

37 Licensee not to sell or dispose of licence

A licensee must not:

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- (a) sell, dispose of, deliver, let out, hire or rent the licence to any other person, or
- (b) permit any other person to use the licence.

Maximum penalty: 20 penalty units.

38 Prohibition of delegation of functions

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A licensee must not delegate the carrying on of a security activity to a person who is not the holder of a licence.

Maximum penalty: 40 penalty units.

39 Master licensee not to employ unlicensed persons

Without limiting the operation of section 30, the holder of a master licence must not knowingly employ any person to carry on any security activity if that person is not the holder of a licence.

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Maximum penalty: 40 penalty units.

Part 4 Miscellaneous provisions

40 Power of court to order licence to be surrendered

- (1) If:
- (a) in any proceedings before a court in which a licensee is convicted of an indictable offence, or 5
 - (b) in any proceedings before a court in which a licensee gives evidence or is convicted of an offence against this Act or the regulations,
- the court is of opinion on the evidence before it, whether that evidence is given by the licensee or any other person, that the licensee's licence should be suspended or revoked, the court may order that the licence be suspended for a period not exceeding 28 days and that the licence be delivered up to the court. 10
- (2) If a licence is delivered up to a court in accordance with an order under subsection (1), the clerk or other relevant officer of the court must immediately send the licence and a copy of the order to the Commissioner. 15
- (3) The Commissioner, on receiving the licence under subsection (2), may:
- (a) cause the licence to be returned to the licensee, or 20
 - (b) take action to suspend or revoke the licence.

41 Payment of fees charged by unlicensed persons

- (1) A person is not entitled to charge a fee in relation to a security activity unless the person is, or was, authorised by a licence to carry on the activity. 25
- (2) If any such fee is charged by a person in contravention of this section, the fee cannot be sued for, recovered or retained by the person.

42 Search warrant

- (1) A police officer may apply to an authorised justice for the issue of a search warrant if the police officer believes on reasonable grounds that any provision of this Act or the regulations is being or has been contravened on any premises. 30

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- (2) An authorised justice to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any police officer to enter and search the premises.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section. 5
- (4) A police officer who enters any premises pursuant to a search warrant issued under this section may search the premises and seize anything that may reasonably be suspected to relate to the carrying on of a security activity. 10
- (5) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

43 Delegation by Commissioner

- (1) The Commissioner may delegate to an authorised person any of the Commissioner's functions under this Act or the regulations, other than this power of delegation. 15
- (2) A delegate may sub-delegate to an authorised person any of the functions delegated by the Commissioner if the delegate is authorised in writing to do so by the Commissioner.
- (3) In this section, *authorised person* means: 20
- (a) a police officer or any other member of the Police Service,
or
 - (b) a public servant, or
 - (c) any other person prescribed by the regulations.

44 Offences by corporations

- (1) If a corporation contravenes a provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 30
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

45 Proceedings for offences

Proceedings for an offence under this Act or the regulations may be disposed of summarily before a Local Court constituted by a Magistrate sitting alone. 5

46 Service of notices

Any notice or other instrument required or authorised by this Act or the regulations to be served on a person by post is sufficiently addressed if it is addressed to the last address of the person known to the Commissioner. 10

47 Evidence

A certificate signed by the Commissioner (or by a person holding an office prescribed by the regulations) certifying any of the following: 15

- (a) that a specified person was or was not, on a day or during a specified period, the holder of a licence,
- (b) that any licence was or was not, on a day or during a specified period, subject to specified conditions, 20

is admissible in any proceedings under this Act and is prima facie evidence of the matters so specified.

48 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 25

(2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to any of the following:

- (a) the keeping by the Commissioner of a register of licences and the particulars to be contained in the register, 30

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- (b) the approval of training courses for persons in the security industry, and the accreditation of trainers and instructors to conduct those courses,
- (c) specialised training of licensees,
- (d) security equipment, 5
- (e) methods and practices relating to the security industry, including:
- (i) the carrying or display, by licensees, of means of identification and the production or surrender of that identification, and 10
- (ii) the wearing by licensees of uniforms and the character or design of any uniforms so worn, and
- (iii) the markings that may be made on, and the design of any features of, a vehicle used by any person in or in connection with the carrying on of any security activity, and 15
- (iv) the preparation, keeping and maintenance, by licensees, of records and accounts, and the audit of any accounts, in respect of the carrying on by the licensee of any business requiring a licence and the production and inspection of any such records, 20
- (f) the procedure relating to applications for licences,
- (g) any matter relating to licences, including the particulars to be endorsed on licences and the notification by the licensee of any change in those particulars, 25
- (h) requiring holders of master licences to obtain specified insurance in connection with their security activities,
- (i) fees payable under this Act or the regulations.
- (3) A regulation may create an offence punishable by a penalty not exceeding: 30
- (a) 5 penalty units in the case of an individual, or
- (b) 20 penalty units in the case of a corporation.

Clause 49 Security Industry Bill 1997

Part 4 Miscellaneous provisions

**49 Amendment of Administrative Decisions Tribunal Act 1997
No 76**

The *Administrative Decisions Tribunal Act 1997* is amended as set out in Schedule 1.

**50 Repeal of Security (Protection) Industry Act 1985 and Security
(Protection) Industry Regulation 1995** 5

The *Security (Protection) Industry Act 1985* and the *Security (Protection) Industry Regulation 1995* are repealed.

51 Savings and transitional provisions

Schedule 2 has effect. 10

52 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. 15
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**Schedule 1 Amendment of Administrative
Decisions Tribunal Act 1997**

(Section 49)

Schedule 2 Composition and functions of Divisions

Insert after clause 7 of Part 4:

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8 Security Industry Act 1997 (Reviewable decisions)

Applications made under section 29 of the *Security Industry Act 1997* are to be determined by one Division member of the General Division of the Tribunal who is a judicial member.

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Schedule 2 Savings and transitional provisions

(Section 51)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 5
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 15

Part 2 Provisions consequent on enactment of this Act

2 Definitions 20

In this Part:

existing licence means a licence:

- (a) that was issued under the former Act, and
- (b) that was in force immediately before the repeal of the former Act by this Act. 25

former Act means the *Security (Protection) Industry Act 1985*.

3 Saving of existing licences

- (1) Subject to the regulations, an existing licence:
- (a) is taken to be a licence of the corresponding kind (as determined by the Commissioner) granted under this Act, and
 - (b) continues, unless it is sooner surrendered by the holder or suspended or revoked under this Act, in force for the unexpired portion of its term, and
 - (c) cannot be renewed.

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Note. All existing licences will terminate during the year following the repeal of the former Act because they are annual licences.

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- (2) The conditions to which an existing licence is subject are, subject to the regulations, taken to be conditions imposed by the Commissioner under this Act, and any such condition may be varied or revoked in accordance with this Act.

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4 Pending licence applications

An application for a licence made under the former Act that was not finally determined before the repeal of the former Act by this Act is void and does not have any operation with respect to this Act.

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5 Pending reviews and appeals

Any proceedings before a Local Court that were instituted before the repeal of the former Act and not determined before that repeal, being proceedings arising out of a licensing decision under the former Act, are to be determined as if this Act had not been enacted.

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6 Transitional review and appeal process

- (1) If the former Act is repealed before the commencement of the *Administrative Decisions Tribunal Act 1997*, the provisions of the former Act relating to the review of licence applications by a Local Court and to appeals to a Local Court against the

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Security Industry Bill 1997

Schedule 2 Savings and transitional provisions

cancellation and suspension of licences, continue, subject to the regulations, to apply in relation to decisions under this Act until such time as the *Administrative Decisions Tribunal Act 1997* commences.

- (2) If proceedings are commenced in a Local Court in accordance with subclause (1) but are not determined when the *Administrative Decisions Tribunal Act 1997* commences, the provisions referred to in subclause (1) continue to apply to those proceedings until such time as they are determined by the Local Court. 5
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7 References to Security (Protection) Industry Act 1985

Except as provided by the regulations, a reference in any instrument (other than this Act or the regulations) to any provision of the *Security (Protection) Industry Act 1985*, or the *Security (Protection) Industry Regulation 1995*, is to be read as a reference to the corresponding provision of this Act, or the regulations made under this Act, respectively. 15

SECURITY INDUSTRY BILL

Schedule of the amendments referred to in the Legislative Council's Message of 2 December 1997.

No. 1 Page 10, clause 16. Insert after line 14:

- (2) However, if the applicant concerned has been so removed from the Police Service of New South Wales by the Commissioner under section 181D of the *Police Service Act 1990* on grounds other than the applicant's integrity as a police officer, the removal of the applicant in those circumstances is a discretionary ground for refusing the granting of the application for a licence.

No. 2 Page 10, clause 16, line 25. Omit "or (2)". Insert instead ", (2) or (3)".
