

# SECURITY INDUSTRY AMENDMENT (PRIVATE INVESTIGATORS) BILL 2016

*First Reading*

**Bill introduced on motion by Mr Troy Grant, read a first time and printed.**

*Second Reading*

**Mr TROY GRANT (Dubbo—Deputy Premier, Minister for Justice and Police, Minister for the Arts, and Minister for Racing) (10:13):** I move:

That this bill be now read a second time.

The amendments in the Security Industry Amendment (Private Investigators) Bill 2016 serve to transfer the regulation of the private investigation industry to the Security Industries Act 1997. This bill provides for the private investigation industry to be regulated as a security activity alongside other activities already regulated under the Security Industries Act 1997. This is a sensible amendment that will provide synergies to police in their regulatory and compliance activities and reduce red tape that comes from police managing two different but similar schemes at the same time.

The changes outlined in the bill provide certainty to the private investigation industry and the New South Wales community that private investigators will continue to be regulated effectively and in a way that reflects the risks and sensitive scenarios licensees regularly engage in. While the majority of work carried out by this industry relates to the investigation of insurance claims on behalf of insurers who outsource investigations into claims, private investigators are also employed by other large corporations and government departments and can work directly for members of the public.

A private investigator may assist the legal profession to locate evidence or interview witnesses, assist businesses to undertake investigations of employees or potential employees, or undertake investigations on behalf of individuals into issues such as partner fidelity. Also, as I have mentioned, a great deal of private investigation work involves assisting insurers to investigate claims. This type of work carries privacy and integrity risks that mean it is appropriate for government to continue to closely regulate this industry. Risks associated with the work of private investigators include illegal access to confidential information, breaches of confidence, misrepresentation, impersonation, trespass, harassment and inappropriate use of surveillance equipment.

Police also receive complaints in relation to alleged fraud, harassment and unethical conduct. These risks often are compounded because most private investigation work is done discretely. There can be little visibility to the government and the people being investigated as to the lawfulness of their activities. Given these risks, it is quite right for the public to expect that all private investigators continue to be subject to a robust regulatory scheme. The Security Industries Act is such a scheme. It will continue to apply ongoing probity compliance checks before private investigators are permitted to engage in the work.

I want to make clear that this bill will enhance the regulation of the private investigation industry in New South Wales by aligning it with the established regulatory framework of the Security Industries Act 1997. Current activities regulated by the Security Industries Act 1997 include bodyguards, crowd controllers, locksmiths and people who advise on, sell or install security services. As with private investigation, these activities pose a level of risk to the public because of the intrusive nature of their activities. Therefore, it makes sense to stop managing private investigators and the security industry under separate but similar legislative schemes. I note that by regulating private investigators alongside the security industry New South Wales will join with most other Australian jurisdictions which already implement a similar approach. We know that national consistency, also

known as harmonisation, in licensing and regulation is important for the private investigation industry and this bill represents a step forward by New South Wales in that regard.

I turn to the detail of the bill. A key feature of schedule 1 of the bill is that a definition of private investigation will be included in section 4 of the Security Industries Act 1997. This sets out that a private investigator is a person who is employed or engaged to investigate the business or personal affairs of a person or to carry out surveillance of a person. This definition draws from the definition of a private inquiry agent under the Commercial Agents and Private Inquiry Agents Act 2004. In practice, the "investigation of persons" arm of the definition encapsulates the inquiries that these agents make about a person, which often involves using open source material and interviewing the person, or others, about that person's personal or business affairs.

The second arm of this definition, that of "surveillance of persons", includes activities such as following a person or surveilling places that they are known to frequent, such as their residence or place of employment, to identify their movements, activities or associates. Schedule 1 of the bill amends section 4 of the Security Industries Act 1997 to set out that a person who acts as a private investigator or acts in a similar capacity is carrying out a security activity when it is done in the course of conducting a business or in the course of the person's employment. By specifying that it is a security activity, the Security Industries Act 1997 will require persons to carry a licence issued under that Act. The licencing approach for security activities under the Security Industries Act 1997 is similar to the existing master licences or operator licences that are currently required for private inquiry agents under the Commercial Agents and Private Inquiry Agents Act 2004.

Under this bill, a master licence will still be required for a person to run a business as a private investigator. The bill also creates a new technical class of licence under the Security Industry Act 1997, a class 2E licence, for a person to undertake work as a commercial private investigator. Under the Security Industry Act 1997 the holder of this licence must be employed by a master licence holder unless they hold an individual master licence of their own. This is similar to the operator's licence currently issued for private inquiry agents. Under this bill a person who wants to make an application to become a private investigator will go through many of the same steps as they had previously.

The Security Licensing and Enforcement Directorate within the NSW Police Force State Crime Command currently manages the applications for security licences and private inquiry licences, and this arrangement will continue under this bill. Currently there are more than 3,400 private inquiry agent licences on issue in New South Wales. Since 2010, New South Wales police have received, on average, 800 new licence applications per annum. Applicants will still need to make an application through the police if they wish to become a licensed private investigator. Similar requirements will continue to apply to age, criminal history and competency. Licence fees will also be applicable and, while these fees will now be set under the provisions of the Security Industry Act, they are generally comparable to similar licence fees applicable under the Commercial Agents and Private Inquiry Agents Act.

The criminal history requirements will continue to ensure that persons convicted of a range of serious offences are not licensed as private investigators. This is an important feature of limiting the risk associated with the industry. Types of offences that prevent a person being granted a licence under the Security Industry Act currently include offences relating to firearms or weapons that would disqualify the person from holding a licence under the Firearms Act 1996; offences relating to prohibited drugs; offences involving assault where the penalty imposed is imprisonment or fine of \$200 or more, or both; offences involving fraud, dishonesty or stealing that have a maximum penalty of imprisonment for three months or more; offences relating to terrorism; and offences involving robbery, affray, riot, stalking or intimidation.

While the major aim of this bill is to transfer private investigators to a different regulatory scheme, there is a range of additional benefits that will flow from that as a matter of consequence. I will briefly outline them. First, private investigation activity will now be subject to the offence and penalty regime under the Security Industry Act 1997. Many of those offences are similar to those that apply under the Commercial Agents and Private Inquiry Agents Act 2004, such as failing to produce a

licence when demanded by a police officer. However, an offence that will now apply under the Security Act 1997 is the offence of misrepresentation. This offence, in section 33 of the Security Industry Act 1997, directly addresses false or misleading activity relating to the engagement of security activities. Applying this offence to the private investigation industry will strengthen the integrity of the industry and will increase alignment with the way in which the security industry is regulated.

An additional benefit of this bill is that probationary licences for private investigators will now be abolished. We know that the current probationary licences scheme, which requires first-time private investigators to spend their first 12 months under the direct supervision of a more experienced private investigator, is viewed as creating a barrier for new entrants to the industry and as creating unnecessary red tape. It also contributes to undesirable situations where prospective applicants could choose to become licensed in another jurisdiction to avoid the probationary period.

A provincial licence scheme was removed for all other security licences in 2011. It makes sense to align the approach for the two industries. Private investigators will also benefit from service delivery improvements that have been introduced to the security industry regulatory scheme in recent years. They include the ability to renew licences quickly and easily online. Finally, the greater enforcement powers and resources of the NSW Police Force in regulating the security industry will enable rogue private investigators to be dealt with more quickly and effectively, to the benefit of all industry members and, importantly, the community.

Schedule 1 to the bill also sets out savings and transitional provisions to provide for the transition of persons who are currently licensed, or seeking to be licensed, under the Commercial Agents and Private Inquiry Agents Act 2004 to those persons being licensed, or having their applications for licences determined, under the Security Industry Act 1997. The savings and transition provisions in the bill are intended to provide that current licensed private investigators can continue under their existing licence, including any condition the licence has been subject to. There are also provisions that provide for the Commissioner of Police to deal with pending applications without requiring a new application to be made.

In regard to the other industry regulated by the Commercial Agent and Private Inquiry Agents Act 2004, the commercial agent industry, this bill is the first stage of the Government's move to transfer regulation of that industry to the Office of Fair Trading. This action follows a statutory review undertaken in 2008 and the 2014 inquiry of the Legislative Assembly Legal Affairs Committee into Debt Recovery in New South Wales. I acknowledge that the Parliamentary Secretary who served on that inquiry is in the House.

In response to the inquiry by the Legislative Assembly Legal Affairs Committee, the New South Wales Government decided that the regulation of private investigators should remain with the NSW Police Force due to the higher risk profile of private investigators. The Government has also decided that the regulation of commercial agents would be better placed in the Fair Trading portfolio as this industry is considered to have a lower risk profile, and Fair Trading already handles complaints about debt collectors and breaches of consumer laws.

Separate to this bill, the New South Wales Government intends to bring forward a further standalone bill to regulate commercial agents and repeal the Commercial Agents and Private Inquiry Agents Act 2004. That separate legislation will affect the transfer of the regulation of commercial agents from the Police portfolio into the Fair Trading portfolio. The NSW Police Force will work with the Office of Fair Trading to facilitate this change. The Government's intention is that the current bill and future bill will commence at the same time. For that reason, this bill will commence on a date to be proclaimed. This bill is about transferring regulatory arrangements for private investigators so that they are regulated as part of the security industry. This is a sensible approach to managing the criminal and privacy risks presented by this type of work in New South Wales. This bill will also reduce red tape and improve efficiencies for police in licensing and regulating the private industry. I commend the bill to the House.

**Debate adjourned.**

**The ASSISTANT SPEAKER ( Mr Andrew Fraser ):** Order! Government business having concluded, the House will now consider General Business Notices of Motions (for Bills).