

Security Industry Amendment (Private Investigators) Bill 2016

Second Reading

The Hon. DAVID CLARKE (15:35): On behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

The amendments in this bill serve to transfer the regulation of the private investigation industry to the Security Industry 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 Industry Act 1997. This is a sensible amendment that will provide synergies to police in their regulatory and compliance activities and reduce the 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 in which licensees regularly engage.

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 the inappropriate use of surveillance equipment. Police also receive complaints in relation to alleged fraud, harassment and unethical conduct. These risks are often compounded because most private investigation work is done discreetly. 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 Industry Act is such a scheme that will continue to apply ongoing probity compliance checks before they are permitted to engage in the work.

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

I now turn to the detail of the bill. A key feature of schedule 1 to the bill is that a definition of "private investigator" will be included in section 4 of the Security Industry 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 to the bill also amends section 4 of the Security Industry 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 Industry Act 1997 will require persons to carry a licence issued under that Act. The licensing approach for security activities under the Security Industry 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 holders 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 licences currently issued for private inquiry agents. Under this bill persons who want to make an application to become private investigators will go through much of the same steps as they previously have. 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, on average, New South Wales police have received about 800 new licence applications per year. Applicants will still need to make an application through the police if they wish to become licensed private investigators. Similar requirements will continue as currently apply in regard to age, criminal history and competency. Licence fees will also be applicable, and whilst these fees will now be set under the provisions of the Security Industry Act, they will be 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 risks associated with the industry.

The 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 a fine of \$200 or more or both; offences involving fraud, dishonesty or stealing that have a maximum penalty of imprisonment of three months or more; offences relating to terrorism; and offences involving robbery, affray, riot, stalking or intimidation. The major aim of this bill is to transfer private

investigators to a different regulatory scheme, but a range of additional benefits will flow as a consequence of that and I will briefly outline them.

Private investigation activity will now be subject to the offence and penalty regime under the Security Industry Act 1997. Many of these offences are similar to those that apply under the Commercial Agents and Private Inquiry Agents Act 2004 such as failure to produce a licence when demanded by a police officer. However, an offence that will now apply to private investigators under the Security Industry Act 1997 is the offence of misrepresentation. This offence, under section 33 of the Security Industry Act 1997, directly addresses false or misleading activity in relation 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 licence 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 both creating a barrier for new entrants to the industry and creating unnecessary red tape. It also contributes to the undesirable situation where prospective applicants could choose to become licensed in another jurisdiction to avoid the probationary period. A provisional licence scheme was removed for all other security licences in 2011 and 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. These 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 more quickly and effectively dealt with for the benefit of all industry members and 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 are seeking to be licensed, under the Commercial Agents and Private Inquiry Agents Act 2004 to those persons being licensed, or having their applications for licenses determined, under the Security Industry Act 1997.

The savings and transition provisions in this bill are intended to provide that current licensed private investigators can continue under their existing licence, including any conditions to which the licence has been subject. There are also provisions that will enable 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 Agents and Private Inquiry Agents Act 2004—the commercial agent industry—this bill is the first stage of this Government's move to transfer regulation of that industry to the Office of Fair Trading. This action follows both a statutory review undertaken in 2008 and the 2014 inquiry of the Legislative Assembly Legal Affairs Committee into debt recovery in New South Wales.

The New South Wales Government decided that regulation of private investigators should remain with the NSW Police Force and that the regulation of commercial agents would be better placed in the Fair Trading portfolio as this industry is considered low risk, and Fair Trading already handles complaints about debt collectors and breaches of consumer laws. Separate to this bill, the Government intends to shortly 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 the 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 investigation industry. I commend the bill to the House.