



New South Wales

Security Industry Amendment Bill 2017

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 the Commissioner of Police may, in determining whether the grant or renewal of a licence under the principal Act would be contrary to the public interest, have regard to any criminal intelligence report or other criminal information held in relation to the applicant or licensee,
- (b) to make it clear that the Commissioner may approve persons or organisations to provide training, assessment and instruction in connection with licence conditions under the principal Act that require the undertaking of training, assessment and instruction by a licensee while the licence is in force,
- (c) to provide that the Commissioner must refuse an application to renew a licence if the Commissioner is satisfied that, if the applicant were applying for a new licence, the application would be required to be refused,
- (d) to provide that the Commissioner may suspend a licence for a period of 60 days without the licensee being given an opportunity to be heard,
- (e) to ensure that criminal intelligence reports or other criminal information before NCAT can be withdrawn and protected against disclosure,
- (f) to provide that the privilege against self-incrimination does not excuse a person who is required to furnish records or information to police and other enforcement officers, or to answer questions under the principal Act from furnishing that information or those records or from answering those questions,

(g) to make other amendments of a minor, administrative or consequential nature.
The Bill also amends the *Security Industry Regulation 2016* in the manner outlined in Schedule 2.

Outline of provisions

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 the date of assent.

Schedule 1 Amendment of Security Industry Act 1997 No 157

Schedule 1 [1] extends references to the provision of training and instruction in relation to security activities so that they refer also to providing assessment in relation to those activities.

Schedule 1 [4] enables the Commissioner, in determining whether the grant or renewal of a licence would be contrary to the public interest, to have regard to any criminal intelligence report or other criminal information held in relation to the applicant.

Schedule 1 [5] provides that the Commissioner must refuse an application to renew a licence if the Commissioner is satisfied that, if the applicant were applying for a new licence, the application would be required by the principal Act to be refused. The amendment replaces the current discretion to refuse an application for renewal and aligns the renewal provision with section 26 (1A) of the principal Act which requires automatic revocation of a licence in such circumstances.

Schedule 1 [8] and [25] are law revision amendments consequential on the enactment of the *Government Sector Employment Act 2013*.

Schedule 1 [10] restates, for consistency of language with the principal Act, an existing condition that requires the holder of a master licence to obtain the approval of the Commissioner before providing persons to carry on a security activity with a dog. **Schedule [1] 11** is a consequential amendment.

Schedule 1 [12] deletes a provision that makes it a condition of certain class 1 licences that the licensee must not carry on the security activity authorised by the licence with a dog. The provision is unnecessary because section 11 (3) of the principal Act already provides that the use of a dog in carrying on security activities is not authorised by the class 1 licences concerned.

Schedule 1 [13] provides that the Commissioner is not required to give a licensee an opportunity to be heard before the Commissioner decides to suspend the licence for a period of up to 60 days. The amendment also provides that the period of suspension may be extended for a further period of not more than 60 days by a further notice.

Schedule 1 [14] makes it clear that the Commissioner's power to revoke a licence on certain grounds (namely, that if the licensee were applying for a licence the application would be required to be refused) is not discretionary.

Schedule 1 [15] makes it clear that the Commissioner may approve persons or organisations to provide training, assessment and instruction not only for the purposes of the requirements relating to an application for a licence but also in connection with the licence conditions under the principal Act that require the undertaking of training, assessment and instruction by a licensee while the licence is in force. **Schedule 1 [2], [3], [6], [7] and [9]** are consequential amendments.

Schedule 1 [16] and [17] provide that, in NCAT hearings for the administrative review of licensing decisions by the Commissioner under the principal Act, the protection against disclosure of criminal intelligence reports or other criminal information will apply in relation to any criminal intelligence report or other criminal information that the Commissioner is relying on in relation to the reviewable decision. The amendments ensure that in NCAT hearings the Commissioner can provide criminal intelligence reports and other criminal information, in addition to what was used in making the reviewable decision, in the knowledge those reports or information will be protected from disclosure.

Schedule 1 [18] provides that if NCAT, in hearing an application for the administrative review of a licensing decision by the Commissioner under the principal Act, considers that any information in a criminal intelligence report or other criminal information relied on by the Commissioner has not been properly identified as such, NCAT must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration by NCAT in its determination of the application. Any information that is withdrawn by the Commissioner must not be disclosed to any person or taken into consideration by NCAT in determining the application.

Schedule 1 [19] makes it clear that the offence of providing false information or particulars extends to records that are required to be provided under the principal Act.

Schedule 1 [21] and [22] enable police and other enforcement officers to require a person to attend at any specified place and time (rather than at a place and time nominated by the person) to answer questions in connection with an investigation of a suspected contravention of the principal Act.

Schedule 1 [23] inserts provisions relating to requirements to furnish records and information to police and other enforcement officers, and to answer questions, under the principal Act. Self-incrimination is not an excuse from such a requirement, however any information or records furnished or answer given by a natural person is not admissible in evidence against the person in criminal proceedings (except proceedings for certain offences under the principal Act) if the person objected at the time that it might incriminate the person. The amendment also requires persons to be warned that not complying with a requirement by police and other enforcement officers under Part 3B of the principal Act is an offence. **Schedule 1 [20]** is a consequential amendment that deletes a similar provision.

Schedule 1 [24] makes it clear that any action by the Commissioner to suspend or revoke a licence as a consequence of an order by a court that the licence be suspended is to be taken under section 25 or 26 of the principal Act which provide for the suspension or revocation of a licence by the Commissioner.

Schedule 1 [26] updates the provision relating to the issuing of penalty notices for offences under the principal Act.

Schedule 1 [27] updates the manner in which documents under the principal Act may be served.

Schedule 1 [28] enables the Commissioner, for the purposes of proceedings under the principal Act, to give certificate evidence in relation to the approval of persons or organisations to provide training, assessment and instruction.

Schedule 1 [29] preserves existing approvals by the Commissioner in relation to the provision of training, assessment and instruction under the principal Act.

Schedule 2 Amendment of Security Industry Regulation 2016

Schedule 2 [2] provides that the Commissioner may, in revoking a licence on the grounds that it would be contrary to the public interest for the person to whom it is granted to continue to hold it, have regard to any criminal intelligence report or other criminal information held in relation to the licensee. The amendment also provides that the Commissioner is not required to give any reasons for revoking a licence if the giving of those reasons would disclose the existence or content of any such criminal intelligence report or other criminal information. **Schedule 2 [1]** is a consequential amendment that ensures consistency in language with the principal Act and Regulation.

Schedule 2 [3] and [4] are consequential on the amendments made by Schedule 1 [3] and [15] to the proposed Act.