



SECURITY INDUSTRY AMENDMENT BILL 2022

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

There are currently over 55,000 security licence holders and over 6,000 master licence holders in New South Wales, operating security businesses of various sizes across different sectors and occupations.

Regulation of the security industry is administered by the NSW Police Force on behalf of the Minister for Police. Regulation was initially introduced to safeguard the security industry from organised crime infiltration and protect public safety. While the policy intent remains, amendments to the *Security Industry Act 1997* (the Act) are needed to ensure regulation remains fit for purpose.

The Bill follows a review of the Act in 2020 by the NSW Police Force. The NSW Police Force consulted industry stakeholders throughout the review and afterwards on the amendments, resulting in identification of the following issues:

- the need for improved exemption and other powers for the Commissioner of Police,
- disproportionality of penalties for breach of licence conditions and other offences and the limited impact upon deterrence,
- regulation not keeping pace with current contemporary practices within industry,
- addressing and mitigating the risk that higher-risk individuals working in sensitive roles within the security industry pose, and
- administratively burdensome requirements for some licence holders.

This Bill provides the following amendments to ensure the regulation of the security industry remains fit for purpose and strengthens the industry's resistance to organised crime infiltration.

Expansion of Commissioner's powers

Some important updates have been made to the Commissioner's powers to ensure the appropriate skills are readily accessible and available in NSW and to strengthen the industry's integrity. The Commissioner will be:

- granted an exemption power to exempt a person or a class of persons from the requirement to hold a licence under section 7(1) or (2),
- granted the power to exempt a person from the requirement to hold a class 2A security licence (security consultant) if the Commissioner is satisfied that the applicant is not an Australian citizen or a permanent Australian resident and has specialised skills or experience not readily available in Australia. There is a \$1000 application fee for this application,
- authorised to refuse an application for a licence where an applicant is a registrable person under the *Child Protection (Offenders Registration) Act 2000* who has reporting obligations under that Act,
- authorised to prohibit a person from making an application for a licence for 2 years if the Commissioner is not satisfied the person is a fit and proposed person or considers granting the licence would be contrary to the public interest, and

- permitted to make information publicly available about significant offences committed under the Act or the revocation of a licence.

Introduction of Tiered licence condition system and revised offences proportionate to severity

There was support from industry to address the 'one size fits all' approach to breaches of licence conditions under section 30 to ensure penalties were proportionate and commensurate with the offence. Penalties associated to other offences outside of section 30 have also been reviewed and updated. This has resulted in increases and decreases to some, while others have remained the same.

The estimated impact of the increases to penalties is expected to strengthen deterrence across industry and are commensurate to the specific severity of the offences.

Expansion of the obstruction offence

Further, the Bill moves and expands offences of obstruction or failing to comply with requirements of enforcement officers into a new Part 3C of the Act. The review highlighted that the current penalty for obstruction was insufficient to deterring criminal activity. The Bill increases the penalty from 100 penalty units to 500 penalty units or 2 years imprisonment, or both. The Bill also applies similar amendments to the *Tattoo Parlours Act 2012* to ensure consistency across both of these high-risk industries regulated by the NSW Police Force.

Alignment of regulation with current industry practice

The review found that crowd controller activities are being undertaken in areas not currently captured by regulation causing a risk to public safety. The Bill proposes to address this gap by capturing these crowd controller functions being performed in these areas. It does so by removing the current definition and replacing this with the term "relevant place" – which captures current places and expands this to included other places such as hospitals, retail premises, quarantine facilities and public places.

The reference to 'sell' in the Act has also been defined to capture activities associated with selling including, leasing or hiring. The review found the reference to the word 'sell' within section 4 did not capture these broader activities which was resulting in unintended disadvantage to regulated businesses.

The review also highlighted an issue with the current prohibition against persons on a student or working holiday visa from being eligible to apply for a licence. The Bill amends section 15(1)(f) to specify visa criteria linking the visa requirement to sponsorship by the holder of a master licence or for a skilled occupation to which the activities authorised by the proposed licence correspond. These amendments future proof industry and ensures eligibility for visa holders to apply for a security licence will not be adversely impacted by future changes to visa categories.

The review found that NSW licence subclasses were not aligned with the current national training and education package and competency requirements. The Bill includes the amalgamation of class 1A (unarmed guards) and 1C (crowd controller) into a new class 1A licence – Security Officer and the introduction of a new cash-in-transit licence which will replace the former class 1C licence.

Clearer restrictions for industry to support enforcement and better safeguard industry

The review found a need to expand the Master licensee and employee obligations to strengthen industry integrity and provide greater safety to those working in the cash in transit sector. The Bill extends section 16 (restriction on granting licence – criminal and other related history) by capturing persons who have had their licence refused or revoked due to section 15(1)(a) (not fit and proper person) or section 15(3) (contrary to the public interest) (unless the licence was subsequently granted and is not suspended or revoked).

The same restrictions will be imposed on a condition of a master licence, that the licensee must not provide any persons to roster or schedule the carrying on of any security activity by a class 1 or 2 licensee if the person is not eligible for the same reasons, in the past 5 years. The requirement will also apply to the person who rosters or schedules the work of security guards if that person is ineligible to work as a security guard who has had a licence refused or revoked due to section 15(1)(a) or 15(3).

A person who is deemed an 'ineligible person' must not, for fee or reward, work in the cash-in-transit sector or work in any area that involves access to operational information about a master licensee's security business.

Objectives: What is the policy's objective couched in terms of the public interest?

The objective of the Bill is to strengthen the regulatory framework for the security industry and support industry resistance to organised crime infiltration.

The Bill does this by:

- improving the Regulator's powers to support industry capability and integrity,
- increasing penalties where appropriate to better deter non-compliance and misconduct,
- introducing a more proportionate penalty system based on the severity of the breach of licence condition,
- introducing a prohibition on ineligible persons undertaking sensitive roles within the security industry,
- removing red tape by eliminating certain administratively burdensome requirements for security operators, and
- providing greater flexibility in the regulatory framework to adapt to changing industry conditions and practices.

Options: What alternative policies and mechanisms were considered in advance of the bill?

No alternative policies were considered in relation to the amendments set out in the Bill. The amendments in the Bill stem from the review of the Act in 2020 as well as consultation with industry stakeholders. Regulatory reforms are periodically undertaken by the NSW Police Force's Security Licensing & Enforcement Directorate (SLED) in consultation with industry stakeholders. Industry was broadly supportive of these reforms.

Analysis: What were the pros/cons and benefits/costs of each option considered?

As noted above, no alternative policies were considered in relation to the amendments in the Bill. If the amendments are not made, this would result in the following issues highlighted by the review of the Act in 2020 to remain unaddressed. The Bill is considered the most effective and efficient way for the Government to address the issues highlighted by the 2020 review and via industry consultation.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill will commence on proclamation.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The NSW Police Force consulted with stakeholders during the review of the Act through the SLED Advisory Council (SLED Advisory Council). The views of industry representatives were considered in preparation of the Bill. Further targeted consultations were undertaken with key government stakeholders on the definition of crowd controller. Their views were considered by the NSW Police Force when drafting the amended definition.

The NSW Police Force undertakes regular consultation with the security industry through the SLED Advisory Council and other mediums of communication. The NSW Police Force will consult with industry through these channels on the operative date of policy amendments.