



New South Wales

# Security Industry Amendment Bill 2012

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to expand the range of powers that can be exercised by police officers under the *Security Industry Act 1997* (the *SI Act*) and to authorise those powers to be exercised by other members of the NSW Police Force who are authorised by the Commissioner of Police (the *Commissioner*) to exercise enforcement officer functions,
- (b) to abolish the provisional licensing system under the *SI Act* and to make provision for class 1 licences to be issued to persons who have not previously held such a licence, subject to certain conditions, including undertaking certain training and assessment,
- (c) to declare that certain provisions of the *SI Act* and the *Security Industry Regulation 2007* are excluded from the application of section 9 of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth (the *Commonwealth Act*) so that the State provisions will continue to apply to certain organisations providing training, assessment or instruction in relation to security activities,

- (d) to declare that certain provisions of the *Firearms Act 1996* (the *Firearms Act*) and the *Firearms Regulation 2006* are excluded from the application of section 9 of the Commonwealth Act so that the State provisions will continue to apply to certain organisations providing training, assessment or instruction in relation to use and possession of firearms,
- (e) to provide for the renewal of licences under the SI Act,
- (f) to amend provisions relating to master licences under the SI Act, including:
  - (i) introducing additional subclasses of master licence, and
  - (ii) creating permits allowing master licensees to provide more persons than authorised by their master licence in certain circumstances, and
  - (iii) making it an offence for a master licensee to subcontract the provision of the master licensee's services to carry on certain security activities to another master licensee unless specific conditions are met,
- (g) to remove certain subclasses of class 1 and class 2 licences under the SI Act,
- (h) to abolish the Security Industry Council,
- (i) to make other amendments generally with respect to licences under the SI Act, including the introduction of additional grounds on which the Commissioner must refuse to grant a licence,
- (j) to extend the Commissioner's power under the SI Act to require that an applicant for a licence provide the Commissioner with fingerprints so that it also includes palm prints,
- (k) to create a new provisional pistol licence under the Firearms Act which holders of a class 1F licence under the SI Act who have not previously held such a licence will also be required to hold.

## 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. A number of the amendments will commence on 1 November 2012. Other amendments (relating to the new enforcement powers given to persons exercising enforcement officer functions, the declaration that certain provisions of the SI Act and regulations are excluded from the application of the Commonwealth Act, a savings and transitional regulation-making power and other matters) will commence on the date of assent to the proposed Act.

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## **Schedule 1      Amendment of Security Industry Act 1997 No 157**

### **Enforcement powers under the SI Act**

The proposed amendments provide for the appointment of enforcement officers (which includes both police officers and certain members of the NSW Police Force who have been authorised by the Commissioner to exercise the functions of an enforcement officer) and confer certain powers of investigation on such officers (**Schedule 1 [3] and [73]**).

At present, police officers have the power to apply for a search warrant under the SI Act and have powers of inspection and seizure. The proposed amendments extend those existing powers to other members of the NSW Police Force who are enforcement officers. In addition, the proposed amendments confer power on enforcement officers to enter premises at which a security activity is being carried on, at any reasonable time, without a warrant. The powers exercisable by an enforcement officer upon entry (whether by virtue of a warrant or otherwise) have been clarified and expanded, for example, to include the power to require any person to produce documents or answer any question in relation to them. The amendments also require enforcement officers who are not police officers to be provided with identification cards, which they will be required to produce on request when exercising their functions as an enforcement officer. In addition to powers of entry and search of premises, enforcement officers are also given powers to obtain information and records. This includes, for example, the power to require, by notice in writing, a person to furnish information or records.

**Schedule 1 [10]** is a consequential amendment. The proposed amendment makes it clear that the SI Act applies to police officers and other members of the NSW Police Force when exercising their powers as enforcement officers under the SI Act. However, police officers and other members of the NSW Police Force will continue to be exempt from licensing and other requirements under the SI Act relating to the carrying on of security activities. **Schedule 1 [75] and Schedule 2.3** are consequential amendments.

### **Abolition of provisional licensing system**

Provisional licences under the SI Act are abolished (**Schedule 1 [22] and [62]**). Currently, provisional licences may be issued to a person to carry out the security activity authorised by the particular subclass of licence, subject to certain supervision requirements. Each provisional licence subclass corresponds to a subclass of class 1 licence, with the provisional licence requiring a licence holder to be supervised by a person who holds the corresponding subclass of a class 1 licence. Under the proposed amendments, a class 1 licence may now be granted to a person who has not, during the 3 years immediately before making an application for the licence, been authorised by a class 1 licence to carry on the relevant security activity. However, it will be a condition of a licence so issued that the licence holder undertake and complete such training, assessment or instruction as may be required by the

Commissioner within 6 months (or such longer period as the Commissioner allows) of the licence being granted (**Schedule 1 [48]**). Current holders of provisional licences will, following the abolition of provisional licences, be taken to hold the corresponding subclass of class 1 licence (**Schedule 1 [79] (proposed clause 28)**), subject to the above condition. However, a period of 12 months (rather than 6 months) will be given to those persons to undertake the requisite training, assessment or instruction.

References to provisional licences have been removed as a consequence of the proposed amendments (**Schedule 1 [1], [8], [14], [16], [36], [42]–[45], [47], [55], [63], [65], [67], [69], [70] and [77], Schedule 2.1 [7] and Schedule 2.4**).

### **Declaration excluding the operation of the National Vocational Education and Training Regulator Act 2011 of the Commonwealth**

The Commonwealth Act provides that a training organisation registered by the National Vocational Education and Training Regulator (*registered training organisation*) which operates in New South Wales is not subject to New South Wales law in relation to certain matters, including the regulation of registered training organisations and investigative powers, sanctions and enforcement relating to such regulation. The application of the Commonwealth Act is, however, subject to any declaration made by New South Wales that a matter is an “excluded matter”, such that the Commonwealth Act will not apply to it.

Accordingly, **Schedule 1 [11]** declares that certain provisions under the SI Act and the regulations relating to registered training organisations providing training, assessment or instruction relating to any security activity and the exercise of ancillary investigative powers, sanctions or enforcement (*State security industry regulation provisions*) constitute an “excluded matter” for the purposes of the relevant section of the Commonwealth Act which makes all registered training organisations immune to New South Wales law. However, the State security industry regulation provisions only constitute an “excluded matter” to the extent that the Commonwealth Act prevents the application of those provisions to registered training organisations which are regulated by the Act. Accordingly, the effect of the declaration is that registered training organisations providing training, assessment or instruction relating to any security activity will not be immune to the State security industry regulation provisions and that both the State security industry regulation provisions and the Commonwealth Act will apply to them.

### **Renewal of licences**

Currently, the SI Act does not allow for the renewal of licences. The proposed amendments give the Commissioner power to renew licences, applications in respect of which may be lodged by a licence holder no earlier than 8 weeks before the expiry of a licence (**Schedule 1 [27]**). The Commissioner may also grant an application for renewal lodged within a period of up to 90 days after the expiry of the licence if the applicant pays a late fee. The current procedures and requirements under the SI Act relating to licence applications will also apply to applications to renew. For example, the Commissioner may refuse an application to renew a licence if satisfied that, if the

applicant were applying for a new licence, the Commissioner would be required under the SI Act to refuse the application. Consequential amendments have also been made to accommodate the new process of renewing licences (**Schedule 1 [28], [31], [32], [35], [37], [38], [49]–[53] and [56]–[59]**). Licences granted prior to the insertion of the provision for renewal of licences may be renewed under that provision (**Schedule 1 [79] (proposed clause 35)**).

### **Miscellaneous amendments to master licence provisions**

The proposed amendments create new subclasses of master licence which further segment the numbers of persons authorised to be provided by a master licensee under a master licence (**Schedule 1 [17]**). Currently, a different subclass of master licence is required to authorise a master licensee to provide no more than 10 persons, between 11 and 50 persons and more than 50 persons to carry on security activities. The proposed amendments restructure the subclasses so that there is now a separate subclass of master licence to authorise master licensees to provide no more than 3 persons, between 4 and 14 persons, between 15 and 49 persons and 50 or more persons. In addition, the proposed amendments clarify that:

- (a) the number of persons authorised to be provided by the master licence refers to the number of persons provided on any one day. This means that, for example, a master licensee may employ more than the number of persons authorised to be provided under the licence, as long as the master licensee only provides the number of persons authorised to be so provided per day, and
- (b) the number of persons authorised to be provided by the master licence includes persons with whom a master licensee subcontracts or arranges by contract, franchise or otherwise for the purpose of that other person employing or providing persons to carry on a security activity on the master licensee's behalf.

The savings and transitional provisions provide for the conversion of existing subclasses of master licences to the new subclasses (**Schedule 1 [79] (proposed clause 24)**). Consequential amendments are also proposed (**Schedule 1 [2], [5], [9], [12], [13], [18], [41], [46], [71] and [72]**).

In addition, a master licensee will be able to apply to the Commissioner for a temporary excess provision of services permit, which authorises a master licensee to provide more persons than the number authorised by the master licence on a specified day, or on each day within a period, specified in the permit (**Schedule 1 [74]**). A permit may be subject to conditions imposed by the Commissioner and may be revoked if such conditions are contravened. **Schedule 1 [15]** is a consequential amendment which ensures that the holder of a temporary excess provision of services permit does not commit an offence of providing more persons than is authorised under that person's master licence.

The proposed amendments also create a new offence relating to subcontracting undertaken by a master licensee for the provision of security services (**Schedule 1 [68]**). On the commencement of the new offence provision, it will be an offence for a master licensee (*principal*) who has entered into a contract to provide

persons to carry on certain security activities with a client to engage a subcontractor on the principal's behalf unless the client has expressly agreed to the provision of persons by a subcontractor and the principal provides the client with certain particulars (such as the name and master licence number of each subcontractor) before requiring payment from the client. It will also be an offence for a subcontractor to further subcontract to provide persons to carry on a security activity unless the principal expressly agrees to the provision of persons by a further subcontractor and the subcontractor provides the principal with the above mentioned particulars. The maximum penalty for both offences is 200 penalty units (in the case of a corporation) or 100 penalty units or 6 months' imprisonment (in the case of an individual). **Schedule 3** repeals an uncommenced Act that contained an amendment creating a similar offence.

#### **Changes to subclasses of class 1 and 2 licences**

**Schedule 1 [19]–[21] and [79] (proposed clauses 25–27 and 29–31)** provide for certain subclasses of class 1 and class 2 licence to be abolished and taken to be licences of existing subclasses as follows:

- (a) a class 1G licence (which authorises the licensee to patrol, protect or guard any property while carrying on retail loss prevention) will be taken to be a class 1A licence (which authorises the licensee to patrol, protect or guard any property while unarmed (whether static or mobile)),
- (b) the following subclasses of licence will be taken to be a class 2C licence (which, following the proposed amendments, authorises a licensee to sell, install, maintain, repair and service, and provide advice in relation to, security equipment (including electronic security equipment and barrier equipment) and to act as a locksmith):
  - (i) a class 2E licence (which authorises a licensee to protect assets or other property by selling, installing, maintaining, repairing and servicing, and providing advice in relation to, barrier equipment),
  - (ii) a class 2F licence (which authorises a licensee to sell, install, maintain, repair and service, and provide advice in relation to, electronic security equipment).

#### **Miscellaneous provisions relating to licences and carrying on a "security activity"**

The proposed amendments also make some general and consequential amendments relating to licences (**Schedule 1 [4], [6], [23]–[26], [39], [40], [54], [60], [61], [64], [66] and [69]**). These include, for example, the following:

- (a) clarification that for the purposes of the SI Act "security equipment" and "security activity" do not include equipment and activity used simply for watching (as opposed to guarding) property,

- (b) the inclusion of further mandatory and discretionary grounds on which the Commissioner is to refuse to grant an application for a licence, including the ground that an applicant has not undertaken and completed the requisite training, assessment (for example, testing) and instruction for the class of licence sought by the applicant or that an applicant has a conviction that is not capable of being spent under section 7 of the *Criminal Records Act 1991*,
- (c) that it is now a condition of every class 1 or 2 licence (including licences granted before the insertion of the new provision) that the licensee undertake the training, assessment and instruction required by the Commissioner to ensure that the licensee has continuing knowledge and competency in relation to the security activity to which the licence relates,
- (d) changes to the mandatory requirements for the form of a licence and the inclusion of some non-mandatory requirements,
- (e) clarifying that the Commissioner may have regard to certain criminal intelligence reports or other criminal information for the purpose of determining whether a licence should be revoked and that the Commissioner's reasons for revoking a licence may be withheld if such reasons would disclose the existence or content of such a report or information,
- (f) making it clear that a licensee is not, in specified circumstances, required to produce, or wear, a licence that has been lost, stolen, destroyed, defaced or mutilated.

**Schedule 1 [7]** clarifies that the carrying on of a security activity in relation to patrolling, protecting or guarding any property includes, but is not limited to, control room operations, monitoring centre operations, retail loss prevention, or patrolling, protecting or guarding cash, an airport or any other infrastructure.

#### **Abolition of Security Industry Council**

**Schedule 1 [76]** abolishes the Security Industry Council.

#### **Extension of the Commissioner's power to require an applicant for a licence to provide the Commissioner with palm prints**

**Schedule 1 [29], [30], [33] and [34]** extend the Commissioner's power to require fingerprints in connection with a licence application so that palm prints may also be required. The provisions of the SI Act that apply to the use and destruction of fingerprints will also apply to palm prints. **Schedule 1 [79] (proposed clause 34)** validates the previous collection and use of palm prints by the Commissioner, to the extent that the Commissioner's actions would have been valid if the amendments had been in force.

#### **Savings and transitional provisions**

**Schedule 1 [78]** allows for regulations containing provisions of a savings or transitional nature to be made. **Schedule 1 [79]** makes savings and transitional provisions consequent on the commencement of the proposed amendments.

## **Schedule 2     Amendment of other legislation**

### **Provisional pistol (business/employment) licences**

The proposed amendments to the Firearms Act introduce a new kind of category H (business/employment) pistol licence which is to be issued to a person who has never previously held such a licence (*provisional pistol (business/employment) licence*) (Schedule 2.1 [1], [4] and [5]). The term of a provisional pistol (business/employment) licence is 12 months (unless sooner surrendered, revoked or the licence otherwise ceases to be in force) (Schedule 2.1 [6]). The Commissioner is only able to issue such a licence if certain employment arrangements are in place (Schedule 2.1 [4]).

Schedule 2.1 [2] makes a declaration and excludes provisions of the Commonwealth Act in relation to certain provisions relating to training, assessment or instruction in relation to the use and possession of firearms similarly to the declaration and exclusion described above in relation to the security industry.

In addition to the general conditions imposed on licences by the Firearms Act, a provisional pistol (business/employment) licence is subject to further specific conditions outlined in the proposed provision which relate to the licensee's required employment arrangements, as well as requirements relating to the licensee's training, supervision and so on. For example, it will be a condition of a provisional pistol (business/employment) licence that, for the first 6 months of the term of the licence, a licensee is required to be under the direct supervision of a natural person who has continuously held, for a period of more than 12 months, both a category H (business/employment) licence and a class 1F licence issued under the SI Act. If this condition is contravened by the licensee, the master licensee who is the employer of the licensee will be guilty of an offence, the maximum penalty for which is 200 penalty units (in the case of a corporation) or 100 penalty units (in the case of an individual).

Schedule 2.1 [3] makes it clear that a genuine reason of business or employment includes work undertaken voluntarily but only if such work relates to the static guarding of premises.

Consequential amendments have also been made to other legislation (Schedule 2.1 [1], 2.2 and 2.4).