

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Michael Gallacher.**

**Second Reading**

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [12.37 p.m.]: I move:  
That this bill be now read a second time.

The Security Industry Amendment Bill 2012 will achieve significant improvements to the current regulation of the security industry. There has been extensive consultation with industry, and the issues raised are reflected in the reforms contained in this bill. The amendments will enhance the NSW Police Force's regulation of the security industry. Through this bill and associated reforms the fragmentation and lack of coordination identified by the Independent Commission Against Corruption in its Operation Columba will no longer exist. The Independent Commission Against Corruption report demonstrated that more work needs to be done to ensure ongoing compliance with the regulatory regime for the New South Wales security industry. The need for these amendments has grown out of the identification of growing risks surrounding the industry.

In 2009 the Australian Crime Commission [ACC] completed a two-year investigation into the private security industry nationally. The commission found that organised crime groups and outlaw motorcycle gangs have moved into the security industry in all mainland States, and are involved in illegal practices. The evidence of organised crime in the security industry further highlights the need to ensure that regulatory standards are enforced within the industry. The security industry plays a vital role in a wide range of businesses and government agencies throughout New South Wales. There are approximately 4,000 security firms of various sizes operating in the New South Wales security industry across different sectors and occupations. Master licensees range from large multinational companies, such as Chubb Security, to sole traders providing a limited range of services. The conduct of compliance audits on these businesses will be based on risk assessments and intelligence reports gathered and held by the NSW Police Force. The bill supports the conduct of these compliance audits through the insertion in the Act of new part 3B, which deals with enforcement.

Clause 39 of the Security Industry Regulation 2007 and sections 42 and 42A of the Security Industry Act provide for powers of inspection and seizure for police officers or other authorised persons in relation to inspections of security firms. Currently, the power is aimed at ensuring that compliance can be accessed only by sworn police officers. The bill expands legislative powers of enforcement to encompass civilian staff of police who have been authorised by the Commissioner of Police to exercise the functions of an enforcement officer under the Security Industry Act.

The bill further provides that for the purposes of conducting compliance auditing or generally administering the legislation at premises at which a security activity is being carried on no search warrant is required to enter. This aligns with the way compliance auditing is conducted by a range of other New South Wales government agencies. For example, the

Gaming and Liquor Administration Act 2007 provides for power of entry without a warrant and powers of inspection and seizure for civilian inspectors. As with similar compliance inspection regimes, the bill limits the power of entry without a warrant to exclude entry into premises or part of premises that are used only for residential purposes. The bill also provides that entry must take place at a "reasonable time".

In addition to the power of entry without a warrant, the bill provides for application to be made for a search warrant for entry to premises. Search warrants can be applied for in cases where an enforcement officer believes on reasonable grounds that any provision of the Security Industry Act or the regulations is being or has been contravened on any premises. New section 39K of the bill outlines the powers that may be exercised by an enforcement officer following lawful entry to premises. These powers include requiring production of, examining and making copies of and seizing registers, books or other records. New Section 39M provides that civilian enforcement officers will be required to carry identification cards issued by the Commissioner of Police to demonstrate their status and will be required to produce these cards on request.

The provisional licensing scheme was introduced in New South Wales in 2007 to provide a pathway for new persons to enter the manpower sector of the security industry and work under supervision. The scheme was endorsed by the Council of Australian Governments in 2008; however, New South Wales remains to date the only State that has fully implemented such a scheme. The need to provide direct supervision together with the associated compliance costs has led to a widespread reluctance by master licensees to employ provisional licensees. This has motivated many new entrants to obtain interstate security licences and exploit the mutual recognition scheme to bypass the New South Wales provisional licensing scheme. For example, last year 50 per cent of applications for new New South Wales security licences were made under mutual recognition.

Five years of industry and regulator experience indicates that the provisional licensing scheme has not achieved its objectives, and has created more problems than it has solved. A number of stakeholder submissions to me highlighted this as a problem following a forum that I held with the security industry in August 2011. The bill therefore abolishes the scheme by repealing sections 12A and 38B. It is envisaged that this is likely to lead to a significant reduction in the number of mutual recognition applications for licences. A new provision for the grant of conditional class 1 licences is included to ensure that New South Wales continues to meet the Council of Australian Governments agreement to "introduce a provisional, probational or conditional licence in the manpower sector for a duration of not less than six months." The provisional licensing scheme was also used to impose restrictions on new entrants to the armed guarding sector.

While there is a sound argument for abolishing the current provisional licensing scheme there is still a need to maintain a provisional system for armed guards. Therefore, the Firearms Act 1996 is being amended to create a new provisional pistol licence and to make new armed guards subject to supervision and training requirements. Armed guards will be required to have a firearms licence under category H with the genuine reason of "business/employment" under the Firearms Act 1996 in addition to a class 1F security licence. Class 1F applicants will be able to move beyond working in the cash-in-transit companies to work as employees or appropriately trained and supervised volunteers in the area of static guarding of approved premises. The police commissioner will have the approval power to accept or reject an application.

The Commonwealth National Vocational Education and Training Regulator Act 2011 commenced on 1 July 2011. This Act established a national regulator—the Australian Skills Quality Authority [ASQA], which replaced State-based regulators in New South Wales through a referral of powers to the Commonwealth. The Commonwealth Act renders inoperative the legislative provisions that support police regulation of security industry training. This was an unintended consequence, as training of the security industry is only one of the many industries to be regulated by the Australian Skills Quality Authority. It is proposed that a declaration as per sections 10 and 11 of the Commonwealth Act be made in relation to security industry training so that the Security Industry Act 1997 powers of the NSW Police Force to oversight registered training organisations [RTOs] in New South Wales may be retained. This will mean that the NSW Police Force can regulate registered training organisations alongside the national regulator. Advice from the Commonwealth indicates that it supports this approach.

The Act currently provides for master licences to be classified into subclasses, with authority conferred to each subclass based on the number of persons carrying on security activities on behalf of the master licensee. New master licence subclasses will be created for businesses employing one to three persons, four to 14 persons and 15 to 49 persons. Subcontracting is a significant problem within the security industry. Currently a business that secures contracts to provide security services and entirely subcontracts that work out is not required to hold a master licence, as the business is not employing any person to carry on security activities. This means that directors, shareholders and managers of the business are not subject to probity checks.

In addition, the subcontractor needs to deliver the security services with a lesser profit margin than would be the case if it were contracted directly to the client and this, in turn, leads to problems endemic in the industry of non-compliance, low wages and labour exploitation. The amendments to section 10 provide that a master licensee's authorisation to supply persons to carry on security activities is irrespective of whether those persons are employees or are provided through subcontracting. Submissions from industry following the August 2011 stakeholder forum were unanimous in the call for stronger measures to regulate subcontracting arrangements. New section 38A of the bill prohibits unauthorised subcontracting by master licensees.

The Act currently provides for restrictions on granting a licence on the basis of criminal and other related history of applicants. The bill strengthens these provisions by amending section 16 so that if a person has ever been found guilty or convicted of a serious offence for which the conviction can never be spent, the Commissioner of Police will have the discretion to refuse the licence application. Industry consultation has revealed the need to address situations where master licensees have one-off spikes in employee numbers during major events. For instance, a company that regularly employs two guards might have to temporarily employ 30 guards for a New Year's Eve event. To address this situation, a provision is included in the bill for master licensees to apply for a temporary permit to exceed their authorised employee numbers.

The bill will also reduce red tape and gain efficiencies in the licensing process, which is of benefit to those working in the industry as well as to those regulating it. Under the Act, an application for a licence must be accompanied by two written references. Operational experience indicates that these provisions add significant time and cost to the making and processing of applications while not enhancing the quality or probity checking of applications. Therefore, section 14 (3) (b) will be repealed to remove this requirement. In

addition, licensing processes will be streamlined. The bill will amend section 24 to provide for a licence renewal process, which will include the continuation of the authority of the old licence being renewed subject to any further particulars required by the commissioner and a provision for a penalty for late renewal.

A number of miscellaneous technical improvements that clarify the intent of the Act will also be implemented by the bill. Section 18 will be amended to extend the power to require fingerprints in connection with a licence application so that palm prints may also be required. This amendment will rectify an anomaly identified in the New South Wales legislation and will amend the Act by inserting "palm print" after "fingerprint" in section 18. The Security Industry Council was established as an advisory body for the then Minister for Police. The council's specific functions are currently outlined in section 43A of the Act. The council has not fully carried out the statutory role envisaged for it. With the police assuming the role of the principal regulatory body, there is no longer a requirement for the Security Industry Council to facilitate co-regulation in the way that was envisaged.

With the expansion of the Security Licensing and Enforcement Directorate [SLED] there will be a greater capacity to liaise regularly with industry associations and representatives and to ensure that communication and consultation occur. It is proposed that a non-statutory group called the Security Licensing and Enforcement Directorate Advisory Council under the police's State Crime Command be established to provide a forum for the regular exchange of information between the industry and the regulator. The industry has responded positively to that proposal. Therefore, the bill will repeal section 43A to abolish the Security Industry Council. The changes proposed in this bill will further strengthen the regulation of the security industry in New South Wales. I commend the bill to the House.

**Debate adjourned on motion by the Hon. Greg Donnelly and set down as an order of the day for a future day.**