



New South Wales

Security Industry Amendment Act 2012 No 49

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New South Wales

Security Industry Amendment Act 2012 No 49

Act No 49, 2012

An Act to amend the *Security Industry Act 1997* to make further provision for the licensing and regulation of persons in the security industry; and for other purposes.
[Assented to 25 June 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Security Industry Amendment Act 2012*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 (other than Schedule 1 [3], [10], [11], [25], [26], [39], [40], [54], [61], [69], [70], [73], [75], [76] and [78]), Schedule 2 (other than Schedule 2.1 [2] and 2.3) and Schedule 3 commence on 1 November 2012.

Schedule 1 Amendment of Security Industry Act 1997 No 157

[1] Section 3 Definitions

Omit “or P1F” from paragraph (b) of the definition of *armed security guard* in section 3 (1).

[2] Section 3 (1), definition of “employ”

Omit the definition.

[3] Section 3 (1)

Insert in alphabetical order:

enforcement officer means:

- (a) a police officer, or
- (b) any other member of the NSW Police Force who is authorised by the Commissioner in writing to exercise the functions of an enforcement officer under this Act.

[4] Section 3 (1)

Insert in alphabetical order:

providing persons includes employing or subcontracting another person (or arranging by contract, franchise or otherwise with another person) for the purpose of that other person employing or providing persons.

renewed licence means a licence that is renewed under section 17.

temporary excess provision of services permit means a temporary excess provision of services permit in force under section 40A.

[5] Section 3 (1), definition of “security equipment” and sections 4 (1) (c), (d) (ii), (e) (ii) and (i) and 11

Omit “or watching”, “, watch” and “, watching” wherever occurring.

[6] Section 3 (1A)

Insert after section 3 (1):

- (1A) In this Act, a reference to a class of licence includes a reference to a subclass of that class of licence.

[7] Section 4 Carrying on a “security activity”

Omit “in any one or more of the following circumstances” from section 4 (1) (c).

Insert instead “including, but not limited to, in any one or more of the following circumstances”.

[8] Section 4 (1) (l)

Omit the paragraph.

[9] Section 4 (1) (m)

Omit the paragraph. Insert instead:

- (m) providing persons to carry on any security activity referred to in this section,

[10] Section 6 Application of Act

Omit section 6 (2) and (2A). Insert instead:

- (2) Any person who is employed in any of the following capacities does not carry on a security activity while, and to the extent that, the person is performing official duties in that capacity or in the course of that employment:
 - (a) a police officer or other member of the NSW Police Force,
 - (b) a police officer of the Commonwealth, another State or a Territory,
 - (c) a member of the armed forces of the Commonwealth,
 - (d) a special constable appointed under Part 4 of the *Police (Special Provisions) Act 1901* and employed by the Commissioner.
- (2A) A person does not carry on a security activity while, and to the extent that, the person is performing official duties in the course of his or her employment by or in any of the following:
 - (a) the New South Wales Crime Commission,
 - (b) the Australian Crime Commission,
 - (c) the Police Integrity Commission,
 - (d) the Independent Commission Against Corruption,

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- (e) the Department of Attorney General and Justice as a correctional officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) or a juvenile justice officer,
 - (f) any other agency responsible for the enforcement of criminal laws of the State, of the Commonwealth or of another State or Territory.

[11] Section 6A

Insert after section 6:

6A Application of Commonwealth National Vocational Education and Training Regulator Act 2011

- (1) In this section:

Commonwealth Act means the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

State security industry regulation provisions means the provisions of this Act and the regulations:

- (a) regulating organisations providing training, assessment or instruction in relation to any security activity, and
- (b) providing for the approval by or under this Act of training, assessment or instruction provided by organisations, and
- (c) providing for the exercise of investigative powers, sanctions and enforcement by or under this Act in relation to such matters.

- (2) The State security industry regulation provisions are declared to be an excluded matter for the purposes of section 10 of the Commonwealth Act in relation to section 9 (Immunity from State and Territory laws) of the Commonwealth Act to the extent only that that section prevents the application of the State security industry regulation provisions to an NVR registered training organisation (within the meaning of the Commonwealth Act) providing training, assessment or instruction in relation to security activities regulated by this Act.

- (3) This section is taken to have had effect from 1 July 2011.

[12] Section 7 Offence of carrying on unauthorised security activities

Omit “employ or” from section 7 (1).

[13] Section 7 (1) (b)

Omit the paragraph. Insert instead:

- (b) the person provides no more persons on any one day than the number of persons authorised by the master licence.

[14] Section 7 (2)

Omit the subsection. Insert instead:

- (2) A person must not carry on a security activity (other than providing persons to carry on security activities) unless the person is the holder of a class 1 licence or class 2 licence that authorises the person to carry on the security activity.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

[15] Section 7 (4)

Insert after section 7 (3):

- (4) The holder of a temporary excess provision of services permit granted under section 40A does not commit an offence under subsection (1) while acting under and in accordance with the authority conferred by the temporary excess provision of services permit.

[16] Section 9 Classes of licences

Omit section 9 (1) (d).

[17] Section 10 Master licences

Omit section 10 (1) (b)–(d). Insert instead:

- (b) class MB—authorises the holder to provide no more than 3 persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or class 2 licence,
- (c) class MC—authorises the holder to provide between 4 and 14 persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or class 2 licence,

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- (d) class MD—authorises the holder to provide between 15 and 49 persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or class 2 licence,
 - (e) class ME—authorises the holder to provide 50 or more persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or class 2 licence.

[18] Section 10 (3)

Omit “employing or”.

[19] Section 11 Class 1 licences

Omit section 11 (1) (g).

[20] Section 12 Class 2 licences

Omit section 12 (1) (c). Insert instead:

- (c) class 2C—authorises the 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,

[21] Section 12 (1) (e) and (f)

Omit the paragraphs.

[22] Section 12A Provisional licences

Omit the section.

[23] Section 14 Application for licence

Omit section 14 (3)–(5).

[24] Section 15 Restrictions on granting licence—general suitability criteria

Omit section 15 (1) and (2). Insert instead:

- (1) The Commissioner must refuse to grant an application for a licence if the Commissioner is not satisfied that the applicant:
 - (a) is a fit and proper person to hold the class of licence sought by the applicant, or
 - (b) is of or above the age of 18, or
 - (c) has the competencies and experience approved by the Commissioner, or

- (d) has undertaken and completed the requisite training, assessment and instruction for the class of licence sought by the applicant, or
 - (e) is competent to carry on the security activity to which the proposed licence relates, or
 - (f) is an Australian citizen or a permanent Australian resident.
- (2) For the purposes of subsection (1) (d), the requisite training, assessment and instruction for a class of licence is training, assessment and instruction in relation to the carrying on of security activities under a licence of that class:
- (a) that is of a kind approved, and to a standard required, by the Commissioner, and
 - (b) is provided by such persons or organisations as are approved by the Commissioner for the purposes of this section.
- (2A) The Commissioner may impose conditions with respect to the provision of training, assessment and instruction by any person or organisation approved by the Commissioner for the purposes of this section.
- (2B) A person or organisation approved by the Commissioner for the purposes of this section must comply with any conditions imposed by the Commissioner under subsection (2A).
Maximum penalty:
- (a) in the case of a corporation—100 penalty units, or
 - (b) in the case of an individual—50 penalty units.
- (2C) The Commissioner must also refuse to grant an application for a licence if the applicant has supplied information that is (to the applicant's knowledge) false or misleading in a material particular in, or in connection with, the application.

[25] Section 16 Restrictions on granting licence—criminal and other related history

Insert after section 16 (1):

- (2) Without limiting subsection (1), the Commissioner may refuse to grant an application for a licence if the Commissioner is satisfied that the applicant has a conviction that is not capable of becoming spent.

Note. Under section 7 of the *Criminal Records Act 1991*, certain convictions are not capable of becoming spent. For example, convictions for which a prison sentence of more than 6 months has been imposed, convictions for certain sexual offences and convictions prescribed by the *Criminal Records Regulation 2004*.

[26] Section 16 (5)

Insert “(2),” after “(1),”.

[27] Section 17

Insert after section 16A:

17 Renewal of licence

- (1) An application for the renewal of a licence may be lodged with the Commissioner by the holder of the licence no earlier than 8 weeks before the licence ceases (otherwise than by revocation) to be in force (its *expiry*).
- (2) The application is to be:
 - (a) in the approved form, and
 - (b) lodged electronically, by post or in any other approved manner, and
 - (c) accompanied by a fee prescribed by the regulations.

Note. See sections 18, 21 and 24 in relation to the grant, conditions and terms of renewed licences.

- (3) Subsection (1) does not prevent the Commissioner from granting an application for the renewal of a licence lodged no later than 90 days after its expiry on payment of the late fee prescribed by the regulations.
- (4) The Commissioner may 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 this Act to be refused.

Note. For example, under section 15 (1) of this Act the Commissioner must refuse an application for a new licence if the Commissioner is not satisfied that the applicant is a fit and proper person to hold the licence or is not competent to carry on the security activity to which the licence relates.

- (5) For the purposes of subsection (4), section 15 (6) and (7) apply to an application for renewal of a licence in the same way as they apply to an application for a licence.
- (6) Without limiting section 18, the Commissioner may request an applicant for the renewal of a licence to demonstrate, in the manner required by the Commissioner and to the satisfaction of

the Commissioner, continuing knowledge and competency in relation to the security activity authorised by the licence before renewal of the licence is granted.

- (7) Without limiting section 21 (3), the Commissioner may grant an application for renewal of a licence on the condition that the applicant undertake and complete to the satisfaction of the Commissioner any requisite training, assessment or instruction required by the Commissioner to ensure the licensee has continuing knowledge and competency in relation to the security activity authorised by the licence.
- (8) Section 15 (2) and (2A) apply to the requisite training, assessment and instruction under subsection (7) required in relation to an application for the renewal of a licence in the same way as they apply to an application for a licence.
- (9) A licence may be renewed under this section on more than one occasion.
- (10) Section 12 of the *Criminal Records Act 1991* does not apply in relation to an application for the renewal of a licence.

[28] Section 18 Investigation of licence and renewal applications

Insert “or for the renewal of a licence” after “licence” in section 18 (1).

[29] Section 18 (2) (a)

Insert “or palm prints, or both,” after “fingerprints”.

[30] Section 18 (2) (b)

Omit “been fingerprinted”.

Insert instead “provided fingerprints or palm prints”.

[31] Section 18 (3) (a)

Insert “or for the renewal of a licence” after “licence”.

[32] Section 18 (3) (b)

Insert “or renew” after “grant”.

[33] Section 18 (4)

Insert “, palm print” after “fingerprint”.

[34] Section 18 (5) (a)

Insert “or palm prints” after “fingerprints”.

[35] Section 20 Commissioner may require further information

Insert “or for the renewal of a licence” after “applicant for a licence” in section 20 (1).

[36] Section 20 (1) (b1)

Omit “or a provisional licence”.

[37] Section 20 (4) and (8)

Insert “or for the renewal of a licence” after “licence” wherever occurring.

[38] Section 21

Omit the section. Insert instead:

21 Grant and conditions of licence and renewal of licence

- (1) The Commissioner may, after considering an application for the grant or renewal of a licence:
 - (a) grant a licence to, or renew the licence of, the person making the application and nominate a place where the person is to collect the licence or renewed licence, or
 - (b) refuse to grant a licence or to renew the licence.
- (2) A licence confers no right of property and is incapable of being transferred, assigned or mortgaged, charged or otherwise encumbered.
- (3) A licence is subject:
 - (a) to such conditions as may be imposed by the Commissioner (whether at the time the licence is granted or renewed or at any later time), and
 - (b) to such other conditions as are imposed by this Act or prescribed by the regulations.
- (4) A licence is granted or renewed subject to the condition that the person making the application collect the licence or renewed licence from the place nominated by the Commissioner under subsection (1) (a) within 60 days of being notified of the grant or renewal.

[39] Section 21A

Insert after section 21:

21A Continuing training, assessment and instruction

- (1) It is a condition of every class 1 or class 2 licence that the licensee undertake and complete, to the satisfaction of the Commissioner, such training, assessment and instruction as may be required by the Commissioner to ensure the licensee has continuing knowledge and competency in relation to the security activity authorised by the licence.
- (2) Subsection (1) extends to licences granted before the commencement of this section.

[40] Section 22 Form of licence

Omit section 22 (2). Insert instead:

- (2) A licence must:
 - (a) contain the name of the licensee, and
 - (b) specify the class (or subclass) of licence, and
 - (c) contain the number of the licence, and
 - (d) contain such other details as may be prescribed by the regulations.
- (3) In addition, the Commissioner may determine that a particular class or subclass of licence is:
 - (a) to contain a recent photograph of the person to whom it is granted (such photograph being obtained in accordance with arrangements determined by the Commissioner), or
 - (b) to bear the signature of the licensee,or both.

[41] Section 23 Master licence—condition relating to provision of certain persons

Omit “employ or”.

[42] Section 23AA Special conditions—authority to carry firearms

Omit “or P1F” wherever occurring.

[43] Section 23A Special conditions—uniforms must be worn when carrying firearms

Omit “or P1F” wherever occurring.

[44] Section 23B Special conditions—storage of firearms in certain residential premises

Omit “or P1F” wherever occurring.

[45] Section 23C Special conditions—class P1F licences

Omit the section.

[46] Section 23D Special conditions—dog handling security services

Omit “employ any person to provide” from section 23D (1).

Insert instead “provide any person to carry out”.

[47] Section 23D (2) and (3)

Omit the subsections.

[48] Section 23E

Insert after section 23D:

23E Special conditions—class 1 licences

A class 1 licence that is granted on application by a person who has not, during the 3 years immediately before the application, been authorised by a class 1 licence to carry on the security activity to which the proposed licence relates is subject to the condition that the person undertake and complete, to the satisfaction of the Commissioner, 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 grant of the licence.

[49] Section 24 Term of licence

Insert “other than a renewed licence” after “licence” in section 24 (1A).

[50] Section 24 (1B)

Insert after section 24 (1A):

- (1B) The renewal of a licence comes into force:
 - (a) if the application for renewal is lodged under section 17 before its expiry and the Commissioner grants the application—on the expiry of the licence, or
 - (b) if the application for renewal is lodged after its expiry—on the day the Commissioner grants the application for renewal of the licence.

[51] Section 24 (2)

Omit the subsection.

[52] Section 24 (3)

Omit the subsection. Insert instead:

- (3) Despite subsection (1), if the person who made the application for a licence or for the renewal of a licence (the *applicant*) fails to collect the licence in accordance with the condition set out in section 21 (4):
 - (a) the licence does not come into force and is taken to have not been granted or renewed, and
 - (b) for the purposes of section 18 (5), the applicant is taken to be a person who was an applicant for, but was never granted, a licence.

[53] Section 26 Revocation of licence

Insert “or the renewal of the licence” after “licence” in section 26 (1) (b) (i).

[54] Section 26 (5) and (6)

Insert after section 26 (4):

- (5) For the purpose of determining whether a licence should be revoked under subsection (1A), the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the licensee that:
 - (a) is relevant to the activities carried on under the class of licence held by the licensee, or
 - (b) causes the Commissioner to conclude that improper conduct is likely to occur if the licensee continues to hold the licence, or
 - (c) causes the Commissioner not to have confidence that improper conduct will not occur if the licensee continues to hold the licence.
- (6) The Commissioner is not, under this or any other Act or law, required to give any reasons for revoking a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information as referred to in subsection (5).

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- [55] Section 27 Variation of licence**
Omit “class 1, class 2 or provisional licence” from section 27 (1).
Insert instead “class 1 or class 2 licence”.
- [56] Section 29 Right to seek review from Administrative Decisions Tribunal**
Insert after section 29 (1) (a):
 (a1) the refusal or failure of the Commissioner to renew a licence (other than by operation of section 24 (3)),
- [57] Section 29 (2)**
Insert “or renewal” after “grant”.
- [58] Section 29 (2)**
Insert “or renewed” after “granted”.
- [59] Section 29 (3)**
Omit “or to revoke”. Insert instead “, to renew a licence or to revoke”.
- [60] Section 29 (3) (a)**
Omit “section 15 (6)”. Insert instead “section 15 (6), 17 (5) or 26 (5)”.
- [61] Section 29, note**
Omit the note at the end of the section. Insert instead:
Note. Sections 15 (7), 17 (5) and 26 (6) of this Act provide that the Commissioner is not, under this or any other Act or law, required to give any reasons for not granting or renewing a licence or revoking a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information referred to in section 15 (6) or 26 (5). Accordingly, Part 2 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997* does not apply to any decision to refuse to grant (or renew) or revoke a licence based on such information to the extent that it would require disclosure of the existence or content of any criminal intelligence report or other criminal information.
- [62] Section 29A Offence of permitting employee who is provisional licensee to carry on unsupervised security activity**
Omit the section.
- [63] Section 29B Certain licensees must be employed by other licensees or visitor permit holders**
Omit section 29B (2).

[64] Section 35 Licence to be produced on demand

Insert at the end of the section:

- (2) Subsection (1) does not require a licensee to produce a licence that has been lost, stolen, destroyed, defaced or mutilated during the period in which the licensee is waiting for the issue of a replacement licence after notifying the Commissioner of that occurrence, and applying for a replacement licence within 14 days after giving that notification, in accordance with the regulations.

[65] Section 36 Licence to be worn by licensee

Omit “class 1, class 2 or provisional licence” from section 36 (1).

Insert instead “class 1 or class 2 licence”.

[66] Section 36 (3)

Insert after section 36 (2):

- (3) Subsection (1) does not require a licensee to wear a licence that has been lost, stolen, destroyed, defaced or mutilated during the period in which the licensee is waiting for the issue of a replacement licence after notifying the Commissioner of that occurrence, and applying for a replacement licence within 14 days after giving that notification, in accordance with the regulations.

[67] Section 38 Prohibition of delegation of functions

Omit section 38 (2).

[68] Section 38A

Insert after section 38:

38A Prohibition on unauthorised subcontracting

- (1) A master licensee (the *principal*) who enters into a contract to provide persons to carry on any relevant security activity with a person (the *client*) on or after the commencement of this section must not engage another master licensee (the *subcontractor*) to provide those persons on behalf of the principal unless:
 - (a) the client has expressly agreed in the contract to the provision of the persons by a subcontractor, and

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- (b) the principal provides the requisite subcontracting particulars in relation to any subcontractor engaged by the principal to the client before requiring payment by the client for the work of such a subcontractor.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
 - (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.
- (2) A subcontractor providing persons on behalf of the principal must not engage another master licensee (***further subcontractor***) to provide any of the persons to carry on security activities that the principal has engaged the subcontractor to provide unless:
- (a) the principal has expressly agreed in the contract with the subcontractor to the provision of the persons by a further subcontractor, and
 - (b) the subcontractor provides the requisite subcontracting particulars in relation to any further subcontractor engaged by the subcontractor to the principal before requiring payment by the principal for the work of the further subcontractor.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
 - (b) in the case of an individual—100 penalty units or imprisonment for 6 months, or both.
- (3) The regulations may exempt any principal or class of principals or relevant security activity from the operation of subsection (1) (b) in such circumstances as may be specified in the regulations.

- (4) In this section:

relevant security activity does not include the provision of a restricted security keying system.

requisite subcontracting particulars, in relation to a subcontractor or further subcontractor, means:

- (a) the name and master licence number of the subcontractor or further subcontractor, and
- (b) any other particulars prescribed by the regulations.

[69] Section 38B Supervising or monitoring licensees

Omit the section.

[70] Section 38C

Omit the section. Insert instead:

38C Rostering or scheduling of licensed persons to carry on security activities and monitoring of their performance

A person (the *relevant person*) must not, for fee or reward, roster or schedule the carrying on of any security activity by a person who holds a class 1 or class 2 licence, or monitor the performance of such a person in carrying on a security activity, if the relevant person is not eligible to hold a licence because of section 16.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

[71] Section 39

Omit the section. Insert instead:

39 Master licensee not to provide unlicensed persons

- (1) Without limiting the operation of section 30, the holder of a master licence must not provide any person to carry on any security activity if that person is not the holder of a licence that authorises the person to carry on a security activity of that kind.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units, or
(b) in the case of an individual—500 penalty units or imprisonment for 2 years, or both.
- (2) It is a defence in proceedings for an offence under this section if the master licensee satisfies the court that the master licensee did not know, and could not reasonably have been expected to know, that the person provided by the master licensee did not hold a licence that authorised the person to carry on a security activity of the kind concerned.

[72] Section 39B Master licensee to have “fitness for work” policy

Omit “employ or” and “employed or”.

[73] Part 3B

Insert after Part 3A:

Part 3B Enforcement

Division 1 Powers of entry and search of premises

39I Powers of enforcement officers to enter premises without warrant

- (1) An enforcement officer may enter any premises at which a security activity (or an activity ancillary to the carrying on of a security activity) is being carried on, or at which the enforcement officer reasonably believes such an activity is being carried on, at any reasonable time for the following purposes:
 - (a) for determining whether there has been compliance with, or a contravention of, this Act or the regulations,
 - (b) generally for administering this Act.
- (2) This section does not confer a power to enter any premises or part of premises that is used only for residential purposes without the permission of the occupier or the authority of a search warrant.

39J Powers of enforcement officers to enter premises with warrant

- (1) An enforcement officer may apply to an authorised officer for the issue of a search warrant if the enforcement officer believes on reasonable grounds that any provision of this Act or the regulations is being or has been contravened on any premises.
- (2) An authorised officer to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any enforcement officer to enter and search the premises.
- (3) An enforcement officer executing a search warrant issued under this section may:
 - (a) enter the premises specified in the warrant, and
 - (b) search the premises for evidence of a contravention of this Act or the regulations, and
 - (c) exercise any other function of an enforcement officer under this Part.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

- (5) In this section:
authorised officer has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

39K Powers that can be exercised by enforcement officers on entry

- (1) An enforcement officer may, at any premises lawfully entered under this Act for a purpose referred to in section 39I, do any or all of the following:
- (a) examine any registers, books, records or other documents on the premises,
 - (b) make a copy on the premises of any registers, books, records or other documents and retain that copy,
 - (c) require any person to make a copy on the premises of any registers, books, records or other documents and give that copy to the enforcement officer to retain,
 - (d) take such photographs, films, audio, video or other recordings as the enforcement officer considers necessary,
 - (e) require any person to produce any registers, books, records or other documents on the premises,
 - (f) require any person to answer any question relating to any registers, books, records or other documents or any other relevant matter,
 - (g) take any registers, books, records or other documents from the premises for the purposes of copying them,
 - (h) seize any registers, books, records or other documents, or any other thing that the enforcement officer believes on reasonable grounds is connected with an offence against this Act or the regulations.
- (2) The power to seize anything connected with an offence includes a power to seize anything that will provide evidence of the commission of an offence.
- (3) Any registers, books, records or other documents taken only for the purpose of copying them must be returned when that copying is completed.

39L Obstruction

- (1) A person must not:
- (a) obstruct, hinder or interfere with an enforcement officer in the exercise of a function under this Part, or

- (b) fail, without reasonable excuse, to comply with any requirement made of the person by an enforcement officer in the exercise of a function under this Part.

Maximum penalty: 100 penalty units.

- (2) A person is not guilty of an offence of failing to comply with a requirement made of the person by an enforcement officer unless the person was warned on that occasion that a failure to comply is an offence.

39M Identification of certain enforcement officers

- (1) Every enforcement officer, who is not a police officer, is to be provided with an identification card as an enforcement officer by the Commissioner.
- (2) In the course of exercising the functions of an enforcement officer under this Act, an enforcement officer who is not a police officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person the officer's identification card.

Division 2 Power to obtain information or records

39N Application of Division

This Division applies whether or not a power of entry under this Part is being or has been exercised.

39O Requirement to provide information and records

- (1) An enforcement officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice for the following purposes:
 - (a) for determining whether there has been compliance with, or a contravention of, this Act or the regulations,
 - (b) generally for administering this Act.
- (2) A notice under this section must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

39P Provisions relating to requirement under section 39O to furnish records

- (1) A notice under section 39O may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The person to whom any record is furnished under section 39O may take copies of it.
- (3) If any record required to be furnished under section 39O is in electronic, mechanical or other form, the record must, unless the notice otherwise provides, be furnished in written form.

39Q Power of enforcement officers to require answers and record evidence

- (1) An enforcement officer may require a person whom the enforcement officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for a purpose referred to in section 39O to answer questions in relation to those matters.
- (2) The Commissioner may require a corporation to nominate a director or officer of the corporation who is authorised to represent the corporation for the purpose of answering questions under this section.
- (3) An enforcement officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (4) The place and time at which a person may be required to attend under subsection (3) is to be:
 - (a) a place or time nominated by the person, or
 - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the enforcement officer that is reasonable in the circumstances.
- (5) An enforcement officer may cause any questions and answers to questions given under this section to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (6) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the enforcement officer.

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- (7) A copy of any such record must be provided by the enforcement officer to the person who is questioned as soon as practicable after it is made.
 - (8) A record may be made under this section despite the provisions of any other law.

[74] Section 40A

Insert after section 40:

40A Temporary excess provision of services permits

- (1) A master licensee may apply to the Commissioner for the grant of a permit (a *temporary excess provision of services permit*) authorising the holder of the permit to provide more persons than the number of persons authorised by the master licence on any specified day or on each day within a period specified in the permit.
- (2) The application must be in the approved form and be accompanied by the fee and any information and particulars prescribed by the regulations.
- (3) The Commissioner may, after considering an application for a temporary excess provision of services permit:
 - (a) grant the permit, or
 - (b) refuse to grant the permit.
- (4) A permit is to be in the approved form.
- (5) A permit is subject to such conditions as may be imposed by the Commissioner (whether at the time the permit is granted or at any later time).
- (6) The Commissioner may revoke a permit if the holder contravenes any condition to which the permit is subject.

[75] Sections 42 and 42A

Omit the sections.

[76] Section 43A Security Industry Council

Omit the section.

[77] Section 47 Certificate and other evidence

Omit section 47 (1) (c).

[78] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Security Industry Amendment Act 2012

[79] Schedule 2, Part 8

Insert after Part 7:

Part 8 Provisions consequent on enactment of Security Industry Amendment Act 2012

23 Definitions

In this Part:

amending Act means the *Security Industry Amendment Act 2012*.

converted licence means a licence that is taken by the operation of this Part to be a licence of a different class or subclass of licence.

24 Conversion of certain existing subclasses of master licence to new subclasses of master licence

On the commencement of this clause, a master licence that, immediately before the amendment made to section 10 (1) by the amending Act, was:

- (a) a class MB licence—is taken to be, and to have the authority conferred by, a class MC licence granted under this Act (as amended by the amending Act), and
- (b) a class MC licence—is taken to be, and to have the authority conferred by, a class MD licence granted under this Act (as amended by the amending Act), and
- (c) a class MD licence—is taken to be, and to have the authority conferred by, a class ME licence granted under this Act (as amended by the amending Act).

25 Conversion of existing class 1G licence to new class 1A licence

On the commencement of this clause, a licence that was a class 1G licence immediately before the repeal of section 11 (1) (g) by the amending Act is taken to be, and to have the authority conferred by, a class 1A licence.

26 Conversion of existing class 2E licence to class 2C licence

On the commencement of this clause, a licence that was a class 2E licence immediately before the repeal of section 12 (1) (e) by the amending Act is taken to be, and to have the authority conferred by, a class 2C licence.

27 Conversion of existing class 2F licence to class 2C licence

On the commencement of this clause, a licence that was a class 2F licence immediately before the repeal of section 12 (1) (f) by the amending Act is taken to be, and to have the authority conferred by, a class 2C licence.

28 Conversion of existing provisional licences to class 1 licences

- (1) On the commencement of this clause, a licence that, immediately before the repeal of section 12A by the amending Act, was:
- (a) a class P1A licence—is taken to be, and to have the authority conferred by, a class 1A licence granted under this Act, and
 - (b) a class P1B licence—is taken to be, and to have the authority conferred by, a class 1B licence granted under this Act, and
 - (c) a class P1C licence—is taken to be, and to have the authority conferred by, a class 1C licence granted under this Act, and
 - (d) a class P1D licence—is taken to be, and to have the authority conferred by, a class 1D licence granted under this Act, and
 - (e) a class P1E licence—is taken to be, and to have the authority conferred by, a class 1E licence granted under this Act, and
 - (f) a class P1F licence—is taken to be, and to have the authority conferred by, a class 1F licence granted under this Act, and
 - (g) a class P1G licence—is taken to be, and to have the authority conferred by, a class 1A licence granted under this Act.
- (2) The holder of a licence referred to in subclause (1) is taken to be a person who has not previously been authorised by a class 1 licence to carry on the security activity to which the licence relates and, accordingly, is subject to section 23E as inserted by the amending Act.

- (3) The holder must comply with the conditions set out in section 23E within 12 months of the commencement of that section.

29 Duration of converted licence

- (1) A licence converted by the operation of this Part to another class or subclass of licence remains in force (unless sooner surrendered, suspended or revoked) until the end of the period that it would have remained in force under section 24 but for the conversion.
- (2) The holder of a converted licence may renew the converted licence in accordance with section 17.

30 Form of converted licence

- (1) Section 22 (2) (b), as inserted by the amending Act, does not apply to a converted licence.
- (2) The Commissioner may reissue any converted licence with such alterations or endorsements as the Commissioner considers appropriate having regard to the provisions and operation of the amending Act.

31 References to converted licences

- (1) A reference in any Act (other than this Act) or statutory instrument, or in any other instrument, or in any contract or agreement, to a licence of a particular class or subclass of licence is to be construed as a reference to the class or subclass of the licence as converted by the operation of this Part.
- (2) The conditions to which a converted licence is subject are, subject to the regulations, taken to be conditions imposed by the Commissioner under this Act (as amended by the amending Act) applicable to the class or subclass of the licence on conversion and any such condition may be varied or revoked in accordance with this Act.

32 Proceedings for abolished offences relating to provisional licensees

Any proceedings for an offence under a provision of this Act repealed by the amending Act that have been commenced but not finally determined before the repeal of the provision may continue to be dealt with as if the provision had not been repealed.

33 Restriction on granting licence to applicant providing false or misleading information

Section 15 (2C), as inserted by the amending Act, applies to applications that have been made but not yet determined by the Commissioner before the insertion of that subsection.

34 Investigation of licence applications—taking of palm prints

Anything done or omitted to be done by the Commissioner that would have been validly done or omitted had the amendments made to section 18 of this Act by the amending Act been in force at the time that the thing was done or omitted, is taken to have been validly done or omitted.

35 Licence renewals

Section 17, as inserted by the amending Act, extends to licences granted before the insertion of that section.

Schedule 2 Amendment of other legislation

2.1 Firearms Act 1996 No 46

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

approved means approved by the Commissioner from time to time.

approved master licensee means a holder of a master licence under the *Security Industry Act 1997* who provides uniformed armed security services and is approved by the Commissioner for the purposes of this definition.

category H (business/employment) licence means a category H licence that is issued for the purposes of business or employment.

provisional pistol (business/employment) licence means a category H (business/employment) licence of the kind referred to in section 16C.

[2] Section 6AA

Insert after section 6:

6AA Application of Commonwealth National Vocational Education and Training Regulator Act 2011

(1) In this section:

Commonwealth Act means the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

State firearms regulation provisions means the provisions of this Act and the regulations:

- (a) regulating organisations providing training, assessment or instruction in relation to possession or use of firearms, and
- (b) providing for the approval by or under this Act of training, assessment or instruction provided by organisations, and
- (c) providing for the exercise of investigative powers, sanctions and enforcement by or under this Act in relation to such matters.

(2) The State firearms regulation provisions are declared to be an excluded matter for the purposes of section 10 of the Commonwealth Act in relation to section 9 (Immunity from State and Territory laws) of the Commonwealth Act to the extent only that that section prevents the application of the State firearms regulation provisions to an NVR registered training organisation

(within the meaning of the Commonwealth Act) providing training, assessment or instruction in relation to the use and possession of firearms regulated by this Act.

(3) This section is taken to have had effect from 1 July 2011.

[3] Section 16 Category H licences—restrictions on issue

Insert after section 16 (1):

(1A) For the purposes of subsection (1), *business or employment* includes work undertaken voluntarily but only with respect to the static guarding of approved premises.

[4] Section 16 (4) and (5)

Insert after section 16 (3):

(4) The Commissioner must not issue a category H (business/employment) licence (other than a provisional pistol (business/employment) licence) to a person who has never held such a licence unless:

- (a) the person has previously been issued with a provisional pistol (business/employment) licence, and
- (b) the provisional pistol (business/employment) licence has expired.

(5) The Commissioner must not issue a provisional pistol (business/employment) licence to a person unless:

- (a) the person indicates that he or she intends to be employed by an approved master licensee specified in the application for the licence for the term of the licence, and
- (b) the approved master licensee has verified to the satisfaction of the Commissioner that the master licensee intends the employment to continue for the term of the licence.

[5] Section 16C

Insert after section 16B:

16C Provisional pistol (business/employment) licences

(1) A category H (business/employment) licence that is issued to a person who has never held such a licence is to be issued as a provisional pistol (business/employment) licence.

- (2) Without limiting section 19, a provisional pistol (business/employment) licence is subject to the following conditions:
- (a) the licensee must, before possessing or using a pistol, complete to the satisfaction of the Commissioner an approved firearms training course conducted by the employer,
 - (b) the licensee must, in addition to the training referred to in paragraph (a), complete:
 - (i) such further training within 3 months of being granted the licence as is determined by the Commissioner, and
 - (ii) such other training as may be required by the Commissioner during the term of the licence,
 - (c) the licensee must hold a class 1F licence issued under section 11 of the *Security Industry Act 1997*,
 - (d) for the first 6 months of the term of the licence, the licensee must not possess or use a pistol unless the licensee is under the direct supervision of a natural person who has continuously held, for a period of more than 12 months:
 - (i) a category H (business/employment) licence that is not a provisional pistol (business/employment) licence, and
 - (ii) a class 1F licence under the *Security Industry Act 1997*.

Note. The licence may also be subject to other conditions—see section 19.

- (3) The Commissioner must revoke a provisional pistol (business/employment) licence if the Commissioner is satisfied that the licensee has failed to comply with a condition under this section.
- (4) If the holder of a provisional pistol (business/employment) licence contravenes the condition referred to in subsection (2) (d), the person who is (at the time of the contravention) the master licensee who is the employer of the licensee is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units.

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- (5) If:
- (a) the holder of a provisional pistol (business/employment) licence applies for a category H (business/employment) licence before the term of the provisional pistol (business/employment) licence expires, and
 - (b) the application has not been dealt with by the time the provisional pistol (business/employment) licence expires, the authority conferred by the provisional pistol (business/employment) licence continues until such time as the person is notified of the issue of, or refusal of, the category H (business/employment) licence.
- (6) A provisional pistol (business/employment) licence is automatically revoked if the licensee ceases to be employed during the term of the licence by the approved master licensee specified in the application for the licence as required by section 16 (5).

[6] Section 21 Term of licence

Omit section 21 (3). Insert instead:

- (3) The following types of licence continue in force for a period of 12 months from the time the licence is issued unless the licence is sooner surrendered or revoked or otherwise ceases to be in force:
- (a) provisional pistol (business/employment) licence,
 - (b) probationary pistol licence.

[7] Section 24 Revocation of licence

Omit “P1F licence” wherever occurring in section 24 (1A).

Insert instead “1F licence”.

2.2 Firearms Regulation 2006

[1] Clause 3, definition of “security guard”

Omit “or P1F”.

[2] Clause 8 Term of licence

Insert “, a provisional pistol (business/employment) licence” after “Act” in clause 8 (1).

[3] Clause 83 Additional requirements relating to security guards

Omit “or P1F” from clause 83 (1) (b).

2.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit “section 42” from the matter relating to the *Security Industry Act 1997*.

Insert instead “Part 3B”.

2.4 Weapons Prohibition Regulation 2009

Schedule 1 Persons exempt from requirement for permit

Omit “, 1F or P1F” from clause 3 (1) (i).

Insert instead “or 1F”.

Security Industry Amendment Act 2012 No 49

Repeal of Security Industry Amendment Act 2005 No 63

Schedule 3

**Schedule 3 Repeal of Security Industry Amendment
Act 2005 No 63**

The *Security Industry Amendment Act 2005* is repealed.

[Second reading speech made in—

Legislative Council on 13 June 2012

Legislative Assembly on 20 June 2012]