

Private Security and County Court Amendment Bill 2024

Introduction Print

EXPLANATORY MEMORANDUM

General

The Private Security and County Court Amendment Bill 2024 is a Bill for an Act to amend the **Private Security Act 2004**, the **County Court Act 1958** and the **Sentencing Act 1991**.

Clause Notes

Part 1—Preliminary

Clause 1 sets out the purposes of the Bill.

Clause 1(a) states that a purpose of the Bill is to amend the **Private Security Act 2004** to—

- provide a single licensing system for all private security workers and businesses, by removing the requirement that some activities require a registration and others a licence. All activities require a licence under the Bill;
- streamline and simplify the application process for private security licences and impose a new requirement for refresher training prior to renewal of licences for some private security activities;
- allow any person aware of concerns about a holder of a private security licence to make a complaint to Victoria Police;
- set out requirements for obtaining consent and providing written notice in relation to sub-contracting arrangements, with attached offences for failure to comply;

- provide for the development of a code of conduct for private security workers, enforceable by disciplinary action;
- require a risk management plan to be prepared by a person or business prior to private security workers starting work;
- clarify provisions in relation to the appointment of Special Counsel in licence suspension hearings at VCAT where protected information is required to be managed.

Clause 1(b) states that a purpose of the Bill is to amend the **County Court Act 1958** and the **Sentencing Act 1991** to extend the operation of the Drug Court Division of the County Court.

Clause 1(c) states that a purpose of the Bill is to make consequential amendments to other Acts.

Clause 2 sets out the commencement of the Bill.

Subclause (1) provides that the Bill (other than Parts 2 and 4) comes into operation on the day after the day on which the Bill receives the Royal Assent.

Subclause (2) provides that subject to subclause (3), Parts 2 and 4 of the Bill come into operation on a day or days to be proclaimed.

Subclause (3) provides that if a provision under subclause (2) does not come into operation before 19 June 2025, it comes into operation on that day.

It is noted that subclause (3) sets a default commencement date that is 16 months from the expected day of introduction of the Bill to Parliament, rather than the expected maximum 12 months. The reasons for delayed commencement are—

- Victoria Police, the Regulator for private security and firearms licences, as well as controlled weapons is working with an outdated database that the parent company will no longer support in 2029, and the level of support provided by that company is limited. The required system changes to implement the amendments, particularly to licensing, including accommodation of transitional arrangements, will be costly and time consuming.

- The fee structure for licenses and registrations is set out in detail in the Private Security Regulations 2018. The Regulations will need to be substantially re-drafted or re-made, requiring detailed analysis through a Regulatory Impact Statement to ascertain what fees are required on a cost recovery model. This task will be complicated because each staff member in the Registry deals not only with private security matters, but also firearms matters and controlled weapons matters. It will take time to accurately assess what proportion of their time, on average, is spent on each private security licensing task before fees can be managed.
- In addition to the RIS process, education and training need to be developed and rolled out to industry participants.
- The Bill imposes significant change on the private security industry, as well as clients who hire private security services. Allowing longer for commencement of relevant provisions will allow for the burden of change to be understood and absorbed.

Clause 3 notes that in the Bill, the **Private Security Act 2004** will be referred to as the "Principal Act".

Part 2—Amendments in relation to licensing, registration and sub-contracting

Clause 4 deletes the word *registration* from the purposes of the Principal Act. This reflects the abolition of registrations for private security activities and the creation of a single system where all activities require a licence.

Clause 5 adds and amends a number of definitions under section 3(a) of the Principal Act, as follows—

- inserts a new definition of *ABN*, which refers to "Australian Business Number" and has the same meaning as it does under Commonwealth Tax legislation.
- inserts a new definition of *code of conduct* that refers to new section 171 which sets out the power for the Chief Commissioner to establish a code of conduct.

- inserts a new definition of *private security individual operator (security guard) licence* which refers to the licence that authorises the holder to carry on the activity of acting as a security guard. *Security guard* is defined in the Principal Act to include particular security activities.
- inserts a new definition of *risk management plan* that refers to new section 136A which sets out new requirements for the development of risk management plans.

Paragraph (b) repeals the definitions of *class A security activity* and *class B security activity*. In the Principal Act, class A security activities referred to those activities requiring a private security licence, while Class B security activities were those requiring registration. Since the Bill abolishes registration in favour of licensing the distinction between Class A and B security activities is no longer necessary.

Paragraph (c)(i to iii) amends the definition of *close associate* to remove references to registration (see clause notes for clause 4).

Paragraph (d) replaces the definition of *nominated person*. The purpose of the amendment is to remove references to registration in section 124 of the Principal Act, which deals with body corporate nominations regarding private security licence applications.

Paragraph (e) repeals definitions in the principal act that refer to *registration* (see clause note 4).

Paragraph (f) amends the definition of *register of licence and registration holders* to remove reference to *registration* (see clause note 4).

Paragraph (g) removes the reference to registration in the existing definition of *registered address* leaving a single reference to licence.

Paragraph (h) substitutes the existing definition of *security activity* to include activities which were formerly subject to registration. It is noted that this amendment does not affect the existing definition of *security guard* in the Principal Act.

Paragraph (i) repeals the definition of *specified identification method* to accommodate provisions in the Bill which provide that the form of identification may be approved by the Chief Commissioner of Police.

- Clause 6 amends section 4 of the Principal Act to remove several references to registration.
- Clause 7 substitutes section 5(1) of the Principal Act to omit references to registration and impose a proportionally higher fine for breach by a body corporate—previously the fine for individuals and businesses was 120 penalty units. The Bill retains that penalty for individuals but increases it to 240 penalty units for businesses to increase deterrence and reflect the relative increase of gravity of the offending.
- Clause 8 substitutes section 6(1) of the Principal Act to omit references to registration for the offences of a business or individual holding themselves out to possess a private security licence when they do not. This clause includes a note referring the reader to section 256 of the **Victoria Police Act 2013** to draw attention to the offence in that Act of holding oneself out to be a police officer. This note has been added for clarity and ease of reference.
- Clauses 9 and 10 substitute section 7(1) and 8(1) of the Principal Act to omit references to registration. The amendment to section 8(1) includes a note referring the reader to section 256 of the **Victoria Police Act 2013** to draw attention to the offence in that Act of holding oneself out to be a police officer. This note has been added for clarity and ease of reference.
- Clause 11 repeals sections 9, 10, 11 and 12 of the Principal Act. These sections are no longer required because they refer wholly to registrations.
- Clause 12 amends section 14(1) of the Principal Act to include all security activities, including those formerly known as Class B security activities, in the list of security activities for which the Chief Commissioner of Police may issue a licence.
- Clause 13 amends section 15(3) of the Principal Act to provide that the Chief Commissioner of Police may authorise one or more security activities on a single licence.

Clause 14 inserts new section 15A into the Principal Act to provide that if a natural person wishes to engage in work in private security as an independent contractor and has an ABN to enable them to do so, the natural person must hold an individual operator private security licence and a private security business licence. This amendment aims to deter sham contracting by making it very difficult for a prospective employee to be pushed into obtaining an ABN which puts them in a situation where the prospective employer does not have an obligation to pay Award rates, take out WorkCover insurance or provide leave and superannuation. This provision is intended to work together with Commonwealth and State laws prohibiting sham contracting.

New section 15A applies from the day that is the 6 month anniversary of the commencement of clause 14.

Clause 15 substitutes section 17(1) and (2) of the Principal Act regarding applications for licences, introducing flexibility for the Chief Commissioner to determine the form of the application and proof of identity requirement and to remove the requirement to provide written references.

Clause 16 repeals section 18 of the Principal Act. That section required applicants for private security licences to cause an advertisement to be printed in a newspaper (physical) so that anyone who wanted to object to that person or business obtaining a licence could do so.

Clause 17 omits a reference to "class A" security activities from section 33 of the Principal Act. This is necessary because the Bill abolishes class A and B security activities.

Clause 18 substitutes section 37 of the Principal Act which governs when the Chief Commissioner must refuse to renew a licence. Substituted section 37 will give the Chief Commissioner the power to refuse a renewal if they are not satisfied that the applicant meets all the required criteria. Most criteria remain unchanged, with the addition of first aid training and activity specific refresher training as determined by the Chief Commissioner for certain security activities as specified.

Clause 19 amends section 42(1) and (2) of the Principal Act to remove references to "class A" security activities. This is necessary because the Bill abolishes class A and B security activities.

- Clause 20 amends section 45(1)(b)(i) and (ii) of the Principal Act to omit a reference to "class A". This is necessary because the Bill abolishes class A and B security activities.
- Clause 21 inserts new paragraph (ba) into section 50(b) of the Principal Act to extend the existing power of the Chief Commissioner to hold disciplinary proceedings to situations where there is an alleged breach of the code of conduct introduced by the Bill.
- Clause 22 omits a reference to "class A" security activities from section 51(1)(b)(i) and (ii) of the Principal Act. This is necessary because the Bill abolishes class A and B security activities.
- Clause 23 omits references to "class A" security activities from section 56(e) and (g) of the Principal Act. This is necessary because the Bill abolishes class A and B security activities.
- Clause 24 omits references to "class A" security activities from section 59(1)(b) and (2) of the Principal Act. This is necessary because the Bill abolishes class A and B security activities.
- Clause 25 omits a reference to "class A" security activities from section 64(1) of the Principal Act. This is necessary because the Bill abolishes class A and B security activities.
- Clause 26 omits a reference to "class A" security activities from section 65(1) of the Principal Act. This is necessary because the Bill abolishes class A and B security activities. .
- Clause 27 substitutes section 68(2) of the Principal Act to provide that an application for a private security permit must be accompanied by proof of identity of the applicant in the form approved by the Chief Commissioner, at the Chief Commissioner's discretion.
- Clause 28 repeals Part 4 of the Principal Act. Part 4 of the Principal Act governs registration and registration is abolished by this Bill.
- Clause 29 amends the heading to Part 5 of the Principal Act to remove the reference to registrations.
- Clause 30 repeals section 124(5), (6), (7) and (8) of the Principal Act to remove references to registration. Clause 30(2) substitutes section 124(10) of the Principal Act, which governs body corporate members applying for a private security licence, to update the definition of *qualified person* in that subsection.

- Clause 31 removes various references to registration in section 125 of the Principal Act.
- Clause 32 removes various references to registration in section 126 of the Principal Act.
- Clause 33 repeals section 127 of the Principal Act. That section provided that a business or individual who performed security work for a client did not have the right to sue for, recover or retain any commission, fee, gain or reward unless the business or individual was licensed or registered to provide that security work. This provision limited the jurisdiction of the Supreme Court under section 85 of the **Constitution Act 1975** and is no longer required. The Principal Act contains clear offences and penalties for unlicensed work and it is a matter for a Court to determine if the unlicensed individual or business has standing to sue, for example, a client who is withholding payment.
- Clause 34 omits references to registration in section 128 of the Principal Act.
- Clause 35 omits references to registration in section 129 of the Principal Act, which deals with address requirements for licence holders.
- Clause 36 omits the reference to registration in section 130 of the Principal Act, which requires a business or individual which is advertising private security services to display their licence number in that advertisement.
- Clause 37 omits references to "class A" security activity in section 131 of the Principal Act, which sets out an offence for employing unlicensed persons.
- Clause 38 repeals section 132 of the Principal Act, which sets out an offence for hiring unregistered persons.
- Clause 39 omits references to registration in section 133 of the Principal Act.
- Clause 40 amends section 134(1) of the Principal Act to remove references to "class A" security activities. Subclause (2) repeals section 134(2) of the Principal Act which sets out record keeping requirements for holders of private security registrations.

Clause 41 removes the words "written reference" from section 135 of the Principal Act, as a result of the removal of the requirement for written references for licence applicants (see clause 15).

Clause 42 inserts new sections 136A and 136B into the Principal Act.

New section 136A(1) requires a person who employs or engages a private security licence holder to carry on a security activity or provide the services of other people to carry on a security activity to prepare a risk management plan prior to the security activity taking place. A penalty of 30 penalty units applies for failure to comply with new section 136A(1).

New section 136A(2) and (3) require businesses to prepare a risk management plan in the same manner as new section 136A(1).

New section 136A(2) applies to a natural person or body corporate with less than 10 employees while new section 136A(3) applies to a natural person or body corporate with 10 or more employees. The distinction in business size is relevant to the size of the penalty for failure to comply (30 penalty units for a natural person or 60 penalty units for a body corporate with less than 10 employees and 60 penalty units for a natural person or 120 penalty units for a body corporate with 10 or more employees). New section 136A(4) provides for the Chief Commissioner of Police to determine the form of a risk management plan.

New section 136B(a) provides that a person who employs or engages the holder of a private security licence to carry on a security activity or to provide the services of other persons to carry on a security activity must provide the risk management plan prepared under new section 136A to all persons carrying on the security activity at least one day before they commence providing that service.

New section 136B(b) and (c) require that in addition to the risk management plan referred to in new section 136A(a), the person who engages a private security licence holder to carry on a security activity or to provide the services of other persons to carry on a security activity, must provide all persons carrying on the security activity with any prescribed equipment required for their role, and written information about their role and responsibilities. New 136B creates an offence for breaches of this provision, with 60 penalty units for individuals and 120 penalty units for a body corporate.

Clause 43 inserts a new Part 5A into the Principal Act, entitled "**Offences in relation to sub-contracting**". This clause includes new sections 136C to 136G, as follows.

New Division 1, section 136C sets out definitions in relation to sub-contracting—

- *client* means a person who has hired a principal contractor to provide the services of other persons to carry on a security activity;
- *principal contractor* means a private security business licence holder, and includes an independent contractor;
- *sub-contractor* is defined to mean a private security business licence holder who is not the principal contractor or a private security individual operator licence holder.

New Division 2, sections 136D and 136E set out offences in relation to principal contractors as follows.

New section 136D sets out the requirements for principal contractors engaging sub-contractors, and the penalties for failure to meet those requirements.

New section 136D(2) requires that a principal contractor who is required to hire a sub-contractor to carry out security activity on their behalf, must obtain the written consent of the client to the sub-contractor carrying out those services at least one day prior to commencement of the work. Failure to comply attracts a penalty of 120 penalty units or 6 months imprisonment or both for a natural person and 240 penalty units for a body corporate.

New section 136D(3) provides that the principal contractor must provide the client with the names and licence numbers of the sub-contracted private security licence holders at least one day prior to commencement of the work. The penalty for failure to comply is 120 penalty units or 6 months imprisonment or both for a natural person and 240 penalty units for a body corporate.

New section 136D(4) provides that section 136D(3) does not apply if the principal contractor is the holder of a private security business licence that authorises persons to act as a private investigator and in cases where due to the nature of their work, providing details of sub-contractors would compromise either the

investigation conducted by that investigator or the safety of that investigator.

New section 136E deals with situations where the principal contractor is required to engage sub-contractor(s) on short notice (that is, for legitimate reasons, they cannot comply with the one day requirement set out in new section 136D(2) and (3)).

New section 136E(2) provides that if, within 24 hours of the start of a security activity, circumstances arise where the principal contractor needs to engage a sub-contractor or other persons to carry on a security activity on their behalf, they must obtain the written consent of the client within 3 days of commencement of the security activity. Failure to comply attracts 120 penalty units or 6 months imprisonment or both for a natural person and 240 penalty units for a body corporate.

New section 136E(3) requires the principal contractor in the circumstances referred to in section 136E(1) and (2) to provide the name and licence number of the sub-contractor to the client within 3 days of commencement of the security activity. Failure to comply attracts 120 penalty units or 6 months imprisonment or both for a natural person and 240 penalty units for a body corporate.

New section 136E(4) provides that section 136E(3) does not apply if the principal contractor is the holder of a private security business licence that authorises persons to act as a private investigator and compliance with section 136E(3) would compromise an investigation or the safety of the investigator.

New Division 3, sections 136F and 136G set out offences in relation to sub-contractors, as follows.

New section 136F(2) requires that a sub-contractor hired by the principal contractor, who needs to hire another sub-contractor to carry out a security activity on their behalf, must obtain the written consent of the client to the other sub-contractor carrying out those services at least one day prior to commencement of the work. The sub-contractor hired by the principal contractor must also provide the names and licence numbers of the other sub-contractors to the client at least one day prior to commencement of the work. Failure to comply attracts a penalty of 120 penalty units or 6 months imprisonment or both for a natural person or 240 penalty units for a body corporate.

New section 136G provides that if a sub-contractor hired by the principal contractor needs to hire another sub-contractor, within the same circumstances as new section 136E (that is, when the need for sub-contracting becomes apparent within 24 hours of commencement of work), the sub-contractor hired by the principal contractor must obtain the written consent of the client within 3 days of commencement of the security activity. The sub-contractor hired by the principal contractor must also provide the names and licence numbers of the other sub-contractors to the client within 3 days of commencement of the security activity. Failure to comply attracts 120 penalty units or 6 months imprisonment or both for a natural person and 240 penalty units for a body corporate.

Clause 44 amends section 150 of the Principal Act which deals with appeals against licence and registrations suspensions, to omit all references to registration.

Clause 45 amends the heading to section 161 of the Principal Act to remove references to registration. It also repeals references to registration appearing in that section.

Clause 46 inserts new sections 171 and 171A into the Principal Act:

New section 171(1) provides that the Chief Commissioner of Police may develop a code of conduct for holders of private security licences and requires the Chief Commissioner to ensure that it is published on Victoria Police's website. New section 171(2) states the purpose of the code of conduct is to include the standards of conduct expected of holders of private security licences.

New section 171A(1) provides that the Chief Commissioner of Police may prepare guidelines on a number of matters, as follows—

- the type or design of uniforms worn by private security licensees, and anyone carrying out a security activity authorised by a private security licence;
- any equipment to be carried by private security licensees, and anyone carrying out a security activity authorised by a private security licence;
- the conditions under which uniforms are to be worn or equipment is to be carried.

New section 171A(2) requires any guidelines that are prepared under section 171A(1) are published on the Victoria Police website.

- Clause 47 amends section 173(1) and (2) of the Principal Act to remove references to registration.
- Clause 48 substitutes section 174(1) of the Principal Act, which requires a private security business licence holder to notify the Chief Commissioner of Police if the person becomes or ceases to become a close associate of the business licence holder. The new provision imposes a time frame in which this notification must be made, which is within 3 days after the licence holder becomes aware of the change. A penalty of 20 penalty units applies for failure to comply with this provision.
- Clause 49 substitutes section 175(1) of the Principal Act, which requires a body corporate with a private security business licence to notify the Chief Commissioner of Police if a person becomes, or ceases to be, an officer of the body corporate. The new provision imposes a time frame in which this notification must be made, which is within 3 days after the body corporate becomes aware of the change. A penalty of 20 penalty units applies for failure to comply with this provision.
- Clause 50 repeals section 176(2) of the Principal Act. That provision relates wholly to private security registrations.
- Clause 51 amends section 177 of the Principal Act, which deals with annual reporting to remove references to private security registrations.
- Clause 52 repeals section 179 of the Principal Act. Section 179 is no longer required following the repeal of section 127 (see clause 33).
- Clause 53 amends the regulation making power in section 180 of the Principal Act to omit all references to registration and where necessary replace those with references to licences.
- Clause 54 inserts a new Part 12 into the Principal Act relating to transitional and savings provisions.
- New section 186 defines *commencement day* for the purposes of Part 12, to mean the day on which Part 2 of the Bill comes into operation.

New section 187(1) and (2) provide that if an application for a private security registration (business or individual) is on foot (that is, it was lodged but not determined prior to the commencement day), despite the repeal of Part 4 of the Principal Act, that application can be determined as if Part 4 was still in force.

New section 187(3) provides that if a registration is granted under new section 187 on or after commencement day, the registrant must apply for a licence within 12 months of the Chief Commissioners decision to grant the registration.

New section 188 deals with applications on foot immediately before the commencement day to renew private security registrations. New section 188 provides that these applications should be dealt with as if Part 4 of the Act were still in operation, and that if granted, the holder of the renewed registration must apply for a private security licence within 12 months of the Chief Commissioners decision to renew the registration.

New section 189 deals with applications to vary private security registrations on foot. The effect of the provision is that these applications can be determined as if Part 4 of the Principal Act were still in force, and where the variation is granted the applicant must, within 12 months of the decision of the Chief Commissioner to vary the registration, apply for a licence.

New section 190 deals with applications to vary or revoke a condition of a private security registration that are on foot. Consistent with the operation of new sections 187, 188 and 189, new section 190 provides that such applications are to be determined as if Part 4 of the Principal Act were still in force.

New section 191 deals with requests to cancel a private security registration or an authority under a private security registration that are on foot. Section 191(2) provides that such a request is to be determined as if Part 4 of the Principal Act were still in force.

New section 192(1) deals with private security business registrations that are valid immediately prior to the commencement day. These registrations will continue to remain valid on and after the commencement day until its expiry, suspension or cancellation (whichever is the earliest). However, new section 192(2) requires the holder of a private security business registration to apply for a private security business licence within 12 months of the commencement day.

New section 193 deals with private security individual operator licences in force immediately prior to the commencement day in the same way that section 192 deals with business registrations. That is, the licence will be valid until expiry, suspension or cancellation (whichever is the earliest) and the holder must apply for a private security individual operator licence within 12 months of commencement day.

New section 194 provides transitional arrangements for complaints, investigations and disciplinary proceedings on foot. A complaint, investigation or disciplinary inquiry is to be determined or completed on and after the commencement day as if Part 4 of the Principal Act were still in operation.

New section 195 deals with VCAT applications on foot by providing that these applications may be determined on or after the commencement day as if Part 4 of the Principal Act was still in force. New section 195(2) provides that if a person had a right to apply to VCAT for a review of a decision made under a provision of under Part 4 of the Principal Act immediately before commencement day, that person may apply to VCAT on and after the commencement day within the time period specified in section 151.

Part 3—Other amendments to the Private Security Act 2004

- Clause 55 amends the definition in section 3 of the Principal Act of *investigator* to clarify that a broad range of activities constitute working as an "investigator" under a private security licence.
- Clause 56 inserts a note at the foot of section 6(1) and (2) of the Principal Act. Section 6 creates an offence for holding oneself out to be a licenced private security business. The new note refers the reader to section 256 of the **Victoria Police Act 2013**, which create an offence for impersonating police and protective security officers.
- Clause 57 inserts a note at the foot of section 8(1) and (2) of the Principal Act. That section creates an offence for holding oneself out to be licensed private security individual operator. Like clause 56, the new note under section 8 refers the reader to section 256 of the **Victoria Police Act 2013**, which create an offence for impersonating police and protective security officers.

- Clause 58 substitutes section 48(1) of the Principal Act to remove the words "affected by" so any person may raise a complaint with the Chief Commissioner.
- Clause 59 amends section 150B of the Principal Act by inserting new subsection (1A). New subsection (1A) clarifies that when special counsel is appointed in a VCAT matter relating to private security, the role of special counsel in assisting the applicant is limited to the extent of dealing with the protected information only.

Part 4—Amendments to other Acts

- Clause 60 makes a consequential amendment to the **Australian Consumer Law and Fair Trading Act 2012** to repeal section 47(1)(a)(v) and (b)(vi) of that Act. These provisions both refer private security registrations.
- Clause 61 makes a consequential amendment to the **Long Service Benefits Portability Act 2018** to delete the words "or registered" from clause 1(1)(a) of Schedule 3 to that Act.

Part 5—Amendments to the County Court Act 1958 and the Sentencing Act 1991

- Clause 62 amends section 4AAB(3) of the **County Court Act 1958** to enable the County Court to adjourn a proceeding to the Drug Court Division at any time before 26 April 2026 (the fifth anniversary of the commencement of section 3 of the **Justice Legislation Amendment (Drug Court Division and Other Matters) Act 2020**).
- Clause 63 renumbers section 103A of the **County Court Act 1958** to section 105. This is a technical amendment to sequence the sections chronologically.
- Clause 64 amends section 18ZO(1D) of the **Sentencing Act 1991** to enable—
- the Magistrates' Court to transfer criminal proceedings in relation to offenders who are subject to a drug and alcohol treatment order (DATO) made by the Drug Court Division of the County Court to the Drug Court Division of the County Court, where those proceedings are otherwise within the jurisdiction of the Magistrates'

Court, and where the offender has pleaded guilty to the offence; and

- the Drug Court Division of the County Court to hear and determine any offence that is within the jurisdiction of the County Court, where the person charged with the offence is subject to a DATO made by the Drug Court Division of the County Court, at any time before 26 April 2026.

Part 6—Repeal of this Act

Clause 65 provides for repeal of this Bill on 19 June 2026. The repeal of the Bill does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).