

Bills

Private Security and County Court Amendment Bill 2024 *Statement of compatibility*

Anthony CARBINES (Ivanhoe – Minister for Police, Minister for Crime Prevention, Minister for Racing) (10:35): In accordance with the Charter of Human Rights and Responsibilities Act 2006, I table a statement of compatibility in relation to the Private Security and County Court Amendment Bill 2024:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, (the Charter), I make this Statement of Compatibility with respect to the Private Security Amendment Bill 2024.

In my opinion, the Private Security Amendment Bill 2024, as introduced to the Legislative Assembly, is compatible with human rights as set out in the Charter. I base my opinion on the reasons outlined in this statement.

Human Rights Issues

No human rights protected by the Charter are limited by the Bill.

In drawing this conclusion, I have considered the potential engagement of the right to be free from forced work in the context of amendments in this Bill which are designed to discourage sham contracting.

In one sense, sham contracting could be considered a form of forced work where a vulnerable private security licence holder is engaged improperly by an employer who directs the worker to obtain an ABN so that the employer does not have to pay them a wage covered by the Industry Award, or afford them other employee entitlements such as superannuation, leave and Workover insurance.

Provisions in the Bill which seek to deter sham contracting by requiring the worker in this situation to obtain a business licence if they are engaged under an ABN are intended to work by making it largely impossible for the worker to become engaged under an ABN because obtaining a business licence requires a full set of business plans, and financial information. While there are various Commonwealth and State laws that prohibit sham contracting, the proposed amendment is a practical way of deterring employers from engaging in sham contracting because the people they seek to engage in this way will not be able or willing to comply.

I also note that the right to privacy may be engaged by the new requirement under the Bill in relation to the requirement for a person sub-contracting security work out to provide the name and licence number of the individuals who will be carrying out the work. However, this information will only be available for the purpose of ensuring that the client and head contractor are aware of the name and licence number of the individuals carrying out the work. The purpose of the amendment is to increase accountability and transparency for clients who need to know who is carrying out the work. This would be expected by those working in a regulated industry. Accordingly, the right to privacy is not limited by the Bill.

Further, Part 5 of the Bill is compatible with the Charter. Section 24(1) of the Charter provides that a person charged with a criminal offence has the right to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Section 24(1) of the Charter is relevant to Part 5 of the Bill to the extent that it extends the operation of the County Court Drug Court Division, which operates alongside the mainstream criminal court. The Bill promotes the right to a fair hearing by providing a specialised court that is targeted to the complex needs of offenders with a drug or alcohol dependency.

The Hon Anthony Carbines
Minister for Police

Second reading

Anthony CARBINES (Ivanhoe – Minister for Police, Minister for Crime Prevention, Minister for Racing) (10:35): I move:

That this bill be now read a second time.

I ask that my second-reading speech be incorporated into *Hansard*.

Incorporated speech as follows:

Almost 20 years ago to the day, the Private Security Bill 2004 was introduced to the Victorian Parliament by then Minister for Police, the Hon Andre Haermeyer, going on to pass the Legislative Council on 25 May 2004. That Bill replaced the *Private Agents Act 1966* and was the first formal recognition in this jurisdiction of the importance of a robustly regulated private security industry. One of the drivers for the establishment of the *Private Security Act 2004* was the tragic death of cricketer, coach and broadcaster David Hookes during an altercation with a crowd controller outside a nightclub. This tragedy brought to the fore the importance of seeking to ensure that those entering the private security industry are properly trained and vetted by police to engage in these important, high-risk roles. While the crowd controller in that matter was ultimately cleared of any wrongdoing, the events of that night highlight the serious risks and potential consequences inherent in private security work and the need for better training and regulation. Together with a decision of the Council of Australian Governments to require people applying for private security licences to undergo probity checks, the *Private Security Act in 2004* was a robust and progressive piece of legislation. Over the past 20 years, we have seen a much better regulated industry emerge, together with a vast improvement in matters such as the infiltration of organised crime into the security industry, which has been a huge step forward.

However, a great deal has changed over those 20 years and the private security industry is no exception. Over time, the industry has grown and diversified. This along with social and technological developments, has required increasingly complex skills. Over that time, issues have also emerged with the way some members of the industry are prioritising profit over fair pay and work conditions, leaving a highly casual, mobile and vulnerable workforce in its wake. Key industry advocates have identified serious concerns about the rights of workers, the barriers to healthy business competition and the behaviour of some trainers and workers that bring down the reputation of the entire industry.

This is not to say that there are not many highly skilled security guards operating in our jurisdiction who make a significant contribution to keeping our community safe. My attention has recently been drawn to the remarkable skills of guards at a medical organisation who were able to use high level verbal de-escalation skills to take someone intoxicated by methamphetamine, and who was agitated and in possession of a weapon, from being an imminent threat to workers and patients to having a calm conversation and being able to be removed from the environment before harm came to anyone. We do not hear about these sorts of situations in the news. Nor do we hear about highly skilled security advisors, organisations and employees who plan, manage and work with police to ensure the safety of participants and members of the community at public events.

This Bill is not aimed at the type of individuals I have just been speaking about. It is aimed at employers who do not pay fair wages and do not afford workers genuine flexibility and access to legal entitlements such as superannuation, leave and insurance. It is aimed at training organisations who do not deliver the required training and who sign off on untrained and wholly unprepared workers as being qualified to obtain a private security licence. It is aimed at those workers who do not understand the importance of their role and do not have the skills needed to deescalate and address emerging threats.

These are the workers about whom we often hear anecdotes: crowd controllers deliberately leaving the scene of a physical altercation between patrons on nightclub premises, training organisations failing to deliver even half the required hours before certifying a person as competent to provide security services, and inept or unlicensed workers seeking to provide security services.

Other matters, such as uncontrolled and unrecorded sub-contracting and poor training and supervision of security staff were brought starkly to light following the inquiry into the COVID19 hotel

quarantine failures. The Inquiry was not directly critical of the guards involved, but noted that the issues relating to sub-contracting, training and supervision needed to be addressed.

Industry leaders have raised these issues with Government over time, and in 2018, the then Premier, the Hon Daniel Andrews made an election commitment to undertake a full review of the industry should his Government be re-elected for a further term. That review was managed by the Department of Justice and Community Safety and Industrial Relations Victoria over 2020–2021. It included a discussion paper written in consultation with key industry stakeholders, which was the subject of public consultation in mid-2020. The final Report on the review was published with Government's endorsement in late 2021, containing 21 recommendations. This Bill addresses the 11 recommendation of that Report which require legislative amendment.

The aim of the Bill is to improve worker access to fair pay and other legal work entitlements, as well as to improve the professional standards across the industry so that it can continue to play a positive, significant role in contributing to community safety right across the state.

One area of particular growth, in line with advances in access to technology, is what is known as the technical sector which consists of security installers and security advisors. When the Private Security Act was enacted in 2004 these roles were more limited, with this part of the industry much smaller and dominated by very small businesses. At the time, this led to them being treated differently under the private security licencing scheme – instead of requiring a licence, they were only required to be registered. Registration requirements are of a lower standard and lower cost than licence requirements. The key differences are that registrants do not need to prove their competency or provide their fingerprints to obtain registration.

The Bill recognises the growth and expertise of the technical sector, as well as the Importance of proof of identity including fingerprints, and proof of competency by replacing the now outdated two tier licensing and registration system with a single licensing system that treats all sectors of the industry equally.

The Bill also addresses significant concerns across the industry, including sub-contracting. Until recently, sub-contracting of security work in Victoria was un-regulated. Following the report on the Inquiry into Hotel Quarantine, Government contracts now limit sub-contracting. The Bill follows suit by making it clear that if a person or organisation signs a contract with a security provider, they must approve any sub-contracting by that provider in writing. In addition, providers must supply the name and licence number of each worker hired under a sub-contracting arrangement. Penalties attach for failure to comply.

Another key amendment is the introduction of refresher training for private security workers in high-risk roles, such as crowd control, bodyguards, or static guards. Under the current legislation, the only training requirement applies at the time a person applies for their licence. The licence expires in three years, and the person can then apply for a renewal without further training. For many workers, this is not particularly problematic: they will have acquired and practiced their skills in the field. However, for many others in higher risk public facing roles, there are potentially significant consequences of not keeping up to date with skills such as first aid, verbal de-escalation and safe physical restraint. The Bill addresses this by requiring refresher training at licence renewal. The training requirements will be confined to those who need them most and will be set by the Chief Commissioner, taking into consideration the need to keep costs low for employers or already lowly paid workers.

The Bill provides for the greater involvement of people who hire private security – the 'client' – in working out their security needs before handing the job over to hired security. This is not for people hiring a security adviser in-house, who can do that assessment for them, but for those who own businesses or intend to host events. It is too often the case that no real consideration is given to the actual security risks or to important matters such as evacuation plans. Security staff walk into these situations without necessarily knowing the layout of the facility, or what to pay attention to. For example, is there a blind corner in a club where drug deals are suspected to occur? Is there a door that does not lock properly so minors can sneak into licensed premises? If it is a large teen party at a private home, what has been done to guard against gate crashers, and how will admission to the premises be handled? How will the hosts deal with a minor who is under the influence of alcohol or other drugs? All of these are important matters that need to be clarified to help security staff do the

best possible job. The Bill therefore requires clients to prepare a risk management plan which must be provided to security staff before they start work.

While there are genuine expert sole traders with ABNs and private security business licences offering expert services under contract, sham contracting is a significant issue in the private security industry. Sham contracting is where would-be employers ask individual licence holders to obtain an ABN and act as a sole trader, rather than taking them on as an employee. By doing this, the employer does not have to pay the costs associated with hiring the person under a genuine agreement – they do not have to pay an Award wage, provide for superannuation or Workcover insurance, and they do not have to provide for leave. As we all know, sham contracting is unlawful under Commonwealth and State Industrial Relations laws. However, the problem persists. The Bill seeks to assist in deterring sham contracting by making it far less likely that a worker will agree to such an arrangement. The mechanism for this is requiring anyone offering security services as a sole trader with an ABN to also hold a private security business licence. This will add a cost and an administrative barrier – as to obtain such a licence, a fee must be paid and financial information and business details must be produced.

To close out in relation to the private security components of the Bill, I want to emphasise that Government recognises the very important contribution our private security workforce makes to keeping our community safe. We remain committed to raising professional standards across the industry and ensuring that all workers are paid appropriately.