

# Building Australia's private security industry capability and capacity

## the need for national consistency



Draft for Discussion

## **National Private Security Act (NPSA)**

an ASIAL initiative to harmonise regulation of  
the private security industry

### Call for comment



AUSTRALIAN SECURITY INDUSTRY  
ASSOCIATION LIMITED

The peak body for security professionals

# National Private Security Act

## Call for comment

### Executive Summary

Whether installing and maintaining alarms, video surveillance, access control and physical security systems, providing cyber security solutions, securing crowded places and critical infrastructure – security is integral to the functioning of the Australian economy. Given the industry’s important and growing role as part of Australia’s national security mix, raising professional standards is a priority.

Through ASIAL’s leadership and advocacy, the case for nationally consistent regulatory standards has been recognised. Yet, despite agreement in 2008 by the Council of Australian Governments to implement a nationally consistent approach to regulation of the private security industry, progress has stalled.

By any objective measure, the current status quo is unacceptable with variations between jurisdictions creating inherent vulnerabilities.

The current patchwork of security regulation also imposes significant and unnecessary red tape, compliance and management costs on businesses operating across multiple jurisdictions. This creates artificial barriers to competition, restricts workforce mobility and limits the industry’s ability to rapidly deploy personnel to meet demand due to emergencies and major sporting events.

The unequivocal findings following decades of discussion and consultation with government, numerous inquiries and research studies is that we need nationally consistent security licensing standards.

To advance professionalism, and build security industry capability and capacity, action is required now. Doing nothing is not in the national interest.

With a combined workforce of over 180,000 people and more than 11,000 businesses offering security services, the security industry plays a vital role as part of the Australian economy. As demand for security services grow, it is no longer tenable for government to ignore the need for a nationally consistent approach to regulation of the private security industry.

### National Private Security Act

To provide a catalyst for national discourse and advance development of a single ‘Model’ national law for regulation of the private security industry, ASIAL has drafted a Model National Private Security Act.

The primary aim of the NPSA is to provide for a balanced and nationally consistent framework that sets out consistent expectations, obligations and responsibilities for individuals and organisations in the private security industry across Australia.

The benefits of a nationally consistent approach include:

- **Higher professional standards** to deliver improved security outcomes for business, government, and the wider community.
- **Improved industry capability and capacity** through greater operational efficiencies and flexibility.

In short, Australia's security capability and capacity would be significantly enhanced under a nationally consistent approach to security licensing, as would public safety. Developed by ASIAL, the NPSA is a first step towards finally achieving the goal of harmonising security licensing requirements across Australia.

The ASIAL NPSA seeks to:

- provide a framework to engage with stakeholders to advance the goal of nationally consistent security licensing requirements;
- articulate an industry position to advance professional standards and further strengthen the industry's capability as part of Australia's national security mix (including requiring cyber security technicians to, as a minimum, meet probity requirements);
- provide consistent expectations, obligations and responsibilities for individuals and organisations operating in the Australian security industry;
- address public safety concerns over issues such as probity, individual and business suitability, fingerprinting, training, the use of criminal intelligence, compliance and access to a national register of security licence holders;
- reduce red tape and unnecessary administrative costs;
- provide industry with greater national operational flexibility and resource management;
- provide security providers and licensed individuals with greater mobility in responding to surge demand;
- provide clients with greater confidence when engaging a security provider due to the implementation of nationally consistent standards.

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# National Private Security Act

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Improving public safety capability and capacity



## 1. Model National Private Security Act

- Consistent licensing requirements
- Consistent expectations, obligations and responsibilities for individuals and organisations
- Consistent licensable activities

## 2. Reduced Administrative Burden

- Consistent probity requirements
- Consistent eligibility requirements
- Use of criminal intelligence
- Consistent fingerprint registration and sharing
- Consistent training requirements

## 3. Drive Improvements in Professionalism

- Reduced red tape
- Greater organisational / individual mobility
- National security licence database
- Improved operational efficiencies
- Increased capability and capacity

Strengthening professional standards through nationally consistent regulation is widely acknowledged as an important step towards building private security industry capability and capacity.

The NPSA provides the first step towards harmonising security regulation across Australia and ensuring a professional security industry capable of performing its growing role as part of Australia's national security mix.

If Australia is to have a more professional security industry, and, in turn improved national security, the adoption of the principles included in the NPSA is essential. In these uncertain times, where cybercrime, terrorism and geopolitical tensions pose ever evolving threats, action is required sooner rather than later.

## Call for Comment

ASIAL is seeking comment from interested stakeholders on the draft National Private Security Act.

## How to make a submission

Submissions must be in writing and should be sent electronically to [security@asial.com.au](mailto:security@asial.com.au) or by mail to ASIAL, PO Box 1338, Crows Nest NSW1585 by **31 October 2022.**

Submissions must include:

- Your name, organisation, position and contact details
- comment on the issues and options outlined in the draft
- be simple, clear and concise
- clearly identify any information in the submission that you wish ASIAL to keep confidential

# National Private Security Act

## 1. Purpose

The purpose of this Act –

- (a) to provide a national legislative position for the licensing of individuals and businesses participating in the private security industry
- (b) to regulate the private security industry for the purpose of ensuring public safety and peace

## 2. Commencement

This Act commences on a day or days to be appointed by proclamation.

## 3. Definitions

(1) In this Act:

**approved** means approved by the Commissioner from time to time.

**approved security industry organisation** means an organisation approved by the Commissioner

**armed security guard** means a person who:

- (a) is employed to carry on a security activity referred to in section 4 (1) (c), and
- (b) is the holder of a category 1F licence, and
- (c) in carrying out the activities authorised by that licence, is authorised by a licence under the *Firearms Act* to use and possess firearms.

**authorised person** means a person appointed by the Commissioner.

**bodyguard** means a person who is employed or retained to provide a close personal protection service.

**business licence** means a person who, or partnership or body corporate that, engages in the business of supplying for reward a security activity or activities.

**cash in transit** means the activity of personally guarding, patrolling, watching or couriering another person's cash or other valuables while they are in transit or being stored in connection with their transit.

**close associate** is defined in section 5.

**commissioner** means the authorised person or person authorised as per jurisdictional legislation, for this Act in the respective jurisdiction. Such as Commissioner of Police, Chief Commissioner of Police, Chief Executive, Commissioner for Consumer Affairs or other designation.

**commissioner of police** means the Commissioner or Chief Commissioner of Police as designated in respective jurisdictions

**cyber security technician** means (only for the purpose of this Act), a person that plans, performs, oversees, and upgrades the **security** of computers, network systems and the IoTs associated with the application of security equipment.

**enforcement officer** means:

(a) a police officer, or

(b) any other member of the jurisdiction security regulator authority who is authorised by the Commissioner in writing to exercise the functions of an enforcement officer under this Act.

**exercise** a function includes perform a duty.

**fingerprints** mean fingerprints taken by any authorised agency of an Australian jurisdiction for the taking of fingerprints by an electronic process (e.g. live scan) or ink application process

**fit and proper person** – see this section subsection (4)

**function** includes a power, authority or duty.

**home jurisdiction** of a person and / or business, in relation to an activity, is the jurisdiction in which the person or business has:

(a) their principal place of residence or business; or

(b) their principal place of work in relation to the activity.

If the person's home jurisdiction under paragraphs (a) and (b) in relation to a security activity is different, the person or business **home jurisdiction** is for an individual the address of the person as registered as a voter via the AEC or for a business the jurisdiction in which the business was registered or has a registered head office as per ASIC records.

**individual licensee** means a person who performs one or more security activities

**Internet of Things (IoT)** means the interconnection via the internet of computing devices embedded in everyday objects, enabling them to send and receive data associated with security equipment

**Internet technician** means (only for the purpose of this Act), a person repairs, services, maintains, the **security** of computers, network systems and the IoTs associated with the application of security equipment.

**investigator** means any person who on behalf of any other person, is employed or retained—

(a) to obtain and furnish information as to the personal character or actions of any person or as to the character or nature of the business or occupation of any person; or

(b) to search for missing persons;

**JCAT** means the appropriate jurisdiction civil and administration tribunal

**jurisdictions** mean the Commonwealth of Australia, States and Territories of Australia

**jurisdiction** means reference to the specific jurisdiction be it the Commonwealth of Australia, States or Territories of Australia

**jurisdictional residence** means jurisdiction in which the licence applicant resides (rates / electoral roll) and the jurisdiction in which a business is registered or its registered head office (ASIC registration)

**known information** means any records concerning a person kept by or on behalf of—

(a) the Commissioner of Police; or

(b) any person holding a position equivalent to that of the Commissioner of Police in the Commonwealth or in a State or Territory of the Commonwealth or any other country.

**licence** means a licence in force under this Act.

**licensee** means the holder of a licence.

**business licensee** means the holder of a business licence.

**nominated person**, in relation to a business licence, means the person nominated under the Act.

**officer**—

(a) in relation to a body corporate which is a corporation within the meaning of the *Corporations Act*, means a person (not being an employee of the body corporate) to whom the definition of **officer** in section 83 of that Act applies; and

(b) in relation to a body corporate that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned in or takes part in the management of the body corporate, if that person is not an employee of the body corporate.

**partnership** has the same meaning as in the **Partnership Act**

**permanent Australian resident** means a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

**principal place of residence** of a person means the place of residence or home that the person primarily occupies, on an ongoing and permanent basis, as the person's settled or usual home.

**principal place of work** of a person, in relation to an activity, means the place in which the person primarily carries on that activity.

**property** includes money and other valuables.

**providing person** 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 24.

**security activity** is defined in section 4.

**security equipment** means any of the following:

(a) any type of safe or vault,

(b) any mechanical, electronic, acoustic or other equipment designed or adapted to provide or enhance security or for the protection of any property, including computers operated, used, or designed to support the protection of any property.

(c) any type of device or equipment prescribed by the regulations for the purposes of this definition,

but does not include any type of device or equipment declared not to be security equipment by the regulations.

**spent conviction** means

- (a) convictions for which a prison sentence of more than 6 months has been imposed,
- (b) convictions for sexual offences,
- (c) convictions imposed against bodies corporate,
- (d) convictions prescribed by the regulations.

**security officer** means a person licensed to undertake a Class 1 security activity of 1A, 1B, 1D, 1E and 1F.

**security technician** means an activity in installing, maintaining, repairing or servicing, by physical or electronic means any security equipment

**temporary permit** means a temporary permit in force under section 75.

**visitor permit** means a visitor permit in force under this Act.

(2) In this Act, a reference to a category of licence includes a reference to a subcategory of that category of licence.

(3) Notes in the text of this Act do not form part of this Act.

(4) For the purposes of this Act, the following provisions govern whether a person is a **fit and proper person** to hold a licence or to be the director of a body corporate that holds a licence:

(a) a person is not a fit and proper person to hold a licence or to be the director of a body corporate that holds a licence if—

(i) the person has been found guilty or convicted of an offence as prescribed by the regulations; or

(ii) the person is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth;

(b) in deciding whether a person is a fit and proper person to hold a licence under this Act, or to be the director of a body corporate, regard may be had to—

(i) the reputation, honesty and integrity of the person; and

(ii) any other factor relevant to the performance of the functions authorised or to be authorised by the licence, including any relevant offence (not prescribed by the regulations) of which the person has been convicted or found guilty;

(c) in deciding whether a person is a fit and proper person to hold a security licence, or to be the director of a body corporate that is the holder of a security licence, regard must be had to—

(i) the reputation, honesty and integrity of the person; and

(ii) the reputation, honesty and integrity of people with whom the person associates; and

(iii) if the licence authorises or is to authorise the licensee to personally perform the function of controlling crowds -



(A) the results of any psychological assessment of the person under this Act; and

(B) any evidence that the person has contravened a provision of *Gaming legislation* or the *Liquor Licensing legislation* relating to the prevention of a person from entering, or the removal of a person from, licensed premises (within the meaning of the *Liquor Licensing legislation*); and

(iv) any other factor relevant to the performance of the functions authorised or to be authorised by the licence, including any relevant offence (not prescribed by the regulations) of which the person has been convicted or found guilty;

(d) in deciding whether a person is a fit and proper person to hold a security industry trainers licence, regard must be had to -

(i) the reputation, honesty and integrity of the person; and

(ii) the reputation, honesty and integrity of people with whom the person associates; and

(iii) any other factor relevant to the performance of the functions authorised or to be authorised by the licence, including any relevant offence (not prescribed by the regulations) of which the person has been convicted or found guilty.

#### 4. Security activity

(1) For the purposes of this Act, a person carries on a **security activity** if the person carries on any one or more of the following activities in the course of conducting a business or in the course of the person's employment:

(a) acting as a **bodyguard** or acting in a similar capacity,

(b) acting as a **crowd controller**, or acting in a similar capacity, by physical or electronic means,

(c) acting as a **security guard** in the capacity of patrolling, protecting or guarding any property, by physical means (which may involve the use of dogs or the possession or use of firearms) or by electronic means, including, but not limited to, in any one or more of the following circumstances:

(i) carrying on **control room** operations,

(ii) carrying on **monitoring centre** operations,

(iii) carrying on **retail loss prevention**,

(iv) carrying on a security guard activity in patrolling, protecting or **guarding, couriering or transporting cash** (including cash in transit) or **other valuables**,

(v) carrying on a security guard activity in patrolling, protecting or guarding an **airport** or any other **infrastructure**,

(d) carrying on a **security technician** activity in installing, maintaining, repairing or servicing, by physical or electronic means:

(i) any security equipment, or

(ii) any mechanical, electronic, acoustic or other equipment that the person installing, maintaining, repairing or servicing the equipment purports to be equipment that is designed or adapted to provide or enhance security or for the protection of any property,

(e) carrying on the activity of an **investigator**

- (f) carrying on a **cyber security technician** or **internet technician** activity associated with any security equipment
- (g) selling:
- (i) any security equipment (other than basic household or automotive security items at approved categories of retail outlets), or
- (ii) any mechanical, electronic, acoustic or other equipment that the person selling the equipment purports to be equipment that is designed or adapted to provide or enhance security or for the protection of any property,
- (h) **selling** security methods or principles,
- (i) selling the services of persons to carry on any security activity referred to in this section,
- (j) providing advice in relation to security equipment (other than basic household or automotive security items at approved categories of retail outlets), including providing product advice in relation to security equipment,
- (k) providing advice in relation to the identification and analysis of security risks and providing solutions or management strategies to minimise security risks,
- (l) providing advice in relation to any other mechanical, electronic, acoustic or other equipment (other than basic household or automotive security items at approved categories of retail outlets) that the person providing the advice purports to be equipment that is designed or adapted to provide or enhance security or for the protection of any property,
- (m) providing **training or instruction** in relation to any security activity referred to in this section where prescribed training is required for licensing purposes,
- (n) assessing another person's training, instruction or competencies in relation to any security activity where prescribed training is required for licensing purposes,
- (o) providing persons to carry on any security activity referred to in this section,
- (p) acting as an agent for, or otherwise obtaining contracts for:
- (i) the supply of persons to carry on any security activity referred to in this section, or
- (ii) the supply of any security equipment (other than basic household or automotive security items at approved categories of retail outlets), or
- (iii) the supply of any security activity referred to in this section,
- (q) brokering any security activity referred to in this section, by acting or purporting to act as an intermediary to negotiate and obtain any such activity for a person (other than the person's employer or a principal who is not a client of the person) in return for a commission or financial benefit,
- (r) any other activity, or category of activities, that is connected with security or the protection of persons or property, whether by physical or electronic means, and that is prescribed by the regulations for the purposes of this section.

(2) In this section:

**basic household or automotive security item** has the meaning given by the regulations.

**bodyguard** means a person who is employed or engaged for the purpose of providing close personal protection to another person.

**crowd controller** means a person who is employed or retained principally to maintain order at any public place by doing all or any of the following-

- (a) screening entry into; or
- (b) monitoring or controlling behaviour in; or
- (c) removing any person from; or
- (d) otherwise maintaining order in-

any such place, unless that person is doing nothing more than securing or checking that persons allowed admission-

- (e) have paid for admission; or
- (f) have invitations or passes allowing for admission;
- (g) any other function prescribed by the regulations.

## 5. Meaning of close associate

(1) For the purposes of this Act, a person is a **close associate** of an applicant for, or the holder of, a licence if the person:

(a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the licence applicant or holder, and by virtue of that interest or power is or will be able (in the opinion of the Commissioner) to exercise a significant influence over or with respect to the conduct of that business, or

(b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the licence applicant or holder.

(2) In this section: **relevant financial interest** in relation to a business means:

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

**relevant position** means the position of director, manager, and other executive positions and secretary, however those positions are designated, and such other positions as may be prescribed by the regulations for the purposes of this definition.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

## 6. Application of Act

(1) This Act binds the Crown in right of the Commonwealth, State and Territory and, in so far as the legislative power of the jurisdiction Parliament permits, the Crown in all its other capacities.

(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 jurisdiction Police Force,
- (b) a police officer of the Commonwealth, another State or a Territory,
- (c) a member of the armed forces of the Commonwealth.

(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 Jurisdiction Crime Commission,
- (b) the Australian Crime Commission,
- (c) the Law Enforcement Conduct Commission,
- (d) the Jurisdiction Commission Against Corruption,
- (e) the Department of Attorney General and Justice as a correctional officer 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.
- (g) a person (an employee) who, in the course of his or her employment with an employer (who is not carrying on a business for which a private security business licence is required to undertake activities of a security technician, Cyber Security Technician or an Internet Technician.

(2B) The Commissioner may, on application by a person who provides training, assessment or instruction in relation to a security activity of a kind authorised by a category 2 licence, exempt the person from the requirement under section 7(2) to be licensed to provide that training, assessment or instruction.

(2C) An exemption under subsection (2B):

- (a) is to be specified in a written notice given to the person concerned, and
- (b) is subject to such terms and conditions as the Commissioner may specify in the notice, and
- (c) may be revoked at any time by the Commissioner.

(3) The regulations may exempt any person or category of persons from the operation of this Act in such circumstances, and subject to such conditions, as may be specified in the regulations. Any such regulation may create offences in relation to a failure to comply with a condition prescribed in relation to an exemption.

## **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 certificate 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 jurisdiction 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 jurisdiction 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.

(2A) Without limiting subsection (2), each provision of this Act (and of any regulations made under this Act) is declared to be a VET legislation displacement provision for the purposes of section 11 of the Commonwealth Act generally. This subsection extends to any such provision enacted or as amended after the commencement of this subsection.

(3) Subsection (2) is taken to have had effect from the commencement of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

(4) Anything done or omitted to be done before the commencement of subsection (2A) that would have been validly done or omitted if subsection (2A) had been in force at the time is taken, on and from the commencement of subsection (2A), to have been validly done or omitted.

## **Part 2 Licences**

### **Division 1 Requirement for licence**

#### **7. Offence of carrying on unauthorised security activities**

(1) A person must not provide persons to carry on security activities unless:

(a) the person is the holder of a business licence, and

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

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) 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 category 1 licence or category 2 licence that authorises the person to carry on the security activity.

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

(3) The holder of a visitor permit does not commit an offence under this section while acting under and in accordance with the authority conferred by the visitor permit.

(4) The holder of a temporary excess provision of services permit granted under section 75 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.

## **8. Licences do not confer additional powers**

A licence does not confer on the licensee any function apart from a function authorised by the licence.

## **9. Jurisdictional licence and national recognition**

(1) Security licences are issued as a jurisdictional licence based on the address of the licensee.

(a) Business licenses are based on the registered address / head office of the business entity of the licence applicant.

(b) Individual licenses are based on the residential address of the individual licence applicant. (rates / electoral roll)

(2) Individual and business licence holders may have their licence registered in another jurisdiction permitting them to operate in additional jurisdictions for the equivalent licence categories.

(3) The home jurisdiction security regulator will provide, upon application by the licensee, the second or subsequent jurisdiction with a copy file of the applicant / licensee.

(4) All licensees will be registered on the national security licence database including second or subsequent jurisdiction registration.

(5) The “home” jurisdiction will be responsible to ensure registration of licensee on the national security licence database including a second or subsequent jurisdiction.

## **10. Fees for second or subsequent Jurisdiction registration**

(1) A person and/or business may be required to pay a registration fee for a second or subsequent jurisdiction in relation to the person or business registration in that jurisdiction to carry on a security activity.

(2) A **registration fee** must not exceed \$100 for an individual or \$200 for a business per registration for a second or subsequent jurisdiction.

(3) The registration fee is payable to the home jurisdiction regulator who is responsible to process the request and facilitate the second or subsequent jurisdiction registration as per Section 9.

## **11 Duration of second or subsequent Jurisdiction registration**

(1) A person or business second or subsequent jurisdiction registration to carry on a security activity in the second or subsequent jurisdiction continues until:

(a) the individual or business licence for security activities in the home jurisdiction ceases to be in force; or

(b) the person's home jurisdiction changes and the person is required to register in a new home jurisdiction within three (3) months.

(c) the person becomes substantively registered in a new home jurisdiction for the licensing that covers the activity.

(2) The Commissioner of the home jurisdiction may cancel or suspend a person's registration if the person provides false or misleading information to the Commissioner.

## 12. Private Security Licence Database

(1) The Commissioner must keep and maintain a register of all security licenses issued in the jurisdiction.

(2) The Commissioner shall maintain and make available to the public a searchable register of all security licenses issued in the jurisdiction

(3) The Commissioner shall provide the Federal Department of Home Affairs, details of all licenses issued in the jurisdiction suitable for publication in a national private security licence database.

(4) The Australian Federal Government (Attorney General's Department) will be responsible to provide and manage a national private security licence database for the registration of all Business and Individual private security industry licence holders in Australia.

(5) The national private security licence database will be a public accessible and searchable database.

### Note: National Security Licence Database

*The Attorney General's Department is responsible for the National Identity Security Strategy via the National Identity Proofing Guidelines revised and published 2016.*

*It is considered that the Department of Home Affairs which manages and is responsible for national security, law enforcement, emergency management, border control, immigration, refugees, citizenship, transport security and multicultural affairs would be the suitable agency to coordinate a National Security Licence Database.*

## Division 2 Licence categories

### 13. Categories of licences

(1) A licence may be of one of the following categories:

(a) a **business licence**,

(b) an **individual licence**

(i) category 1 licence,

(ii) category 2 licence,

(2) A category of licence may, in accordance with the regulations, be combined with another category of licence into a composite licence that authorises the licensee to carry on more than one kind of security activity.

## 14. Business licences

(1) Business licences are to be categorised into subcategories. Those subcategories, and the authority they confer, are as follows:

(a) category **BL0** - authorises the holder (who is self-employed – Sole Trader, and who holds a category 1 or category 2 licence, or both) to provide his or her services only to carry on security activities,

(b) category **BL1** - authorises the holder to carry on approved security activities, where the business turnover is Category Tier 1,

(c) category **BL2** - authorises the holder to carry on approved security activities, where the business turnover is Category Tier 2, (d) category **BL3** - authorises the holder to carry on approved security activities, where the business turnover is Category Tier 1, (e) category **BL4** - authorises the holder to carry on approved security activities, where the business turnover is Category Tier 1,

(3) A business licence does not authorise the licensee to enter into any arrangement, by contract, franchise or otherwise, with another person for the purpose of providing persons to carry on security activities unless the other person is the holder of a business licence or is a person holding a permit authorising its holder to carry on security activities of a kind authorised by a business licence.

### Note: Fee structure – replacement

*It is proposed that the fee structure for a security business licence be linked to the annual financial turnover of a business and not the number of licensed persons provided.*

*Although a security business licence would be associated with a “Home Jurisdiction” associated with ASIC business registration, the business licence fee should be set on a comparable level to ensure organisations do not undertake “jurisdictional shopping” for a home base business location. A five-tier fee structure should be introduced:*

<i>Sole Trader</i>	<i>BL0 - sole trader (provide only their own personal services – no turnover value)</i>
<i>Tier 1</i>	<i>BL1 - business turnover of less than \$500,000</i>
<i>Tier 2</i>	<i>BL2 - business turnover of more than \$500,000 to \$2 million</i>
<i>Tier 3</i>	<i>BL3 - business turnover of more than \$2 million to \$10 million</i>
<i>Tier 4</i>	<i>BL4 - business turnover greater than \$10 million</i>

## 15. Category 1 licences

(1) Category 1 licences are to be categorised into subcategories. Those subcategories, and the authority they confer, are as follows:

(a) category **1A**--authorises the licensee to patrol, protect or guard any property while unarmed (and whether while static or mobile), act as a control room operator and act as a crowd controller or to act in a similar capacity,

(b) category **1B**--authorises the licensee to act as a bodyguard or to act in a similar capacity,

(c) category **1C**--authorises the licensee to act as an investigator

(d) category **1D**--authorises the licensee to patrol, protect or guard any property with a dog,

(e) category **1E**--authorises the licensee to patrol, protect or guard any property while carrying on monitoring centre operations,



(f) category **1F**--authorises the licensee to patrol, protect or guard approved category of property while armed (but only under the authority of a licence or permit to use or possess firearms under the *Firearms Act*),

(g) any other category prescribed by the regulations--authorises the licensee to carry on the security activity prescribed by the regulations in relation to the prescribed category of licence concerned.

(2) The relevant subcategory is to be endorsed on each category 1 licence. More than one such subcategory may be endorsed on a category 1 licence.

(3) A category **1A**, category **1B**, category **1C**, category **1E** or category **1F** licence does not authorise the licensee to carry on a security activity with a dog.

## 16. Category 2 licences

(1) Category 2 licences are to be categorised into subcategories. Those subcategories, and the authority they confer, are as follows:

(a) category **2A**--authorises the licensee:

(i) to sell security methods or principles, and

(ii) to act as a consultant by identifying and analysing security risks and providing solutions and management strategies to minimise those security risks,

(b) category **2B**--authorises the licensee:

(i) to sell, and provide advice in relation to, security equipment, and

(ii) to sell the services of persons to carry on any security activity, and

(iii) to act as an agent for, or otherwise obtain contracts for, the supply of persons to carry on any security activity, the supply of any security equipment or the supply of any security activity, and

(iv) to broker any security activity by acting as an intermediary to negotiate and obtain any such activity for a person in return for a commission or financial benefit,

(c) category **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,

(d) category **2D**--authorises the licensee to provide training, assessment or instruction in relation to any security activity where approved training for licensing purposes is required by this Act or Regulations,

(e), category **2F** – authorises the licensee to plan, perform, oversee, and upgrade the security of computers, network systems and the IoT associated with the application of security equipment.

(g) any other category prescribed by the regulations--authorises the licensee to carry on the security activity prescribed by the regulations in relation to the prescribed category of licence concerned.

(2) The relevant subcategory is to be endorsed on each category 2 licence. More than one such subcategory may be endorsed on a category 2 licence.

(3) The authority conferred by a category **2D** licence does not extend to training, assessment or instruction in the use of firearms. Trainers and instructors of security guards and security

personnel who use firearms in their employment are approved by the Commissioner under the *Firearms Regulation* and are required to be licensed under the *Firearms Act*.

**Note: Licences**

*The Regulations will identify the training, if any required for each security activity.*

**Probity Only Activities:** *It is recognised that some security activities may only require a “probity” check without any additional training requirements. Such activities include “Monitoring Centre Operator”, “Cyber Security Technician” and “Internet Technician”.*

*Cyber Security Technician - A process also in support of the Security of Critical Infrastructure Act 2018 and in particular Part 2B, (Notification of cyber security incidents), Part 2C (Enhanced cyber security obligations), and Rule 1 (Cyber and information security hazards) and Rule 2 (Personnel hazards).*

## **Division 3 Licensing procedures and criteria**

### **17. Application for licence**

- (1) A person may apply to the Commissioner for the grant of a licence.
- (2) An application must be in the approved form and:
  - (a) be accompanied by the fee prescribed by the regulations, and
  - (b) be supported by such information and particulars as may be prescribed by the regulations.
- (2) An applicant for a licence must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the applicant, or, if the applicant is a body corporate, each director of the body corporate, and any other information required by the Commissioner for the purposes of determining the application.
- (3) If the Commissioner is not in possession of a suitable photograph of an applicant for a licence who is a natural person, the Commissioner must require an applicant for a licence who is a natural person to attend at a specified place for the purpose of having the applicant's photograph taken or to supply the Commissioner with 1 or more photographs of the applicant as specified by the Commissioner.

### **18. Fingerprinting**

- (3a) Subject to subsection (3b), the Commissioner must require the following persons to make arrangements to have their fingerprints taken:
  - (a) an applicant for an individual security licence or security industry trainers licence who is a natural person;
  - (b) the person identified as the nominated person for a security business licence
  - (c) each director of a body corporate that is an applicant for a security business licence.
- (3b) The Commissioner need not impose a requirement in respect of fingerprints if the Commissioner is satisfied that the person's fingerprints have been taken (whether in or outside this Jurisdiction) and information relating to the identity, antecedents and criminal history of the person relevant to whether the application should be granted has been provided to the Commissioner.

3a) If a set of fingerprints are held by a government agency, of an applicant for a security licence or close associate, the person is able to provide authority for a copy of those fingerprints held to be provided to the Commissioner for purposes of a security licence application and retained for purposes of security licensing.

(2) As soon as reasonably practicable following receipt of an application, or information in respect of an application, and the taking of fingerprints, the Commissioner of Police-

(a) must make available to the Commissioner such information about criminal convictions, about identity, antecedents and criminal history, as the Commissioner of Police considers relevant to whether the application should be granted; and

(b) may make available to the Commissioner such other information to which the Commissioner of Police has access and considers relevant to whether the application should be granted.

## **19. Suitability to hold a licence - general criteria**

(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 category 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 training, assessment and instruction that is approved for the category 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 or holds a visa that entitles the applicant to work in Australia (other than a student visa or a working holiday visa).

(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.

(3) The Commissioner may refuse to grant an application for a licence if the Commissioner considers that the grant of the licence would be contrary to the public interest.

(4) The regulations may provide additional mandatory or discretionary grounds for refusing the granting of an application for a licence.

(5) Except as provided by the regulations, a reference in this section to an applicant includes, in the case of an application for a business licence, a reference to each close associate of the applicant.

(6) For the purpose of determining whether an applicant is a fit and proper person to hold the category of licence sought by the applicant or whether the grant of the licence would be contrary to the public interest, the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the applicant that:

(a) is relevant to the activities carried out under the category of licence sought by the applicant, or

(b) causes the Commissioner to conclude that improper conduct is likely to occur if the applicant were granted the licence, or

(c) causes the Commissioner not to have confidence that improper conduct will not occur if the applicant were granted the licence.

(7) The Commissioner is not, under this or any other Act or law, required to give any reasons for not granting 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 (6).

(8) In this section:

"**student visa**" means a student visa issued under the *Migration Act 1958* of the Commonwealth.

"**working holiday visa**" means a working holiday visa or a work and holiday visa issued under the *Migration Act 1958* of the Commonwealth.

**Note: Student visa / working holiday visa holders**

*Concerns have been flagged by government and multiple industry reviews over the need to restrict "student visa" and "working holiday visa" holders from working within the security industry by the Department of Home Affairs placing a condition on the grant of all student and working holiday visas prohibiting the visa holder from undertaking employment in the Australian security industry.*

*Recent amendments to the **Security of Critical Infrastructure Act (Cth)**, also highlight the concern associated with critical infrastructure, counterterrorism and criminal activities.*

## **20. Probity - criminal and other related history – licence restrictions**

(1) The Commissioner must refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:

(a) has, within the period of 10 years before the application for the licence was made, been convicted in Australia or elsewhere of an offence prescribed by the regulations in relation to the category of licence sought, whether or not the offence is an offence under an Australian law, or

(b) has, within the period of 5 years before the application for the licence was made, been found guilty (but with no conviction being recorded) by a court in Australia or elsewhere of an offence prescribed by the regulations in relation to the category of licence sought, whether or not the offence is an offence under Australian law, or

(c) has, within the period of 5 years before the application for the licence was made, had a civil penalty imposed on the applicant by a court or tribunal in Australia or elsewhere, being a civil penalty prescribed by the regulations in relation to the category of licence sought, or

(d) has, within the period of 10 years before the application for the licence was made, been removed or dismissed from an Australian Police Force or from the police force of any other jurisdiction (whether in Australia or overseas) on the ground of the applicant's integrity as a police officer.

(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 a **spent conviction**.

(3) The Commissioner must refuse to grant an application for a licence if the Commissioner is of the opinion that the applicant is not suitable to hold a licence because the applicant has been involved in corrupt conduct.

(4A) The Commissioner may refuse to grant an application for a licence if, within the period of 10 years before the application for the licence was made, the applicant has been removed from a jurisdiction Police Force on grounds other than the applicant's integrity as a police officer.

(5) A reference in subsection (1), (2), (3), (4) or (4A) to an applicant includes, in the case of an application for a business licence, a reference to each close associate of the applicant.

**Note: Disqualifying Offences.**

*Standardisation required – offences relating to indictable offences, undischarged bankrupts, offences by corporation vary from jurisdiction to jurisdiction. Clarification is required on matters such as a conviction of personal possession of a drug and how that should be clarified. Regulations would provide clarification for disqualifying offences for probity purposes.*

## **21. Nominated person – Business licence suitability and qualifications – licence restrictions**

(1) The Commissioner must refuse to grant an application for a **business licence** if the Commissioner is satisfied that the identified nominated person does not hold approved tertiary qualifications in business, economics, accounting or law, or other qualifications or units of competency as prescribed by the Regulations.

(2) Where the nominated person does not hold a security licence, they must meet requirements of a **close associate**.

## **22. Restrictions on granting licence--conflict of interest for police officers**

(1) The Commissioner must refuse to grant an application for a licence to a police officer or other member of the jurisdiction Police Force if the Commissioner considers that the grant of the licence, or the carrying on of the security activities authorised by the licence, would create a conflict of interest between the proper performance of the officer's or member's duties as an officer or member and the officer's or member's private interests.

(2) However, the Commissioner may grant an application for a licence to a police officer or other member of the jurisdiction Police Force subject to the condition that the person may not be employed by specified persons, if to do so would avoid a conflict of interest of the kind described in subsection (1). This subsection does not limit the other conditions to which a licence may be subject.

## **23. Refusal of private security licence on grounds of protected information**

(1) If the Commissioner makes a decision not to grant a licence under section 38(1)(a) or 39(1)(a) wholly or partly on the basis of protected information, to the extent that the Commissioner's reasons for that decision relate to that protected information-

(a) sections 40, and 42 do not apply; and

(b) the applicant is not entitled to be provided with those reasons.

(2) If a person is not entitled to some or all of the reasons for a decision under subsection (1), the Commissioner must-

(a) notify the applicant that the application has been denied because the applicant or each relevant person in relation to the application has failed to meet the probity requirements; and

(b) create a written record of the reasons; and

(c) inform the applicant that-

- (i) the Chief Commissioner has created a written record of those reasons; and
- (ii) those reasons are not able to be disclosed to the applicant; and
- (iii) he or she is entitled to seek review of the Chief Commissioner's decision by JCAT; and

(d) if the applicant seeks review of the decision by JCAT, provide JCAT with those reasons.

(3) In this section, ***relevant person in relation to the application*** has the same meaning as in section 39.

## **24. 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) If an application has been made under subsection (1) for the renewal of a private security individual or business licence, the licence is deemed to continue in force, after the expiry of the licence period, until the Commissioner makes a decision in relation to the application or refuses to make a decision in relation to the application.

(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.

See sections 25, 29 and 37 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 must 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. For example, under section 19(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 19 (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 25, 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 29(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 such approved 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.

(8) A licence may be renewed under this section on more than one occasion.

## **25. Investigation of licence and renewal applications**

(1) On receiving an application for a licence or for the renewal of a licence, the Commissioner may carry out all such investigations and inquiries as the Commissioner considers necessary to enable the Commissioner to consider the application properly.

(2) The Commissioner:

(a) may require an applicant for a licence to consent to having his or her fingerprints or palm prints, or both, taken by an authorised officer or approved agency in order to confirm the applicant's identity, and

(b) must refuse to grant the licence unless the applicant has provided fingerprints or palm prints in accordance with any such requirement.

(3) The Commissioner:

(a) may require an applicant for a licence or for the renewal of a licence to provide the Commissioner with a photograph of the applicant or consent to having his or her photograph taken by an authorised officer or approved agency in order to confirm the applicant's identity, and

(b) must refuse to grant or renew the licence unless the applicant has provided a photograph or been photographed in accordance with any such requirement.

(4) Any fingerprint, palm print or photograph obtained in accordance with this section may be used by the Commissioner for any purpose as the Commissioner sees fit.

(5) A person who formerly held a licence, but is not currently a licensee, or who was an applicant for, but was never granted, a licence, may apply to the Commissioner to have the following destroyed:

(a) the person's fingerprints or palm prints obtained in accordance with a requirement under subsection (2) and any copies of them,

(b) the person's photograph obtained in accordance with a requirement under subsection (3) and any copies of it.

(6) The Commissioner may grant or refuse the application as the Commissioner sees fit.

(6A) A reference in this section to an applicant or a licensee includes, in the case of an application for a business licence, or in the case of a former licensee, a reference to each close associate of the applicant or former licensee.

(7) In this section, "**authorised officer**" means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this section:

(a) a police officer or any other member of the jurisdiction Police Force,

(b) a Public Service employee,

(c) any other person prescribed by the regulations.

## **26. Additional particular requirements for licence applications**

(1) If the application is for carrying out the functions of a security business, the application must include evidence that the applicant is a current member of an approved security industry association.

## **27. Applications by serving and former police officers**

Any application for a licence made by any person who is, or who was at any time, a police officer or a member of the police force of any other jurisdiction (whether in Australia or overseas) must be referred to the Professional Standards of the jurisdiction Police Force. That branch may seek further advice from the Law Enforcement Conduct Commission as to the suitability of the applicant to hold a licence or the suitability of the applicant being employed by any specified business licensee.

## **28. Commissioner may require further information**

(1) The Commissioner may, by notice in writing, require a person who is an applicant for a licence or for the renewal of a licence or who, in the opinion of the Commissioner, has some association or connection with the applicant that is relevant to the application to do any one or more of the following things:

(a) to provide, in accordance with directions in the notice, such information, verified by statutory declaration, as is relevant to the investigation of the application and is specified in the notice,

(b) to produce, in accordance with directions in the notice, such records relevant to the investigation of the application as are specified in the notice and to permit examination of the records, the taking of extracts from them and the making of copies of them,

(c) in the case of an application for a category 1 licence by an applicant who has previously held a category 1 licence--to provide, in accordance with directions in the notice, statements from previous employers specifying the duration of the applicant's employment and the security activities carried on by the applicant during the applicant's employment (but only if that employment included time during the term of that previous licence),

(d) to authorise a person described in the notice to comply with a specified requirement of the kind referred to in paragraph (a), (b) or (c),

(e) to furnish to the Commissioner such authorities and consents as the Commissioner directs for the purpose of enabling the Commissioner to obtain information (including financial and other confidential information) from other persons concerning the person and his or her associates or relations.

(2) If a requirement made under this section is not complied with, the Commissioner may refuse to consider the application concerned.

(3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

(4) The reasonable costs incurred by the Commissioner in investigating and inquiring into an application for a licence or for the renewal of a licence are payable to the Commissioner by the applicant, unless the Commissioner determines otherwise in a particular case.

(5) The Commissioner may require part or full payment in advance of the amount the Commissioner estimates will be payable by the applicant and may refuse to deal with the application until the required payment is made.

(6) Investigation and inquiry costs may include reasonable travelling expenses within or outside the State.

(7) It is a condition of any licence granted to the applicant that any amount payable under this section is paid.

(8) A certificate signed by the Commissioner (or by a person holding an office prescribed by the regulations) certifying the reasonable costs incurred by the Commissioner in investigating and



inquiring into an application for a licence or for the renewal of a licence is admissible in any proceedings for the recovery of an amount payable under this section and is prima facie evidence of the amount so specified.

## **29. 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, 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.

## **30. Continuing approved training, assessment and instruction**

(1) It is a condition of every category 1 or category 2 licence that the licensee undertake and complete, to the satisfaction of the Commissioner, such approved 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.

### **Note: Training**

*It is recognised that standardised national training exists for the entry level of an unarmed security guard and crowd controller.*

*National training consistency should be introduced for entry level training for technicians, including Certificate II in Technical Security and other training competencies considered suitable, associated with electrical, engineering, IT and communications.*

*Security Regulators should approve RTOs for the delivery of any training for security licensing purposes. To maintain national consistency in delivery and assessment, consideration should be given for approval of RTOs formally through a National Security Industry Regulators Forum (SIRF).*

*Upon review, if Certificate training becomes an excessive level with regards time and expense for a person to enter the security industry, the SIRF in conjunction with the security industry, should establish "a course in security" for entry level training, where required, for persons entering the security industry.*

## **31. Form of licence**

(1) A licence is to be in any one or more approved forms.

(2) A licence must:

- (a) contain the name of the licensee, and

(b) specify the category (or subcategory) of licence, and

(c) contain the number of the licence, and

(d) contain such other details as may be prescribed by the regulations.

(3) A category 1 or category 2 licence must contain a recent photograph of the licensee and bear the signature of the licensee.

(4) The Commissioner may determine that a business licence is to contain a recent photograph of the licensee or bear the signature of the licensee (or both).

(5) A requirement under this section for a licence to contain a photograph is satisfied only if the licence contains a photograph obtained in accordance with arrangements determined by the Commissioner.

### **32. Special conditions--business licences**

(1) It is a condition of every business licence that the licensee must not provide any person:

(a) to work in the cash-in-transit sector of the security industry, or

(b) to work in any area which involves access to any operational information relating to the licensee's security business,

if that person would be refused a licence because of section 20.

(2) It is a condition of every business licence that the business licensee must not provide persons to carry on a security activity with a dog except with the approval of the Commissioner.

### **33. Special conditions--authority to carry firearms**

(1) It is a condition of every category 1F licence that the licensee must not carry on the security activity authorised by the licence unless the licensee is authorised by a licence or permit under the *Firearms Act* to possess or use a firearm.

(2) If the holder of a category 1F licence is found guilty of an offence under the *Firearms Act* in relation to the unauthorised possession or use of a firearm, the person cannot be found guilty of an offence under section 44 of this Act of failing to comply with the condition imposed by this section in respect of that unauthorised possession or use.

### **34. Special conditions--uniforms must be worn when carrying firearms**

(1) It is a condition of every category 1F licence that, if the licensee is an armed security guard, the licensee must not carry a firearm unless the licensee is wearing a recognisable security guard's uniform.

(2) It is a condition of every business licence that, if the business licensee employs a person as an armed security guard, the business licensee must not allow any firearm in the business licensee's possession (including those firearms that have been acquired by the business licensee in connection with the business licensee's business) to be carried by an armed security guard who is not wearing a recognisable security guard's uniform.

(3) It is a condition of every business licence that, if the business licensee employs a person as an armed security guard, the business licensee must not allow any person employed by the business licensee to carry a firearm while carrying on security activities for the business licensee unless the person is an armed security guard who is wearing a recognisable security guard's uniform.

(4) If a police officer discovers an armed security guard carrying a firearm while the armed security guard is not wearing a recognisable security guard's uniform, the police officer may seize the firearm.

(5) If an armed security guard carries a firearm while the armed security guard is not wearing a recognisable security guard's uniform, the Commissioner must:

(a) suspend, in accordance with section 38, the armed security guard's category 1F licence, and

(b) serve a notice on the business licensee who employs the armed security guard (or, if the security guard is self-employed and holds a business licence, serve a notice on the armed security guard as holder of a business licence), personally or by post:

(i) stating that the armed security guard's category 1F licence has been suspended and the reasons for suspending it, and

(ii) requesting that the business licensee provide the Commissioner with reasons why the business licence should not be revoked.

(6) The Commissioner may, if the Commissioner is satisfied there is a genuine reason, authorise in writing a person employed as an armed security guard to carry a firearm while not wearing a recognisable security guard's uniform.

(7) An authorisation under subsection (6) remains in force for such time as is specified in the authorisation unless it is sooner revoked by the Commissioner.

(8) The conditions set out in subsections (1)-(3) do not apply in relation to an armed security guard authorised under subsection (6), but only while the armed security guard is carrying the Commissioner's written authorisation.

### **35. Special conditions-storage of firearms in certain residential premises**

(1) It is a condition of every category 1F licence that, if the licensee is an armed security guard, the licensee must not store a firearm at any prohibited premises.

(2) It is a condition of every business licence that, if the business licensee employs a person as an armed security guard, the business licensee must not cause or permit any firearm in the business licensee's possession (including those firearms that have been acquired by the business licensee in connection with the business licensee's business) to be stored at any prohibited premises.

(3) If a police officer discovers that a firearm is stored at prohibited premises, the police officer may seize the firearm.

(4) If an armed security guard stores a firearm at any prohibited premises, the Commissioner:

(a) must suspend, in accordance with section 38, the armed security guard's category 1F licence, and

(b) must serve a notice on the business licensee who employs the armed security guard (or, if the security guard is self-employed and holds a business licence, serve a notice on the armed security guard as the holder of a business licence), personally or by post:

(i) stating that the armed security guard's category 1F licence has been suspended and the reasons for suspending it, and

(ii) requesting that the business licensee provide the Commissioner with reasons why the business licence should not be revoked.

(5) In this section: **prohibited premises** means any premises that are regularly used as a principal or temporary place of residence by a person who has been found guilty of a criminal offence, being an offence that would disqualify the person from holding a licence because of section 20(1)(a) (if the person has been convicted) or section 20(1)(b) (whether or not the person has been convicted).

### **36. Special conditions-category 1 licences**

A category 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 category 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 approved 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.

### **37. Term of licence**

(1) A category 1 or category 2 licence, other than a renewed licence, comes into force:

(a) on the day on which the licence is published on the jurisdiction public security licence database, or

(2) A business licence, other than a renewed licence, comes into force on the date specified in the licence.

(3) The renewal of a licence comes into force:

(a) if the application for renewal is lodged under section 24 before its expiry, on the expiry of the licence, or otherwise advised by the Commissioner 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.

(4) A licence remains in force for a period of 5

years (or such shorter period as may be prescribed by the regulations) from the day on which it comes into force, unless sooner surrendered or revoked or it otherwise ceases to be in force.

### **38. Suspension of licence**

(1) The Commissioner may, if satisfied that there may be grounds for revoking a licence, suspend the licence, by notice served on the licensee, for a period of not more than 60 days specified in the notice, commencing on service of the notice.

(1A) The notice is:

(a) to state that the licence is suspended and the reasons for suspending it, and

(b) to request that the licensee provide the Commissioner with reasons why the licence should not be revoked.

(1B) The Commissioner is not required to give a licensee an opportunity to be heard before suspending the licence under this section.

(1C) The Commissioner may, by further notice served on a licensee during the period in which the licence is suspended under this section, extend the period of suspension of the licence for a further period of not more than 60 days specified in the notice.

(2) A suspended licence does not authorise the licensee to carry on any security activity during the period specified in the notice suspending it.

### **39. Revocation of licence**

(1) A licence may be revoked:

(b) if the licensee:

(i) supplied information that was (to the licensee's knowledge) false or misleading in a material particular in, or in connection with, the application for the licence or the renewal of the licence, or

(ii) contravenes any provision of this Act or the regulations, whether or not the licensee has been convicted of an offence for the contravention, or

(iii) contravenes any condition of the licence, or

(d) for any other reason prescribed by the regulations.

(1A) The Commissioner must revoke a licence where the Commissioner is satisfied that, if the licensee were applying for a new licence, the application would be required by this Act to be refused.

(2) The Commissioner may revoke a licence by serving on the licensee, personally or by post, a notice stating that the licence is revoked and the reasons for revoking it.

(3) The revocation of a licence by such a notice takes effect when the notice is served or on a later date specified in the notice. Section 45 requires the licensee to immediately surrender the licence if the licence is revoked.

(4) The Commissioner may, by serving a further notice on the holder of a licence, cancel a notice revoking a licence before the notice takes effect.

(5) For the purposes of 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 category 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).

### **40. Variation of licence**

(1) The holder of a category 1 or category 2 licence may apply to the Commissioner for a variation of the kind or kinds of security activity authorised by the licence.

(2) An application for a licence variation is to be treated in the same way as an application for the grant of a licence.

## 41. Provision of approved training, assessment and instruction

(1) The Commissioner may approve persons or organisations to provide, for the purposes of sections 19(1)(d), 24(7), 30 and 36, training, assessment and instruction that is of a kind approved, and to a standard required, by the Commissioner.

(2) The approval of any such person or organisation by the Commissioner:

(a) is subject to such conditions with respect to the provision of training, assessment and instruction by the person or organisation as may be imposed by the Commissioner, and

(b) may be suspended or revoked at any time by the Commissioner.

(3) A person or organisation approved by the Commissioner under this section must comply with any conditions imposed by the Commissioner under subsection (2). Maximum penalty:

(a) in the case of a corporation - 100 penalty units, or

(b) in the case of an individual - 50 penalty units.

### Note: Training

*It is recognised that standardised national training exists for the entry level of an unarmed security guard and crowd controller.*

- *National training consistency should be introduced for entry level training for technicians, including Certificate II in Technical Security and other training competencies considered suitable, associated with electrical, engineering, IT and communications.*
- *Security Regulators should approve RTOs for the delivery of any training for security licensing purposes. To maintain national consistency in delivery and assessment, RTOs should be approved by the National SIRF.*

## Division 4: Review of licensing decisions

### 42. Right to seek administrative review from Civil and Administrative Tribunal

(1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *jurisdictions judicial review legislation* of the following decisions:

(a) the refusal or failure by the Commissioner to grant a licence to the person,

(a1) the refusal or failure of the Commissioner to renew a licence,

(b) a condition imposed by the Commissioner on a licence granted to the person,

(c) the revocation or suspension of a licence granted to the person.

(2) For the purposes of this section, an application for the grant or renewal of a licence is taken to have been refused if the licence is not granted or renewed within 60 days after the application is made in accordance with this Act. Under the *Civil and Administrative Tribunal legislation*, if the Civil and Administrative Tribunal has reviewed an administratively reviewable decision (such as a decision referred to in the above section), a party to the proceedings may appeal to an Appeal Panel of the Tribunal. An appeal on a question of law may then lie to the Supreme Court.

(3) In determining an application for an administrative review of a decision referred to in subsection (1), the Civil and Administrative Tribunal (and any Appeal Panel of the Tribunal in determining any internal appeal against such a review under the *Civil and Administrative Tribunal legislation*:

(a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information without the approval of the Commissioner, and

(b) in order to prevent the disclosure of any such report or other criminal information, is to receive evidence and hear argument in the absence of the public, the applicant for the administrative review, the applicant's representative and any other interested party, unless the Commissioner approves otherwise.

Sections 19(7), 24(5) and 39(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 19(6) or 39(5). Accordingly, administrative review legislation 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.

(4) If the Tribunal considers that information contained in a criminal intelligence report or comprising other criminal information has not been properly identified as such, the Tribunal must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration by the Tribunal in its determination of an application.

(5) Information that is withdrawn by the Commissioner must not be:

(a) disclosed to any person, or

(b) taken into consideration by the Tribunal in determining an application.

### **Part 3: Miscellaneous offences relating to licences**

#### **43. Certain licensees must be employed by other licensees or visitor permit holders**

(1) A person who is the holder of a category 1 or category 2 licence must not carry on a security activity authorised by the licence unless the person:

(a) is employed by a business licensee or the holder of a visitor permit authorising the holder to carry out security activities of a kind authorised by a business licence, or

(b) is self-employed and is the holder of a business licence.

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

#### **44. Contravention of licence conditions**

A licensee must not contravene any condition of the licence.

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.

## **45. Surrender of suspended or revoked licence**

If a licence is suspended or revoked, the person to whom it was granted must immediately surrender the licence in accordance with the regulations.

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.

## **46. Advertising**

(1) A person must not advertise that the person carries on or is willing to carry on any security activity referred to in the advertisement unless the person is the holder of a business licence.

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 licensee must ensure that any advertisement in relation to any security activity carried on by the licensee contains the number of the licence. 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) A reference in this section to an advertisement includes a reference to any form of notice or statement in the nature of an advertisement.

## **47. Misrepresentation and related offences**

(1) A licensee must not:

- (a) by any false, misleading or deceptive statement, representation or promise, or
- (b) by any wilful concealment of a material fact,

induce, or attempt to induce, any person to enter into an agreement or contract in connection with the carrying on of any security activity. 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 person must not:

- (a) in relation to any application for the purposes of this Act or the regulations, or
- (b) in relation to any information, records or particulars that the person is required to furnish under this Act or the regulations,

make any representation or statement that the person knows is false or misleading in a material particular. Maximum penalty: 50 penalty units.



## 48. Abuse of authority conferred by licence

A licensee must not in any way:

- (a) suggest or imply that the licensee may, because of the licence, exercise any function apart from a function authorised by the licence, or
- (b) use or attempt to use the licence to exercise any function apart from a function authorised by the licence.

Maximum penalty: 50 penalty units.

## 49. Licence to be produced on demand

(1) A licensee must produce the licence for inspection on demand by:

- (a) a police officer or any other member of the jurisdiction's Police Force, or
- (b) any person with whom the licensee has dealings when carrying on any security activity.

Maximum penalty: 50 penalty units.

(2) Subsection (1) does not require a licensee to produce a licence that has been lost, stolen, destroyed, defaced or mutilated or become illegible 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.

(3) A person, who has been granted the renewal of a licence but has yet to be issued with the renewed licence, complies with this section if the person instead produces the most recent licence issued to the person.

### Note: Licence display

*The Regulations will identify the requirements for a security business licence to be displayed at the security firm premises or client premises with recognition and acceptance of a security business licence meet such requirements by the use of electronic means.*

## 50. Licence to be worn by licensee

(1) The holder of a category 1 or category 2 licence must, at all times while carrying on a security activity, wear on his or her person so as to be clearly visible his or her licence, being an original and not a photocopy or other copy. Maximum penalty: 50 penalty units.

(1A) For the purposes of this section, a licence is worn by a person so as to be **"clearly visible"** only if:

- (a) the licence is attached to the person's outer clothing, and
- (b) the licence is attached at or above the level of the person's waist, and
- (c) the licence is attached at the front or side of the person's body, and
- (d) the licence is attached with the front face of the licence clearly visible to a person standing in front of the person, and
- (e) there is no material adhering to the licence that obscures any part of the licence from the view of such a person, and

(f) any other requirements prescribed by the regulations are complied with.

(2) This section does not apply to a licensee who is exempted by the Commissioner in writing from the requirement to wear the licence because of the special nature of the licensee's duties.

(3) Subsection (1) does not require a licensee to wear a licence that has been lost, stolen, destroyed, defaced or mutilated or become illegible 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.

(4) A person, who has been granted the renewal of a licence but has yet to be issued with the renewed licence, complies with this section if the person instead wears (in the manner required by this section) the most recent licence issued to the person.

## **51. Licensee not to sell or dispose of licence**

A licensee must not:

(a) sell, dispose of, deliver, let out, hire or rent the licence to any other person, or

(b) permit any other person to use the licence.

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.

## **52. Prohibition of delegation of functions**

(1) A licensee must not delegate the carrying on of a security activity to a person who is not the holder of a licence authorising the person to carry on the same security activity. Maximum penalty: 40 penalty units.

## **53. Prohibition on unauthorised subcontracting**

(1) A business 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 business 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

(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 business 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 category 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 business licence number of the subcontractor or further subcontractor, and

(b) any other particulars prescribed by the regulations.

#### **54. 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 category 1 or category 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 20.

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

#### **55. Business licensee not to provide unlicensed persons**

(1) Without limiting the operation of section 44, the holder of a business 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 business licensee satisfies the court that the business licensee did not know, and could not reasonably have been expected to know, that the person provided by the business licensee did not hold a licence that authorised the person to carry on a security activity of the kind concerned.

#### **56. Business licensee to submit any firearms for ballistics tests**

(1) If a business licensee is authorised under the *Firearms Act* to possess any firearms by reason of holding the business licence, the business licensee must, on request by the Commissioner,

submit all the business licensee's firearms to a police officer for ballistics testing. Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

(2) If, after a business licensee's firearms have been tested in accordance with subsection (1), a firearm so tested has been modified in a manner that would change the characteristics of the firearm's firing (such as any alteration, modification or change to the barrel, chamber, firing pin, extractor, ejector or bolt action of a firearm that may affect the forensic identifying features of that firearm), the business licensee must notify the Commissioner of that modification and on request by the Commissioner submit the firearm to a police officer for further ballistics testing. Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

(3) The Commissioner may keep the records of the results of any ballistics tests undertaken in accordance with this section and may use those records for any purpose as the Commissioner sees fit.

### **57. Business licensee to have "fitness for work" policy**

A business licensee must not provide any person to carry on a security activity unless the business licensee has prepared and implemented a fitness for work policy that covers the use of alcohol and other drugs by persons provided by the licensee to carry on security activities.

Maximum penalty:

(a) in the case of a corporation-20 penalty units, or

(b) in the case of an individual-10 penalty units.

## **Part 3A: Visitor permits**

### **58. Special events**

(1) The Commissioner may, by order published on the website maintained by the jurisdictional security regulator, declare any event or category of events that the Commissioner considers to be of regional, State or national significance to be a special event for the purposes of this Part.

(2) For the purposes of this section, the period of a special event includes such periods immediately before or after a special event as the Commissioner considers necessary.

### **59. Visitor permits**

#### **Note: Visitor permits**

*With the introduction of the NPSA, and the ability for an individual to be recognised to work in multiple jurisdictions, the use of Visitor Permits would be limited to special event and occasions or for international visitors etc.*

(1) A person may apply to the Commissioner for the grant of a visitor permit to carry on one or more kinds of security activity specified in the application during the period of one or more special events so specified or an event described in the application that the applicant requests be declared to be a special event (referred to in this Part as a "**proposed special event**").

(2) The application must be in the approved form and be accompanied by the fee, and information and particulars, prescribed by the regulations.

(3) The applicant must supply evidence to the Commissioner's satisfaction of the following requirements (referred to in this Part as the "**visitor permit eligibility requirements**"):

(a) if the applicant is an individual-that the applicant:

- (i) is ordinarily resident in another State or Territory, and
  - (ii) is licensed or otherwise authorised in that State or Territory to carry on the activity or activities of the kind proposed to be authorised by the visitor permit,
- (b) if the applicant is a corporation-that:
- (i) the applicant's registered office and, if the address of that office is not the address of its principal place of business, its principal place of business is in another State or Territory, and
  - (ii) the applicant is licensed or otherwise authorised in that State or Territory to carry on the activity or activities of the kind proposed to be authorised by the visitor permit.
- (4) The Commissioner may require the applicant to verify any relevant information by a statutory declaration or to provide proof of identity (or both) and may require the applicant to provide additional information or particulars.
- (5) The Commissioner may carry out all such investigations and enquiries as the Commissioner considers necessary to enable the Commissioner to consider the application properly.
- (6) Without limiting subsection (5), the Commissioner may have regard to any criminal intelligence report or other criminal information held (whether in this State or elsewhere) in relation to the applicant.

## **60. Grant and authority conferred by visitor permit**

- (1) The Commissioner may, after considering an application for a visitor permit:
- (a) grant the permit, or
  - (b) refuse to grant the permit.
- (2) The Commissioner may refuse to grant a visitor permit if:
- (a) the applicant fails to supply evidence to the Commissioner's satisfaction that the applicant satisfies the visitor permit eligibility requirements or any additional information or particulars required under section 59(4), or
  - (b) the Commissioner is satisfied that the applicant is not a fit and proper person to hold a visitor permit, or
  - (c) where the event to which the application relates is a proposed special event--the Commissioner refuses to declare the event to be a special event, or
  - (d) the Commissioner considers that the special event or proposed special event to which the application relates does not warrant or require provision of security activities of the kind specified in the application.
- (3) A visitor permit is to be in a form approved by the Commissioner.
- (4) A visitor permit authorises the holder of the permit to carry on each kind of security activity specified in the permit during the period of each special event specified in the permit.
- (5) A visitor permit is subject:
- (a) to such conditions as may be imposed by the Commissioner (whether at the time the permit is granted or at any later time), and
  - (b) to such other conditions as are imposed by this Act or prescribed by the regulations.

## **61 Contravention of visitor permit conditions**

A holder of a visitor permit must not contravene any condition of the visitor permit.

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.

## **62. Revocation of visitor permit**

The Commissioner may revoke a visitor permit:

- (a) if the permit was granted on the basis of false or misleading information, or
- (b) if the holder of the permit contravenes a condition of the permit, or
- (c) if the holder of the permit ceases to satisfy the visitor permit eligibility requirements, or
- (d) for any other reason prescribed by the regulations.

## **63. Visitor permit to be produced on demand**

The holder of a visitor permit must produce the visitor permit for inspection on demand by:

- (a) a police officer or any other member of the jurisdiction's Police Force, or
- (b) any person with whom the holder has dealings when carrying on a security activity.

Maximum penalty: 50 penalty units.

## **Part 3B: Enforcement**

### **Division 1 Powers of entry and search of premises**

#### **64. 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.

#### **65. 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.

## **66. 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 64, 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.

## **67. Obstruction etc**

(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.

## **68 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**

### **69. Application of Division**

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

### **70. 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.

### **71. Provisions relating to requirement under section 70 to furnish records**

(1) A notice under section 70 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 70 may take copies of it.

(3) If any record required to be furnished under section 70 is in electronic, mechanical or other form, the record must, unless the notice otherwise provides, be furnished in written form.

### **72. 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 70 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.



(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 audiovisual apparatus, or any other method determined by the enforcement officer.

(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.

## **Division 3 General**

### **73. Provisions relating to requirements to furnish records or information or answer questions**

(1) Warning to be given on each occasion A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

(2) Self-incrimination not an excuse A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

(3) Information or answer not admissible if objection made However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 47(2)(b) or 67 (1)(b) if:

(a) the person objected at the time to doing so on the ground that it might incriminate the person, or

(b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

(4) Records admissible Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

(5) Further information Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:

(a) that the record or information had to be furnished or the answer had to be given, or

(b) that the record or information furnished or answer given might incriminate the person.

## **Part 4 Miscellaneous provisions**

### **74. Power of court to suspend licence**

(1) If:

(a) in any proceedings before a court in which a licensee is convicted of an indictable offence, or

(b) in any proceedings before a court in which a licensee gives evidence or is convicted of an offence against this Act or the regulations, or

(c) in any proceedings before a court in which a licensee is found to be liable to a civil penalty of a kind prescribed by the regulations,

the court is of opinion on the evidence before it, whether that evidence is given by the licensee or any other person, that the licensee's licence should be suspended or revoked, the court may order that the licence be suspended for a period not exceeding 28 days and that the licence be delivered up to the court.

(2) If a licence is delivered up to a court in accordance with an order under subsection (1), the clerk or other relevant officer of the court must immediately send the licence and a copy of the order to the Commissioner.

(3) The Commissioner, on receiving the licence under subsection (2), may:

(a) cause the licence to be returned to the licensee, or

(b) take action under section 38 or 39 to suspend or revoke the licence.

## **75. Temporary services permits**

(1) A business licensee may apply to the Commissioner for the grant of a temporary services permit, where a visitor permit is not suitable or applicable, authorising the holder to carry out authorised functions of a security firm for a specified day, event or activity.

(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 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.

**Note:** A temporary services permit would be a consideration where a visitor permit is not suitable or appropriate and available for special events or circumstances.

## **76. Payment of fees charged by unauthorised persons**

(1) A person is not entitled to charge a fee in relation to a security activity unless the person is, or was, authorised by a licence or visitor permit to carry on the activity.

(2) If any such fee is charged by a person in contravention of this section, the fee cannot be sued for, recovered or retained by the person.

## **77. Delegation by Commissioner**

(1) The Commissioner may delegate to an authorised person any of the Commissioner's functions under this Act or the regulations, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any of the functions delegated by the Commissioner if the delegate is authorised in writing to do so by the Commissioner.

(3) In this section, **authorised person** means:

(a) a police officer or any other member of the jurisdiction Police Force, or

(b) a Public Service employee, or

(c) any other person prescribed by the regulations.

## **78. Liability of directors etc for offences by corporation--accessory to the commission of the offences**

(1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation.

(2) A person commits an offence against this section if:

(a) a corporation commits a corporate offence, and

(b) the person is:

(i) a director of the corporation, or

(ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and

(c) the person:

(i) aids, abets, counsels or procures the commission of the corporate offence, or

(ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or

(iii) conspires with others to effect the commission of the corporate offence, or

(iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

(3) The prosecution bears the legal burden of proving the elements of the offence against this section.

(4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.

(5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.

(6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 79. Proceedings for offences

(1) Proceedings for an offence under this Act or the regulations may be disposed of summarily before the Local Court.

(2) Proceedings referred to in subsection (1) must be commenced not later than 3 years from when the offence was alleged to have been committed.

## 80. Penalty notices

(1) An authorised officer may issue a penalty notice to a person if it appears to the authorised officer that the person has committed a penalty notice offence.

(2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

(3) Jurisdiction legislation applies to a penalty notice issued under this section. If a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

(4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations.

(5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

(6) In this section, **authorised officer** means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this section:

- (a) a police officer or any other member of the jurisdiction Police Force,
- (b) a Public Service employee,
- (c) any other person prescribed by the regulations.

## 81. Service of documents

(1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:

- (a) in the case of an individual--by personal delivery to the person,
- (b) by post to the address specified by the person for the service of documents of that kind,
- (c) in the case of an individual who has not specified such an address--by post to the residential or business address of the person last known to the person serving the document,
- (d) in the case of a corporation--by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
- (e) by email to an email address specified by the person for the service of documents of that kind or by facsimile transmission to the facsimile number of the person,
- (f) by any other method authorised by the regulations for the service of documents of that kind.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.

(3) In this section, **serve** includes give or send.

## **82. Certificate and other evidence**

(1) A certificate signed by the Commissioner (or by a person holding an office prescribed by the regulations) certifying any of the following:

(a) that a specified person was or was not, on a day or during a specified period, the holder of a licence,

(b) that any licence was or was not, on a day or during a specified period, subject to specified conditions,

(d) that a specified person had or had not previously applied for a licence and been refused,

(e) that the Commissioner has or has not authorised a specified person not to wear a uniform when carrying a firearm pursuant to section 34(6), and if the authorisation was subject to specified conditions,

(f) that the Commissioner has authorised a specified person not to wear a licence pursuant to section 50(2), and if the authorisation was subject to specified conditions,

(g) that a specified person had or had not previously contravened a licence condition and been found guilty of doing so,

(h) that a penalty notice had been issued to a specified person for a specified offence against this Act or the regulations and that the amount of the penalty had or had not been paid on a specified day,

(i) that the licence of a specified person was or was not suspended, revoked or had or had not otherwise ceased to be in force during a specified period,

(j) that a specified person or organisation was or was not, on a day or during a specified period, approved under section 41,

(k) that specified conditions were or were not, on a day or during a specified period, imposed under section 41 with respect to the provision of training, assessment and instruction by a person or organisation approved under that section,

is admissible in any proceedings under this Act and is prima facie evidence of the matters so specified.

(2) In proceedings under this Act:

(a) a document purporting to be a copy of a direction, notice, authorisation, order, requirement or decision given or made under this Act is evidence of the direction, notice, authorisation, order, requirement or decision of which the Commissioner purports it to be a copy, and

(b) a document purporting to be a copy of a licence under this Act is evidence of the licence of which the Commissioner purports it to be a copy.

## **83. Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to any of the following:

- (a) the keeping by the Commissioner of a register of licences and the particulars to be contained in the register,
  - (b) the approval of training courses for persons in the security industry, and the accreditation of trainers and instructors to conduct security industry competency training,
  - (c) specialised training of licensees,
  - (d) security equipment,
  - (e) methods and practices relating to the security industry, including:
    - (i) the carrying or display, by licensees, of means of identification and the production or surrender of that identification, and
    - (ii) the preparation, keeping and maintenance, by licensees, of records and accounts, and the audit of any accounts, in respect of the carrying on by the licensee of any business requiring a licence and the production and inspection of any such records,
  - (f) the making of determinations (including by the Commissioner) in relation to:
    - (i) the wearing by licensees of uniforms and the character or design of any uniforms so worn, or
    - (ii) the markings that may be made on, and the design of any features of, a vehicle used by any person in or in connection with the carrying on of any security activity,
  - (g) the procedure relating to applications for licences,
  - (h) any matter relating to licences, including the particulars to be endorsed on licences and the notification by the licensee of any change in those particulars,
  - (i) requiring holders of business licences to obtain specified insurance in connection with their security activities,
  - (j) fees payable under this Act or the regulations,
  - (k) any matter relating to visitor permits.
- (3) A regulation may create an offence punishable by a penalty not exceeding:
- (a) 50 penalty units in the case of an individual, or
  - (b) 100 penalty units in the case of a corporation.