

# SECURITY PROVIDERS BILL 1993

## EXPLANATORY NOTES

### OBJECTIVE

The *Security Providers Bill 1993* has the following objectives:—

1. To remove the regulation of security providers, that is, private investigators, security officers (in their own business or employed by security firms) and crowd controllers from the *Invasion of Privacy Act 1971*. In addition, the Bill aims to more rigorously regulate security providers, for example, all crowd controllers will have to be licensed, whereas at present only crowd controllers employed by security firms are licensed.
2. To reduce the number of security providers who are poorly trained by requiring them to complete prescribed training courses prior to licensing. There is currently no such requirement.
3. So as to “clean up” the industry, a person who has been convicted within the previous ten years of certain disqualifying offences will be automatically barred from obtaining a licence. In addition, any other convictions will be able to be taken into account by the Department of Consumer Affairs in considering whether an applicant should hold a licence. If a licensee is convicted of a disqualifying offence, the licence will be automatically cancelled.
4. To reduce the incidence of violence at public places, all crowd controllers will be required to wear clearly visible identification while on duty. The Bill also provides for regulations to be made which will require employers of crowd controllers to maintain registers which will record details of the crowd controllers on duty and any violent incidents which occur at the venue.

**NOTES ON CLAUSES**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides that the Act will commence on a day fixed by proclamation.

*Clause 3* defines certain terms used in the Act.

*Clause 4* defines who are security providers.

*Clause 4(1)* states that a *security provider* is either a crowd controller, a private investigator or a security officer. These terms are defined in clauses 5, 6 and 7 respectively.

*Clause 4(2)* states that an employee of a security provider is not a security provider if the employee's duties are only secretarial or clerical.

*Clause 4(3)* makes it clear that neither a member of a police force, nor a member of the Defence Force, nor an officer or employee of either the Commonwealth, State, or a Territory or of a Minister or a department of the Commonwealth or a State or Territory, nor a casino employee within the meaning of the *Casino Control Act 1982* is a security provider in carrying out the functions of the person's employment.

*Clause 5* defines a crowd controller.

*Clause 6* defines the term private investigator.

*Clause 7* defines who is a security officer.

*Clause 8* imposes the requirement that those carrying out the functions of security providers must be licensed and that a person must not, directly or indirectly, for reward, engage an individual to carry out the functions of a security provider unless that individual is licensed. Unless licensed, a person is not entitled to any reward for carrying out the functions of a security provider.

*Clause 9* states that only an individual may apply for, or be granted, a licence. It gives the chief executive power to request an applicant for a licence to provide further information or documents in relation to the application and if the applicant, without reasonable excuse, fails to do so, the chief executive may reject the application.

*Clause 10* details who is entitled to a licence.

*Clause 10(1)* provides that a person is entitled to a licence if the chief executive is satisfied that the person is at least 18, has successfully completed a training course approved by the chief executive and is an appropriate person to hold the licence.

*Clause 10(2)* states that in deciding whether a person is an appropriate person to hold a licence, the chief executive is limited to considering the matters mentioned in clause 10(3) and 10(4).

*Clause 10(3)* sets out the matters which may be considered by the chief executive when deciding if a person is an appropriate person to hold a licence. These matters include the person showing dishonesty or lack of integrity or using harassing tactics in dealings in which the person has been involved, association with a criminal in a way that indicates involvement in unlawful activity, taking advantage as a debtor of the laws of bankruptcy, being a patient within the meaning of the *Mental Health Act 1974*, or having been convicted of an offence.

*Clause 10(4)* states that a person is not an appropriate person to hold a licence if the person within ten years of applying for a licence, has been convicted of a disqualifying offence.

*Clause 11* provides that the chief executive may make enquiries about a person to assist in deciding whether the person is an appropriate person to hold a licence. If requested by the chief executive, the Commissioner of Police must provide the chief executive with a written report of the person's criminal history.

*Clause 12* allows for the granting or refusal of a licence by the chief executive. If the chief executive decides to grant the licence, the chief executive must give the licence to the applicant, and, if a condition is stated on the licence, a written notice stating that the applicant may appeal against the imposition of the condition within 28 days to a Magistrates Court. If the chief executive decides to refuse to grant the licence, the chief executive must give the applicant a written notice stating the decision and the reasons for the decision and that the applicant may appeal against the decision.

*Clause 13* allows for a conditional licence to be granted.

*Clause 14* provides for the conditions on a licence to be amended, subject to the chief executive giving the licensee a "show cause" notice, unless the conditions are to be amended only by omitting a condition or for a formal or clerical reason or in a way that does not adversely affect the licensee's

interests. If the chief executive decides to amend the conditions after the “show cause” notice has been given, the chief executive must give the licensee a written notice stating the way in which the conditions have been amended and that the licensee may appeal against the amendment of the conditions within 28 days to a Magistrates Court.

*Clause 15* provides that the chief executive may require the licensee to return the licence to the chief executive in order to amend the statement of conditions on the licence.

*Clause 16* states that a licensee must produce the licence for inspection on request to the persons outlined therein.

*Clause 17* states that a licence is valid for a term of no longer than one year.

*Clause 18* states that an application for renewal of a licence may be made within a period starting one month before the licence expires and ending six months after the licence expires. The chief executive must renew the licence, unless the chief executive refuses to renew it under proposed section 20. A renewal begins at the end of the day on which, but for its renewal, the licence would have ended and is for a term of not longer than one year.

*Clause 19* specifies the grounds for suspension, cancellation or refusal to renew a licence.

*Clause 19(1)* states that the grounds for suspension or cancellation of a licence or for a refusal to renew a licence are that the licence was obtained on the basis of incorrect or misleading information, or that the licensee has contravened a condition of the licence, or that the licensee has committed an offence against the Act or that the licensee is not, or is no longer, a fit and proper person to hold a licence.

*Clause 19(2)* provides that the question whether a person is an appropriate person to continue to hold a licence is decided in the same way as the question whether a person is an appropriate person to be granted the licence.

*Clause 19(3)* states that the fact that a licensee has been charged with a disqualifying offence is a ground for suspending, or refusing to renew, the licensee’s licence until the end of proceedings in relation to the charge.

*Clause 19(4)* provides that the power of the court to impose conditions of bail under the *Bail Act 1980* includes the power to impose a condition that the licensee not act as a security provider as stated in the condition.

*Clause 20* outlines the procedure for suspension, cancellation or refusal to renew a licence. If the chief executive considers that reasonable grounds exist to suspend, cancel or refuse to renew a licence (the “action”), the chief executive must give the licensee a written notice (the “show cause notice”) giving certain specified particulars and inviting the licensee to show cause within a specified time of not less than 28 days why the action proposed should not be taken. The chief executive must consider all representations made within the specified time and inform the licensee of the chief executive’s decision. If the chief executive decides to cancel, suspend or refuse to renew the licence, the chief executive must inform the licensee in writing regarding the reasons for the decision and that the licensee may appeal within 28 days to a Magistrates Court.

*Clause 21* states that if the chief executive cancels or suspends a licence, the chief executive may request the return of the licence. If a licence returned to the chief executive is still current at the end of the suspension period, the chief executive must return the licence to the licensee.

*Clause 22* states that if a licensee is convicted of a disqualifying offence, the licensee’s licence is cancelled and the licensee must return the licence to the chief executive within 14 days after the conviction.

*Clause 23* provides that a licensee may apply to the chief executive for the replacement of a lost, stolen or destroyed licence. If satisfied that the licence has been lost, stolen or destroyed, the chief executive must replace the licence. If the chief executive decides to refuse to replace the licence, the chief executive must give the applicant a written notice stating the decision and the reasons for the decision and that the applicant may appeal against the decision within 28 days to a Magistrates Court.

*Clause 24* provides that an applicant for a licence may appeal against the chief executive’s decision to refuse to grant the licence. A licensee may also appeal against the decision of the chief executive to impose or amend a condition on a licence or to suspend or cancel a licence or to refuse to renew a licence or to refuse to replace a licence. The appeal may be made to a Magistrates Court nearest the place where the applicant or licensee resides or carries on, or proposes to carry on, business or employment under the licence.

*Clause 25* outlines the procedure for beginning an appeal in the Magistrates Court.

*Clause 26* gives the Court power to grant a stay of a decision appealed against for the purpose of securing the effectiveness of the appeal.

*Clause 27* deals with hearing procedures for appeals to the Magistrates Court against a decision made under the Bill.

*Clause 28* outlines the power of the Magistrates Court when determining appeals.

*Clause 29* allows a party aggrieved by the decision of the Magistrates Court to appeal to a District Court on a question of law.

*Clause 30* states that the chief executive may appoint an officer of the public service to be an inspector only if the person has the necessary expertise or experience or the person has satisfactorily completed a training course approved by the chief inspector.

*Clause 31* provides that the chief executive must issue an identity card to each inspector. The identity card must contain a recent photograph of the inspector and be signed by the inspector. The identity card must be returned to the chief executive as soon as possible after the person stops being an inspector, unless the person has a reasonable excuse for not returning it.

*Clause 32(1)* states that an inspector may exercise a power under this Act in relation to a person only if the inspector first produces or displays the inspector's identity card for inspection by the person.

*Clause 32(2)* states that if it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection at the first reasonable opportunity.

*Clause 33* allows an inspector to enter a place if the occupier of the place consents to the entry, or the place is a public place and the entry is made when the place is open to the public or when the entry is authorised by a warrant.

*Clause 34* outlines the procedure to be followed when applying for, and granting, a warrant and the particulars which must be stated in the warrant.

*Clause 35* sets out certain requirements when warrants are applied for other than in person.

*Clause 35(1)* states that an inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector thinks it is necessary because of urgent or special circumstances.

*Clause 35(2)* states that, before applying for the warrant, the inspector must prepare an application that sets out the grounds on which the warrant is sought.

*Clause 35(3)* provides that the inspector may apply for the warrant before the application is sworn.

*Clause 35(4)* states that, if the Magistrate issues the warrant, the Magistrate must immediately fax a copy of the warrant to the inspector if it is reasonably practicable to do so.

*Clause 35(5)* states that if the warrant is issued but it is not reasonably practicable to fax a copy of it to the inspector, the Magistrate must tell the inspector certain particulars and record the reasons for issuing the warrant on the warrant and the inspector must complete a form of warrant in the same terms as the warrant issued by the Magistrate and write on the warrant form the name of the Magistrate and the date and time that the Magistrate signed the warrant.

*Clause 35(6)* provides that the facsimile warrant or the warrant form properly completed by the inspector is authority for the entry and the exercise of the other powers authorised by the warrant issued by the Magistrate.

*Clause 35(7)* states that the inspector must send to the Magistrate the sworn application and, if the warrant form was completed by the inspector, the completed warrant form.

*Clause 35(8)* states that the sworn application and any completed warrant form must be sent to the Magistrate at the earliest practicable opportunity.

*Clause 35(9)* provides that on receipt of the application and any warrant form, the Magistrate must attach them to the warrant issued by the Magistrate.

*Clause 35(10)* provides that if it is material for a court to be satisfied that the exercise of a power was authorised by a warrant issued under this section, and the warrant is not produced in evidence, the court must assume, unless the contrary is proved, that the exercise of power was not authorised by a warrant.

*Clause 36* outlines an inspector's powers after entering a place under clause 33.

*Clause 36(1)* states that, after entering a place under clause 33, an inspector may exercise a power mentioned in subsection (2) only if the occupier of the place consent to the exercise of the power or the entry was authorised by the warrant.

*Clause 36(2)* gives an inspector certain powers of search and seizure.

*Clause 37* covers the procedure after a thing is seized.

*Clause 37(1)* states that as soon as practicable after a thing is seized the inspector must give a receipt for it to the person from whom it was seized.

*Clause 37(2)* states the inspector must allow a person who would be entitled to the seized thing if it were not in the inspector's possession to inspect it or, if a document, to take extracts from it or make copies of it.

*Clause 37(3)* states that an inspector must return the seized thing to the person after 6 months or, if a prosecution for an offence involving the seized thing is instituted within 6 months, at the end of the proceedings for the offence and any appeal.

*Clause 37(4)* provides that, despite subsection (3), the inspector must return the seized thing to the person if the inspector is satisfied its retention as evidence is no longer necessary and its return is not likely to result in its use in repeating the offence.

*Clause 38* gives an inspector certain powers to require a person to state that person's name and address.

*Clause 39* allows an inspector to require certain persons to provide information.

*Clause 40(1)* states that a person must not state anything to an inspector which the person knows is false or misleading or omit from a statement anything without which the statement is misleading. *Clause 40(2)* states that a complaint against a person for an offence against subsection 40(1) is sufficient if it states the statement made was false or misleading to the person's knowledge.

*Clause 41* allows an inspector to require a person to produce a document required to be held or kept under this Act and a person must not, without reasonable excuse, fail to produce the document. The inspector may keep a



document produced to take an extract from the document or to make a copy of the document and must then return the document as soon as practicable.

*Clause 42(1)* provides that a person must not give to the chief executive or an inspector a document containing information that the person knows is false, misleading or incomplete. *Clause 42(2)* states subsection 42(1) does not apply to a person who, when giving the document, informs the chief executive or inspector of the extent to which the document is false, misleading or incomplete and who gives the chief executive or inspector the correct information.

*Clause 43* provides that a person must not, without reasonable excuse, obstruct an inspector in the exercise of a power.

*Clause 44* deals with compensation. A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under Part 3. Payment of compensation may be claimed in proceedings for compensation brought in a court of competent jurisdiction or during proceedings for an offence against the Act brought against the person by whom the claim for compensation is made. A court may order the payment of compensation only if it is satisfied it is just to do so.

*Clause 45* states that when acting as a crowd controller, a person must wear identification. The section does not apply to a person who is only acting as a bodyguard.

*Clause 46* preserves the confidentiality of information gained by a person through involvement in the administration of the Act, apart from certain specified exceptions.

*Clause 47* protects the chief executive, an inspector or a person acting under the direction of an inspector from liability for an act of omission done honestly and without negligence.

*Clause 48* makes an offence against the Act a summary offence.

*Clause 49* deals with evidentiary provisions.

*Clause 49(1)* states the section applies to any proceeding under the Act.

*Clause 49(2)* states that unless a party, by reasonable notice, requires proof, the appointment of an inspector or the authority of an inspector to do anything under the Act must be presumed.

*Clause 49(3)* states a signature purporting to be that of the chief executive or an inspector is evidence of the signature it purports to be.

*Clause 49(4)* provides that a certificate stating any of the matters set out in the subclause and purporting to be signed by the chief executive, is evidence of the matter.

*Clause 50* states the chief executive may delegate the chief executive's powers under the Act to an officer of the department.

*Clause 51* allows the chief executive to approve a form for the purposes of the Act.

*Clause 52* governs regulations. It grants the Governor in Council power to make regulations for the purposes of the Act and specifies the sorts of regulations which may be made.

*Clause 53* defines certain terms for the purpose of the Transitional Provisions of the Act.

*Clause 54* states that, if an application for a private inquiry agent's licence (which is defined to include a subagent's licence) under the *Invasion of Privacy Act 1971* was pending immediately before the commencement of the Act, the application becomes an application for the appropriate type of security provider's licence.

*Clause 55* aims to further clarify the transition from licensing under the *Invasion of Privacy Act* to this Act. It states that if a person held a private inquiry agent's licence (again defined to include a subagent's licence) under the *Invasion of Privacy Act 1971* immediately before the commencement of the Act, then on commencement it is taken to be the appropriate security provider's licence under this Act. It is also taken to have been granted under this Act on the day it was granted under the *Invasion of Privacy Act 1971* and expires one year from that day. However, for the purposes of renewal of a licence under section 18 of the Act, the criminal history of the person before the licence was granted or last renewed under the *Invasion of Privacy Act* must be disregarded.

If the chief executive decides to renew the licence, the chief executive must issue an appropriate licence under this Act to the person. Despite Clause 8, (which makes a licence mandatory) if a person was engaged or employed in carrying out crowd control functions immediately before the commencement of the Act, the person has six months before the person must hold a crowd controller's licence.

*Clause 56* provides that Part 5 expires one year after the commencement of the Act.

*Clauses 57 to 95* consist of necessary amendments to the *Invasion of Privacy Act 1971* so that security providers no longer are regulated by that Act.

*Clauses 96 to 101* amend the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

The Schedule lists the disqualifying offence provisions under the Criminal Code.