

EXPLANATORY MEMORANDUM

SECURITY AND RELATED ACTIVITIES (CONTROL) BILL 2007

Clause 1 Short title

Citation.

Clause 2 Commencement

Clauses 1 and 2 of the Bill come into effect on Royal assent. The remaining provisions come into effect on proclamation and different provisions may be fixed for different days. Proclamation is necessary as a number of the provisions in the Bill require the development of Regulations to support their operation.

Clause 3 The Act amended

This describes that the Amendment Act amends the *Security and Related Activities (Control) Act 1996* (the Act) except for Part 3. Part 3 amends the *Firearms Act 1974* and the *Spent Convictions Act 1988*.

Clause 4 Long Title amended

The long title is amended to encapsulate the new class of licence holder for security bodyguards.

Clause 5 Section 3 amended

Section 3 provides for interpretations of words used in the Act. The section is amended by inserting definitions of “security bodyguard”, “class”, “compliance officer”, “court”, crowd control agent”, “crowd controller”, “disqualifying offence”, “finding of guilt”, “inquiry agent”, “investigator”, “investigator’s licence”, “licensing officer”, “prohibited person”, “relevant body”, “relevant conduct”, “security bodyguard’s licence”, “security consultant’s licence”, “security installers” and “temporary licence”.

The majority of the new definitions cross reference to where a more expansive definition is found in the Act. The ones that contain a more substantial definition are as follows.

“**class**”: this clause, together with clause 68, provides for sub-classes of licence to be prescribed for security consultants and security installers. The new sub-classes replace the current cumbersome and confusing system of

conditions and restrictions placed on these licences due to skill and training differences.

“court”: this term is defined to allow findings of guilt by courts for disqualifying offences within Australia and overseas jurisdictions.

“disqualifying offence”: is defined to be an offence of a kind prescribed by the regulations as being a disqualifying offence. The offences to be prescribed are to be serious criminal offences including violence related offences, offences relating to theft and dishonesty and offences relating to drugs. If a licence holder, or a persons who is making application for a licence is found guilty of a disqualifying offence, they will not be able to be licensed or could have their existing licence revoked.

“relevant body” and “relevant conduct”: these terms relate to clauses 31(5)(2b) and 34(2). The purpose of using these terms in those clauses is to allow the licensing officer to take into consideration suspected criminal or corrupt conduct of those persons who are defined as being past or present employees of relevant bodies such as former police officers who apply for a licence or are licensed under the Act. It is also pertinent to note that the intent of this clause is consistent with the recommendations contained in the Royal Commission final report into *Whether there has been any Criminal or Corrupt Conduct by any Western Australia Police Officer*¹.

Clause 6 Section 4A and 4B inserted

“prohibited person” is defined to allow persons who have committed a “disqualifying offence” to be prohibited from having a licence for a particular prescribed period. The clause applies to current licensees and new applicants for a licence. A “disqualifying offence” is a new definition that can be found in clause 5 and relates to offences that are to be prescribed in the regulations.

“Finding of guilt” is defined to clarify in what circumstances a person is liable to become a prohibited person i.e. when the person is convicted of a disqualifying offence; when there is a formal finding of guilt; when a court accepts a plea of guilty; if a court finds that they are not guilty by reason of unsoundness of mind; or if the court orders a spent conviction in relation to the disqualifying offence.

Clause 7 Section 7 amended

Section 7(1) of the Act deals with the power of the Commissioner of Police to appoint officers for the purposes of the Act. This clause amends section 7 by allowing the Commissioner to also appoint compliance officers. It is the intent that Compliance Officers will be employed under the relevant public sector

¹ Page 322, Volume II

award and will investigate and enforce potential breaches of the Act, Regulations and Code of Conduct.

Section 7(3) of the Act is amended by including that if a compliance officer does something for the purposes of the Act, then unless the contrary is proved, it is to be taken to be within the compliance officer's authority.

Clause 8 Section 7A inserted

The new section 7A(1) of the Act has been inserted to provide that the Commissioner of Police is to issue an identification card to compliance officers and licensing officers.

The new section 7A(2) of the Act provides that the card must describe whether the officer is a compliance or licensing officer and contain their photograph.

The new section 7A(3) of the Act creates a specific offences to ensure that once the compliance officer or licensing officer ceases employment then the card is returned to the Commissioner.

The new section 7A(4) of the Act creates an obligation upon a compliance officer or licensing officer who has been appointed under the Act to produce on demand their identity card to either a police officer, or to a person who they are exercising one of the powers in respect to as outlined in sections 61, 75, 85 or 86.

Clause 9 Section 8A inserted

It is a current requirement under the Act that if a licence or endorsement is refused or revoked then the aggrieved person is required to be given the grounds for the particular decision. This clause is inserted to implement the Royal Commission recommendation that the Commissioner of Police not be required to provide 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 information².

This is achieved by making reference such information being of a type contained in Schedule 1 clause 5 of the *Freedom of Information Act 1992*. This Schedule broadly relates to information that pertains to law enforcement, public safety and property security.

² Page 322 Final Report Volume II *Royal Commission into whether there has been corrupt or criminal conduct By any Western Australian Police Officer*

Clause 10 Section 9A inserted

This clause inserts a power of delegation by the Commissioner for Police to police officers or public sector officers of the Department in respect to the following.

- The approval of forms as per sections 46 or 49 of the Act.
- The release of information to agents of certain unlicensed persons who are not to be employed in an agent's business by virtue of their being:
 1. unlicensed and having had the grant or renewal of a licence refused; or
 2. whose license is suspended or revoked because of their having been charged with a disqualifying offence or to section 79A.³
- The determination of the type and number of photographs required to be lodged with an application for a licence [as contained in section 47(1)(b) of the Act].
- The format of licences (as per section 58 of the Act).
- The type of uniforms that a licensee can wear whilst performing licensed activities [as per section 63(2)(a) of the Act].
- The matters referred to the State Administrative Tribunal for disciplinary action as mentioned in section 67 of the Act, the new section 67A of the Act (as created by clause 47) and section 81 of the Act.

Clause 11 Section 10 amended

Section 10 provides that the Commissioner of Police is to keep a register of licences. This clause is amended to require the Commissioner to also keep a register of any classes of licence held by a licensed person. This compliments the amendment of the ability to prescribe classes of licence as provided by inserting the new definition for "class" in clause 5(2).

Clause 12 Section 10A inserted

The new section 79A of the Act, created via clause 57, provides an offence for agents who employ in any capacity whatsoever persons who have had their licence:

- revoked or suspended; or
- for whom the renewal or grant of the licence has been refused.

This clause provides an exception to the secrecy provision in section 8 of the Act to allow the Commissioner of Police (or their delegate as allowed in clause 10) to provide information to agents who employ those prohibited

³ This is as per the new section 10A of the Act that is inserted via clause 12.

persons. This is so they can be aware that the revocation, suspension, refusal of renewal or refusal of grant of a licence in a particular instance has occurred.

Clause 13 Section 11 amended

Section 11 of the Act provides for the definition of a security agent. This clause amends section 11 by inserting the new licence type for security bodyguards which provides that the services of a security bodyguard can only be supplied by a security agent.

Clause 14 Section 13 amended

Section 13 of the Act provides for a definition of a security consultant. The section has been amended by clarifying that a person is a security consultant if they carry out all or any of the activities listed in section 13.

Clause 15 Section 14 amended

Section 14 provides for the definition of a security installer. The section has been amended by clarifying that a person is a security installer if they carry out all or any of the activities listed in section 14.

Clause 16 Section 14A inserted

This clause inserts a definition for the new licence type of “security bodyguard”. The definition creates the requirement that persons who provide bodyguard services be licensed.

Clause 17 Section 17 amended

Section 17 of the Act provides for an offence of acting as an unlicensed security consultant without being the holder of a security consultants’ licence. This offence compliments the amendments to provide for classes of security consultant’s licence in clause 5.

Clause 18 Section 18 amended

Section 18 of the Act provides for an offence for unlicensed security installers without being the holder of the class of security installer’s licence. This offence compliments the amendments to provide for classes of security consultant’s licence contained in clause 5.

Clause 19 Section 18A inserted

Section 18A of the Act has been inserted to provide for an offence of acting as a security bodyguard without being licensed.

Clause 20 Section 19 amended

Section 19 of the Act currently creates a requirement that security officers, security consultants and security installers must only act in their capacities if they do so as an employee of a security agent. Clause 20(1) of the Bill amends section 19 to simultaneously impose this requirement upon the new licensing category of security bodyguards.

Clause 20(2) of the Bill amends section 19(2) of the Act to remove the requirement that an agent for whom a security officer, installer, consultant or bodyguard works is required to be specified on the officer's, installer's, consultant's or bodyguard's licence. This is achieved by removing the reference to section 59 from the provision. Section 59 is separately repealed via clause 41.

The particular requirement is considered unnecessary by police and was determined as being anti-competitive following the National Competition Policy review of the Act.

Clause 21 Section 20 replaced

Section 20 of the Act currently provides an offence where a person employs a security officer, security consultant or security installer and they do not hold a relevant licence. The replacement section expands upon the old provisions to include the new licensing class of security bodyguards.

Clause 22 Section 21 amended

Section 21 of the Act currently provides an offence for those persons who advertise or hold out that they are willing to supply the services of security officers, security consultants or security installers if they do not hold a security agents licence. This clause expands this section to include the new licensing class of security bodyguards.

Clause 23 Section 23 amended

Section 23 of the Act currently creates an offence where a security officer is in the possession of a firearm whilst engaged in activities authorised by the licence, unless their licence is endorsed under section 24 to authorise such possession. This licensing endorsement is limited to where, in the course of

their duties, they are carrying the firearm during an escort of money or articles of value or for such other purposes as may be prescribed by regulation⁴.

It is, however, also possible that a security officer may carry a firearm in the course of their duties when operating in accordance with a permit issued under section 25 of the Act. This authorises such carriage of a firearm for a specified period at a specified place while guarding or protecting money or articles of value (other than during an escort of money or articles of value performed under section 24). At present this provision makes no reference to such a permit.

Clause 23 amends section 23 to expand the offence provision so as to clarify that the security officer carries the firearm in accordance the terms, conditions or restrictions of either the licence endorsement made under section 24 or the permit issued under section 25.

Clause 24 Section 24 amended

Section 24(5)(b) of the Act currently allows regulations to be prescribed to ensure that armed security officers have periodical medical examinations. However, the provision has been interpreted to allow for only medical examination at specific time durations (for example, yearly), instead of allowing flexibility as to the timing of the examination. This causes problems where a security officer's actions indicate that such an examination is necessary. Examples can include where their eyesight has deteriorated or where there are indications of mental instability, both of which are potential problems where armed security officers are involved.

As a result, this clause amends section 24 to provide greater flexibility by enabling the regulations to prescribe the:

- types of medical examinations that can be required which can include , for example, psychological assessments or ophthalmology tests;
- circumstances in which a medical examination can be required; or
- times when the examination can be conducted.

Clause 25 Section 25 amended

Section 25 of the Act currently enables the issue of permits to security officers enabling them to carry firearms for particular occasions. These permits are

⁴ Note, in this regard regulation 9 of the *Security and Related Activities (Control) Regulations 1997* prescribes the following activities:

- (a) guarding an automatic teller machine while it is malfunctioning or is being repaired or serviced;
- (b) guarding a safe while it is malfunctioning or is being repaired or serviced;
- (c) guarding money or an article of value at a place of business specified in a security agent's licence.

normally issued for static guard duties during for exhibitions of valuable commodities such as diamonds.

There is a potential anomaly in the current provision as while it refers to permits being issued to enable the protection of articles of valuables specifically, it does not make reference to the guarding or protecting of actual money. Clause 25(1) amends section 25 to correct this anomaly and allow a permit to be issued where it specifically involves the guarding of actual money.

Clause 25(2) inserts a new section 25(1a) of the Act to clarify that only security officers whose licenses are endorsed under section 24 to carry a firearm can be issued with such permits, which is currently not the case⁵. This ensures greater public safety as that only those security officers who are trained in the handling of firearms and experienced in escorting cash or valuables will be able to obtain a permit.

Clause 26 Section 31 amended

This clause amends section 31 of the Act to remove the requirement that an agent for whom an investigator works is required to be specified on the investigator's licence. This is achieved by removing the reference to section 59 from the provision. Section 59 is separately repealed via clause 41.

The particular requirement is considered unnecessary by police and was determined as being anti-competitive following the National Competition Policy review of the Act.

Clause 27 Section 38 amended

This clause amends section 38 of the Act to remove the requirement that an agent for whom a crowd controller works is required to be specified on the controller's licence. This is achieved by removing the reference to section 59 from the provision. Section 59 is separately repealed via clause 41.

The particular requirement is considered unnecessary by police and was determined as being anti-competitive following the National Competition Policy review of the Act.

Clause 28 Section 41 amended

Section 41 of the Act creates an offence for any person (licensed or otherwise) to be an armed security bodyguard. The exceptions to this are only where such bodyguard activity is undertaken:

⁵ Although it should be noted that in practice such permits are only ever issued to security officers with licence endorsements under section 24 of the Act.

- under and in accordance with a written authority given by the Commissioner of Police with the approval of the Minister; or
- as authorised by or under a written law of the Commonwealth.

This clause amends section 41 by changing the terminology used from “bodyguard” to “armed security bodyguard” to be consistent with the new definition of security bodyguard in clause 16. It is important to note, however, that in no way does the new licence of security bodyguard authorise the bodyguard in any way to be armed whilst performing their function unless the above exceptions apply.

Clause 29 Part 6A inserted

Clause 29 of the Bill inserts a new Part 6A into the Act, creating a process whereby temporary licences can be issued to persons who hold an equivalent licence in another jurisdiction. Such temporary licences are designed to apply for short-term periods only. In this regard, they can only be issued for a maximum period of 12 months.

The temporary licence provision is based upon a recommendation by the *Ministerial Council on Police and Emergency Management - Police* to allow licence holders of other States to be able to have a temporary licence to carry out security and related activities in other jurisdictions with a minimum of administrative restriction.

The new Section 42A applies to temporary licences for all licensees other than agents. The new section 42B applies to temporary licences for agents.

Clause 30 Section 46 amended

Clause 30 is a minor technical drafting amendment to section 46 that does not change the intrinsic meaning of the provision.

Clause 31 Section 47 amended

Clause 31 of the Bill amends various parts of section 47 of the Act.

Clause 31(1) amends section 47(1) to clarify that the application requirements within the subsection do not apply to applications for temporary licences, as the process for those applications are dealt with via the amendments to section 47(3) outlined below.

Clause 31(2) deletes the existing subsection 47(1)(a) to reword the requirement that an applicant produces such evidence of proof of age and identity as may be prescribed in the regulations.

Clause 31(3) deletes the existing subsection 47(1)(c) and replaces it with the requirement that a licence applicant produces character testimonials from two referees that have known them for at least five years. It is essential to set such a minimum period as, at present, no time limit exists and testimonials are being produced from persons that have barely known the applicant.

Clause 31(4) is a minor drafting amendment to subsection 47(1)(f)(i) and (ii) prepared by Parliamentary Counsel's Office that does not change the meaning of the provision in any way.

Clause 31(5) inserts subsections 47(2a), 47(2b) and 47(2c) and establishes the evidence that has to be produced by an applicant for a temporary licence.

Clause 31(6) and (7) inserts additional provisions (a) to (c) after subsection 47(3) and subsection 47(4). The effect of those provisions is that a "relevant applicant", being a person that has:

- been out of Australia for more than 12 months in the preceding five years; or
- has not resided in Australia for the whole of the preceding five year period,

can be required by a licensing officer to provide additional evidence when applying for a licence. This additional information can include details of where the person has lived or visited, why they visited such places and persons they associated with and evidence of their probity from such places including their criminal histories.

This is to put in place measures to check whether such applicants have any matters from their periods overseas that should preclude the issue of a licence. This requirement is consistent with the approach being introduced into all other Australian Jurisdictions and was agreed to by relevant police ministers at a meeting of the *Ministerial Council on Police and Emergency Management – Police*.

Clause 32 Section 48 amended

Section 48 relates to the taking of fingerprints or palm prints. The clause amends the section so that fingerprints and palm prints can be obtained from all licence holders. Also the clause ensures that the palm prints and fingerprints can be analysed across forensic databases that are provided under the *Criminal Investigation (Identifying People) Act 2002*.

Similar to the provisions in the *Criminal Investigation (Identifying People) Act 2002*, the clause provides for an election to be made by the licence holder about whether fingerprints and palm prints obtained can be held past the duration of a particular licence.

Clause 33 Section 49 amended

Section 49 relates to how and when to apply for the renewal of a licence. Clause 33 has been inserted by Parliamentary Counsel to reword the provision, but its meaning remains unchanged.

Clause 34 Section 50 amended

Clause 34 of the Bill amends section 50 of the Act, which deals with the material to that is required to be produced in support of an application for renewal. Similar to clause 29 for new applications for the implementation of the Police Royal Commission recommendation that the licensing officer obtain information regarding an ex-police officer's conduct whilst they were a police officer, this clause allows the licensing officer to obtain such information pertaining to "relevant conduct" from a "relevant body" when considering whether to renew a licence.

The terms "relevant body" and "relevant conduct" are inserted in the definitions within section 3 via clause 5. "Relevant body" refers to -

- (a) a police force of the Commonwealth, of this State, of another State of a Territory; or
- (b) another body established, or continued, for a public purpose as prescribed by regulations.

"Relevant conduct" pertains to a person who is or was a member of a relevant body and means actual or suspected conduct in the nature of criminal or corrupt activity by the person while a member, officer or employee of the relevant body.

Clause 35 Section 52 amended

Section 52 deals with the issuing of licences. Clause 35(1) of the Bill amends the section by providing that a person who is a prohibited person (which is detailed in clauses 5 and 6 of the Bill but broadly relates to a person that has been found guilty or convicted of a disqualifying offence) is not able to be issued with a licence.

The clause further provides that a licence should not be issued to a person that has been charged with a disqualifying offence, as distinct from being convicted, unless extenuating circumstances exist. This allowance has been included as it recognises that the person has not been convicted and there may, in some limited instances, be circumstances where there is sufficient reason to allow the issue of the licence until the criminal matter is determined.

There are also minor drafting amendments made to the clause in order to clarify the existing provisions.

Clause 36 Section 52A inserted

This clause inserts section 52A into the Act. The amended provision expands the existing requirements by ensuring that in deciding whether an applicant for a licence is of good character and fit and proper to hold a licence, the licensing officer takes into account whether the reputation, honesty and integrity to whom the applicant associates with.

If the licence is held on behalf of a partnership or body corporate, then all of the partners of the partnership or the officers of the body corporate are also subject to this test. Further, a public interest test is inserted so that a licence can only be issued if the issue of the licence is not contrary to the public interest.

Clause 37 Section 53 amended

Clause 37 has been inserted by Parliamentary Counsel to redraft section 53 in a clearer manner.

Clause 38 Section 54 repealed

This clause repeals section 54, which was a transitional provision for the original *Security and Related Activities (Control) Act 1996* and does not have any current application.

Clause 39 Section 55 replaced

Section 55 of the Act outlines the circumstances in which the licensing officer is obliged not to issue a licence renewal.

Clause 39 of the Bill repeals the existing provision and replaces it with a reworded provision that expands the existing circumstances in which the licensing officer is not to issue a licence. These circumstances as outlined in the new section 55(1) include where they consider:

- there are serious enough grounds to make an allegation to the State Administrative Tribunal in relation to their conduct;
- there are grounds that enable them to revoke a licence;
- the applicant is a security officer with a licence endorsement to carry a firearm and has refused to or failed to comply with a requirement to undergo a medical test; or
- the applicant is a prohibited person who has been convicted or found guilty of a disqualifying offence (refer also to clauses 5 and 6 of the Bill).

The new section 55(2) enables the licensing officer to renew a licence where they consider that, despite the existence of an adverse complaint or a proceeding before the State Administrative Tribunal relating to an applicant's conduct, that it is appropriate to issue the renewal taking into account the circumstances of the particular case. This does not apply, however, where the particularly licence was revoked via section 67A(1)(a) of the Act, that is where the Commissioner of Police revoked the licence having been of the opinion that the safety or welfare of members of the public may be at risk.

Clause 40 Section 56 amended

Section 56 of the Act deals with the issue and renewal of agents' licences held on behalf of partnerships and bodies corporate. It provides broadly that in considering an application for the issue or renewal of an agent's licence, consideration has to be given as to the fitness and propriety of the:

- partners of the partnership;
- the body corporate or officers of the body corporate; or
- any person who has a substantial shareholding in the body corporate, that being a shareholding of 25% or more.

Parliamentary Counsel has drafted clause 40 to better express the meaning of the provision, however the essence of section 56 remains unchanged.

Clause 41 Section 59 repealed

Section 59 required that a licence is to specify the employer of the licence holder. This section has been repealed as it provides no practical purpose and its repeal is consistent with the outcome of a National Competition Policy review.

Clause 42 Section 60 amended

Section 60 provides the ability to issue a licence up to three years, however it also enables the licence applicant to request its issue for a shorter period if so desired. Parliamentary Counsel has drafted clause 42 to better express the meaning of the provision.

Clause 43 Section 61 amended

Section 61(2) provides an offence for failing to produce an identity card to a police officer upon request of the police officer. The section is amended to provide an offence for failing to produce an identity card to request to a police officer, licensing officer or a compliance officer.

Clause 44 Heading to Part 7 Division 4 amended

This clause has been inserted by Parliamentary Counsel and amends the heading by deleting the words “against licensees”. It does not impact on the overall intent of the provisions that come within Part 7 Division 4 of the Act.

Clause 45 Section 66A inserted

This clause inserts section 66A of the Act, which contains a definition of “licensee” that is to apply where it is referred to within Division 4. Division 4 broadly deals with the disciplinary proceedings conducted via the State Administrative Tribunal in respect to the conduct of licensees under the Act.

Its reference to “section 67(1)(b)” clarifies that where the term “licensee” is used throughout Division 4, it includes a person that has previously held, but no longer holds, a licence.

Clause 46 Section 67 amended

Section 67 of the Act contains the mechanism and the power to revoke a licence. Clause 46 (1) clarifies the meaning of a licensee in section 67(1) to:

- include a person who actually holds a licence (as is currently the case); and
- a person that held a licence when the conduct giving rise to an allegation occurred but who no longer holds a licence.

This is to ensure that the State Administrative Tribunal can deal with allegations relating to both existing and past licensees.

Clause 46(2) amends section 67(1a) by adding as one of the criteria that the State Administrative Tribunal can consider when conducting a disciplinary hearing that it would be contrary to the public interest if the licensee were to continue to be licensed. Additionally, the provision makes minor wording changes that reinforces the intent of this provision in ensuring that when considering if there is proper cause for disciplinary action against a licensee, that such cause exists if the licensee no longer meets the requirements that applied when originally the licence application was made under sections:

- 52(1)(c), that is that licence holder is fit and proper and of good character;
- 52(1)(e), that is that the licence holder can during the licence period comply with any licence condition or restriction;
- 52(1)(f), that is in the case of an agents’ licence that they have sufficient financial resources to meet their financial obligations; or

- 52(1)(i), that in the case of an agents' licence held on behalf of a body corporate that, subject to section 44(2), the agent is a resident of the State.

Clause 46(3) amends section 67(2) to expand the powers of the State Administrative Tribunal to, following a proceeding, to also suspend a licence for up to three years. This is in addition to the existing ability to fully revoke the licence, which is its only option at this time.

Clause 46(4) repeals sections 67(3), (3a), (3b) and 4. These provisions are now provided in the new sections 67A and 67B inserted via clause 47.

Clause 47 Sections 67A and 67B inserted

Clause 47 inserts sections 67A and 67B into the Act. These provisions were originally largely contained in sections 67(3), (3a)(3b) and (4) of the Act but they are to be repealed via clause 46(4).

Section 67A provides the power for the Commissioner of Police to immediately revoke a licence where they are of the opinion:

- that the safety or welfare of the public is or may be at risk from the continuance of the licence; or
- the licensee is a prohibited person, that is convicted or found guilty of a disqualifying offence (refer clauses 5 and 6).

This revocation comes into operation when:

- (a) the notice is received by the licensee outlining the grounds of the revocation; and
- (b) the Commissioner advised the applicant that the matter will be referred to the State Administrative Tribunal within 14 days of making the notice.

As outlined in the notice, the Commissioner has to refer the matter to the State Administrative Tribunal within 14 days of making the notice.

The new section 67B creates an offence where a person whose licence has been revoked or suspended has failed to comply with a direction by a licensing officer to return their licence and identity card. The penalty for this offence is a maximum fine of \$2,000.

Clause 48 Section 68A inserted

Clause 48 of the Bill inserts a new section 68A into the Act. The provision enables the licensing officer to be able to request from a "relevant person" (as defined in this new provision) their assistance in facilitating the provision of information held about them by a relevant body (being a new definition

inserted via clause 3 as a police force within an Australian jurisdiction or any other body established for a public purpose as may be prescribed in the regulations).

The information will usually relate to holdings of criminal and corrupt intelligence or records held by public bodies such as police forces. The release of such holdings will generally require the permission of the person to whom the information relates. It will allow the Licensing Officer to obtain information such as holdings held by internal investigation units within various police agencies and other prescribed bodies to see whether current licensees should continue to be licensed.

Clause 49 Section 69

Section 69 of the Act deals with the power of the courts to revoke a licence. Clause 49 amends this section by extending the power of the court to either suspend or revoke a licence for any finding of guilt against a licensee for an offence against any Statute in Western Australia. At present the court is only able to revoke the licence when making such a finding of guilt.

Clause 50 Section 72 amended

Section 72 of the Act provides for the process by which a person aggrieved by the decision of a licensing officer can instigate a review of the decision by the State Administrative Tribunal.

Clause 50 amends the section by including in matters that can be subject to such review decisions applications for a security officer to carry a firearm for a particular occasion, as contained in section 25 of the Act. It appears to be an oversight that such permit applications were not previously subject to the right of review.

Clause 51 Section 73 repealed

Clause 51 of the Bill repeals the existing section 73 of the Act. Section 73 broadly provided that the State Administrative Tribunal could continue to deal with a disciplinary proceeding against a licensee, notwithstanding that the licensee had surrendered their licence.

However, this provision is no longer required as a result of the insertion via clause 46(1), which inserts the new section 67(1)(b) of the Act and clarifies the meaning of a licensee for the purpose of such proceedings includes a person who “held a licence when the conduct giving rise to the allegation occurred but who no longer holds a licence”.

Clause 52 Section 75 amended

Section 75 provides an offence for a holder of a licence to produce their licence for inspection upon the request of a police officer. Clause 52 of the Bill expands on this to also include an offence for failing to produce a licence upon request to a licensing officer or a compliance officer.

Clause 53 Section 76 amended

Clause 53 of the Bill amends section 76 of the Act by specifying that regulations can be created to outline the specific manner in which a licence that has expired or been terminated is to be returned to the licensing officer.

It also provides the enhanced ability to prescribe in the regulations the precise process by which a licence can be voluntarily surrendered by a licence holder, which is not currently specifically provided for in the Act.

Clause 54 Section 77 amended

Section 77 of the Act presently required a licence holder to notify the Commissioner of Police of their change of address. However, it is specifically the licensing officer that deals with such changes of address.

As a result, this clause amends section 77 to enable regulations to be prescribed that will clearly outline the process by which a licensee advises of their address changes.

Clause 55 Section 77A inserted

A new offence is inserted so that a licence holder must advise the licensing officer within seven days that they have been charged, convicted, or found guilty of committing a “disqualifying offence” (refer to the new definition contained in clause 5) .

Clause 56 Section 78 amended

Section 78(2) of the Act provides that a license holder who is required to keep records must advise the Commissioner of Police of the address of the premises at which the records are kept. This clause amends section 78 so that the licence holder is required to advise the Licensing Officer, instead of the Commissioner, in a manner prescribed in the regulations.

Clause 57 Section 79A inserted

This clause inserts the new section 79A of the Act, which provides for a new offence for agents to employ in any capacity a person who has had a licence refused or revoked or that the licence renewal has been refused. This clause is to remove altogether unsuitable persons from being able to have any involvement in a security business. It is aimed towards unscrupulous practices of retaining unsuitable persons in a different role but still working in the business. The penalty for this offence is a maximum fine for an individual of \$15,000 [or, by virtue of section 40(5) of the *Sentencing Act 1995*, \$75,000 for a body corporate].

A defence is provided where, through the exercise of reasonable diligence, an agent can establish that they could not have found out that the person was unlicensed.

This provision inter-relates with clause 12 of the Bill. That clause provides the licensing officer with the authority to provide written advice to an agent that an employee has had a licence refused or revoked or a licence renewal refused.

Clause 58 Heading to Part 9 amended

The heading to Part 9 which indicates that drug testing is for crowd controllers is amended by removing the reference to crowd controllers. Clause 54 widens drug testing to include holders of security licences who are endorsed to carry a baton or firearm or who have a permit to carry a firearm and so the heading is amended to reflect this.

Clause 59 Section 79B inserted

This clause inserts section 79B to effectively amend the definition of licensee to include the holders of security licences who are endorsed to carry a baton or firearm or who have been granted a permit to carry a firearm. This is consistent with subsequent provisions that expand the current drug testing regime to include such licence holders.

Clause 60 Section 80 amended

Section 80 of the Act currently provides a power to randomly drug test crowd controllers. Clause 60 of the Bill expands this to now include security officers who have an endorsement on their licences entitling them to possess firearms or batons in the specific circumstances outlined in sections 24 to 26. This is achieved by referring to the amended definition of “licensee” contained in clause 59.

Additionally, the clause removes the power of delegation from the Commissioner of Police contained in section 81(5) as this has been addressed via the section 9A created via clause 10.

Clause 61 Section 81 amended

Section 81 provides a power for the licensing officer to revoke a licensee's licence when that person fails a drug test or fails to comply with a requirement to do a drug test as required under section 80.

Clause 61(1) amends section 81(1) to change the reference from the licensing officer revoking a crowd controller's licence to instead providing that such revocation is commenced by the Commissioner of Police issuing a written notice to such effect to a licensee. In this regard, the expanded definition of licensee outlined in clause 59 applies in that as well as crowd controllers the revocation can be taken in respect to security officers with a licence endorsement under sections 24 or 25 of the Act.

Clause 61(2) repeals the current section 81(2) and inserts instead subsections (2), (2a), (2b) and (2c)

Subsection (2) provides that the Commissioner may in the notice of revocation also disqualify the licensee from holding any type of licence or licence endorsement under the Act for a period of up to three years.

Subsection (2a) means that the Commissioner must give the licensee written notice of the intent to revoke and (if applicable) disqualify a licence and allow the licensee to respond. The Commissioner is then to have due regard to any such response to the notice provided within 21 days.

Subsection (2b) means that the Commissioner must, after deciding to continue with the revocation and if relevant disqualification, following the process outlined in subsection (2a), issue the notice and, if relevant, a notice of disqualification of the licence at least 14 days before the revocation takes effect. The notice is to state the grounds in which the action is taken, when the revocation is to take effect and advising that the matter will be referred to the State Administrative Tribunal within 14 days of making the notice.

Subsection (2c) obligates the Commissioner to refer the revocation matter to the State Administrative Tribunal within 14 days.

Clause 61(3) amends section 81(3) to change the reference from section "67(3)" to "67A(1)". Section 67A(1) is the amended provision that deals with the process by which the Commissioner can exercise summary power to revoke and suspend licences where they are concerned that the safety or welfare of members of the public is or may be at risk from the continuance in force of a licence. Section 81(3) clarifies that nothing in the section limits the power of take revocation action under section 67A(1) where such safety or welfare concerns exist.

Clause 61(4) repeals section 81(4) as the provision is no longer required as a result of clause 47 and, in particular, the insertion of section 67B.

Clause 62 Section 82 amended

Section 82 currently provides that the cost of drug tests can be recovered where a crowd controller tests positive to illegal drugs. Clause 62 amends the reference to crowd controller by making reference to “licensee”. As this then pertains to the definition of “licensee” contained in clause 59, it means that in addition to the recovery of the costs of a drug test following a positive test result applying to a crowd controller, that it will also apply to security officers with a licence endorsement or permit to carry a firearm or baton under sections 24, 25 o4 26.

Clause 63 Heading inserted

Clause 63 inserts a new heading being “**Division 1 – Records**”.

Clause 64 Section 84 amended

Section 84 of the Act provides offences that relate to the records kept by persons who engage licensed crowd controllers. The clause amends section 84 to provide for a maximum “global” penalty of \$15,000. This contrasts with the current penalty of a maximum \$5,000 fine for individuals and \$10,000 for a body corporate.

As such, this is a potential \$10,000 increase in the maximum available fine applying to individuals committing an offence under this provision.

Section 40(5) of the *Sentencing Act 1995* will be relied upon to provide for penalties for body corporate of up to five times the amount of the maximum fine that could be imposed on an individual (or “natural person”) convicted of the same offence. As such, the maximum fine for a body corporate under this provision effectively becomes \$75,000. This is effectively a \$65,000 increase from the current fine.

Clause 65 Section 85 amended

Section 85 of the Act deals with inspection of records and gives a power to the licensing officer and members of the police force to request records for inspection. The clause amends section 85 to provide that compliance officers also have this power.

Clause 66 Section 86 amended

Section 86 of the Act provides a power for members of the police force to retain records seized under sections 78 and 84 for the purpose of making copies. The clause amends section 86 to also give licensing officers and compliance officers this power.

Clause 67 Section 87 amended

Section 87 of the Act provides a penalty in relation to obstructing police in the performance of their functions when they are inspecting records in accordance with section 85. Clause 67 amends this so that the offence also applies where the records are being inspected by a licensing officer or a compliance officer.

Clause 68 Part 10 Division 2 inserted

Clause 68 of the Bill repeals the existing section 88 of the Act and inserts instead Part 10 Division 2.

Within Part 10 Division 2 there is now a new section 88 along with sections 88A, 88B, 88C, 88D and 88E.

The new provisions broadly outline a process by which infringement notices can be issued for offences under the Act that are prescribed by regulation. Note, the reference to the "Act" also means that offences contained in the *Security and Related Activities (Control) Regulations 1997* (the Regulations) can also be prescribed offences for the purposes of the infringement process.

Section 88 allows the Commissioner of Police to appoint designated persons for the purpose of dealing with infringement notices.

Section 88A(1) provides that a member of the police force or a compliance officer can issue an infringement notice for an offence prescribed in the Regulations within six month of the commission of the offence.

Section 88A(2) provides that the infringement notice must be in a form prescribed in the Regulations and the information that must be contained in the infringement.

Section 88A(3) provides that the penalty written on the infringement must be consistent with that prescribed for the particular offence in the Regulations.

Section 88A(4) provides that a designated person may extend the 28 day period in which the modified infringement penalty can be paid.

Section 88A(5) limits the modified offence penalty that is prescribed in the Regulations to being no more than 20% of the maximum penalty for the particular offence.

Section 88B provides that a designated person may withdraw an infringement notice whether or not the modified penalty has been paid. This would generally occur where new information comes to light and a decision is made that the issuing of the infringement was no longer warranted.

Section 88C provides that the benefit of paying the modified penalty provided by the infringement notice is that the imposition of further penalties for the same offence cannot occur.

Section 88D means that no admission of guilt (civil or criminal) is implied by the payment of the infringement penalty. This is consistent with the infringement process being an alternative prosecutorial process.

Section 88E means that the proceeds of any infringements are dealt with in the same way as penalties imposed by the courts for the same offence.

Clause 69 Section 89 amended

Section 89 of the Act broadly deals with the liability of partners or a body corporate for offences against the Act committed by licensees of the relevant partnership or body corporate.

Clause 69 inserts subsection (2a), which clarifies that proceedings may be undertaken against a body corporate or a partner whether or not proceedings are taken against a licensee for an offence against the Act and whether or not a licensee is convicted of such offence.

Clause 70 Section 90 amended

Section 90 of the Act deals with liability of officers of the body corporate when a body corporate has committed an offence against the Act. The section is amended to clarify that proceedings may be taken against the officers of the body corporate irrespective of whether proceedings are also taken against the body corporate or whether the body corporate was actually convicted of the particular offence.

Clause 71 Section 90A inserted

Clause 71 of the Bill inserts section 90A into the Act. The new section provides that an agent is deemed to have committed an offence under the Act where the licence holder that the agent employs commits such an offence.

This provision applies unless the agent can prove that they:

- did not consent or connive in the commission of the offence; and
- exercised due diligence as ought to be exercised in the circumstances of the particular matter.

The clause also clarifies that proceedings may be taken against an agent even if proceedings aren't taken against the licence holder who commits the offence or the licence holder is not convicted of the offence.

Clause 72 Section 91 amended

Section 91 of the Act deals with the liability of the crowd controller's employer for the actions of the crowd controllers they employ. This clause repeals section 91(4), as it made reference to the agent specified on the crowd controller's licence under section 59, which is repealed by clause 41.

Clause 73 Section 92 amended

Section 92 deals with evidentiary provisions and to allow certificate evidence to be used for offences under the Act. The clause amends section 92 to extend the use of certificate evidence to be used in proceedings before a court or tribunal.

Certificates will be able to be used at the State Administrative Tribunal and for other non-offence related proceedings such as when judicial review is made of licensing decisions.

Clause 74 Section 93 amended

Section 93 relates to the onus of proof in relation to proving whether remuneration for an offence of a person acting as a licensee without being licensed. The clause amends the section by including the new offence of acting as a security bodyguard in section 18A that has been inserted via clause 19.

Clause 75 Heading inserted

This clause inserted the new heading "**Division 3 – General Provisions**".

Clause 76 Section 93A inserted

Clause 76 of the Bill inserts the new section 93A. This provides an obligation upon a licensee to provide on demand information to a police officer, a licensing officer or a compliance officer of the name of an agent they were working on behalf of at a particular time when performing their licensed

functions. The maximum penalty for failing to comply with this provision, or for providing false or misleading information, is a maximum fine of \$2,000.

This provision has been inserted as a result of the repeal of section 59 of the Act, via clause 41. This provision removed the requirement for a licence to specify the agent or agents on whose behalf a licensee works.

Clause 77 Section 94 amended

Section 94 of the Act broadly deals with the regulation making powers via the Act.

Section 94(2) deals with the power to make regulations for a code of conduct. At present a code has to be prepared by a particular industry association and such a code can only apply to those persons who are part of the particular association. Clause 77(1) amends section 94(2) by allowing a code of conduct to be prepared by the Minister that will apply to all licence holders or, where specified, to specific types of licences. This is irrespective of whether the licence holders are members of particular industry associations.

Clause 77(1) also clarifies that the regulation making power can extend to restricting the services that a particular class of licensed security installer or security consultant can perform. This will clearly be applied in line with the particular training, skill, experience and ability that the particular class of installers or consultants have. For example, it is possible that a group of locksmiths holding particular qualifications may be suitably trained in installing and repairing locks, whereas another group holding different qualifications may only be suitably trained installing (but not repairing) locks. This will mean that the regulations can prescribe such matters.

Clause 77(2) amends section 94(4) to allow for an increased fee where:

1. a security officers' licence includes an application for endorsement under sections 24 or 26 (that is, to be authorised to carry in defined circumstances a firearm or baton); or
2. fingerprints are taken as part of the licensing application or renewal process.

Clause 78 Section 95 repealed

Section 95 is repealed as it contained a transitional provision that only had application when the *Security and Related Activities (Control) Act 1996* came into operation.

Clause 79 Schedule 1 repealed

Schedule 1 is repealed as it contained transitional provisions that only had application when the *Security and Related Activities (Control) Act 1996* came into operation.

Clause 80 Certain provisions amended regarding penalties

Clause 80(1) provides a minor rewording to sections 68(2b), 75, 75, 77(1), 77(2), 78(2), 85(4) and 87 of the Act by inserting the words “a fine of” before the relevant \$2,000 penalty. This is the maximum penalty available for the less serious offences provided for in the Act.

Clause 88(2) increases the penalty for offences under the various sections of the Act outlined in the table contained within the sub-clause, those being sections 8(1), 15, 16, 19(1), 21(1), 23, 29, 30, 31(1), 32, 33(1), 36, 37, 38(1), 39, 40(1), 41(1), 51(1), 64, 78(1) and 79 of the Act. The insertion of the new penalty for these various sections is required as the general penalty applying to these particular provisions, originally contained in section 88, were repealed via clause 68.

The various offences to which these penalties relate are the more serious offences contained within the Act. Originally, the maximum penalty available under the Act for these offences was a maximum fine of \$10,000 for individuals and \$20,000 for a body corporate for offences under those provisions. The penalty for individuals committing these offences has been significantly increased to now become a maximum fine of \$15,000 for individuals, an increase of \$5,000.

The specific references to penalties in relation to bodies corporate have been removed. This means that, by virtue of section 40(5) of the *Sentencing Act 1995*, the maximum penalties for such bodies becomes five times the amount of the maximum fine that could be imposed on an individual (or natural person) convicted of the same offence. This effectively represents a \$55,000 increase in the maximum penalty.

Clause 81 *Firearms Act 1973* amended

Section 16A of the *Firearms Act 1973* effectively allows security officers who are endorsed to carry a firearm under section 24 of the *Security and Related Activities (Control) Act 1996* to possess firearms that are licenced by their agent under a corporate firearms licence. There is a potential deficiency in section 16A in that security officers who operate under section 25 of the Act are precluded from possessing firearms of their employer as the reference is only to section 24.

The clause amends section 16A *Firearms Act* to allow for corporate licensed firearms to be used by the security officer who has a section 25 permit.

Clause 82 ***Spent Convictions Act 1988* amended**

Currently the *Spent Convictions Act 1988* only allows the spent convictions to be taken into account when a person applies for a security agent's, security officer's, security consultant's or security installer's licence. This clause amends the section so that spent convictions can be taken in respect to all licences and permits issued under the Act.