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Private Security Personnel and Private Investigators Bill 2008

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Published: 05 March 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of this Bill is to reform the law relating to the private security industry (the industry) and private investigators and their staff and to repeal the Private Investigators and Security Guards Act 1974. In particular, the aims of the Bill are to:

- prevent certain people from either running businesses or working in various roles in the industry;
- ensure that participants in the industry have at least a minimum level of appropriate training;
- require industry participants to comply with appropriate rules of conduct;
- prescribe penalties for offences against this Bill; and
- to ensure the effective and efficient administration and enforcement of the Act¹.

¹ Private Security Personnel and Private Investigators Bill, 2008 No 297-1, Explanatory note, General policy statement, pp. 1 and 2.

Background

"Reviews of the Private Investigators and Security Guards Act 1974 ... were undertaken in 2001-03 and in 2007. The content of the Bill reflects the findings of those reviews"².

In a speech to the New Zealand Security Conference, on 25 June 2008³ the then Associate Minister of Justice gave some background to this Bill. Hon Clayton Cosgrove said that the main areas of reform fall into three categories.

"First, licensing requirements will cover a wider range of security-related activities – in particular, “crowd controllers,” which include “bouncers”. These are dedicated security staff who are employed specifically to screen entry, to keep order among groups of people, and remove people from premises – particularly on licensed premises. The licensing regime will also be extended to cover bodyguards offering services for hire and private security staff guarding people in legal custody. All those currently required to be licensed will continue to be required to be licensed.

"Secondly, private security staff will be required to undertake training if their job is guarding property, guarding persons, or keeping order among groups of people. This is not a requirement under the existing security industry legislation. The Bill proposes that training be required if the nature of the work is such that there is a substantial risk of physical violence occurring. Proper training is important for private security staff who have to deal with potentially violent situations, for their own safety and the safety of the public. Extending the licensing requirements and introducing mandatory training for private security staff will also bring New Zealand into line with the United Kingdom and Australia.

"A third major reform will be the establishment of a dedicated enforcement body, the Complaints, Investigation and Prosecution Unit. The Bill will also contain tougher penalties for breaches of the new Act, particularly for unlicensed people working in an area where they are required to be licensed.

The penalty for unlawfully employing an unlicensed security employee will go up, from the existing \$2,000, to 20,000. The penalty for unlawfully operating an unlicensed business will go up, from the existing \$2,000, to \$40,000 for an individual and \$60,000 for a company.

"The Bill will set up a dedicated enforcement unit, funded from licensing revenue, to enforce the new security industry legislation. Increasing penalties for offending will also provide a more effective deterrent for those people who do continue to break the law.

"The Police will retain the power to prosecute for breaches of the Act. There will, of course, be costs associated with all this, and the intention is that the new licensing regime, and the enforcement unit, will be financed from licensing revenue. However, every effort is being made to keep costs to the private sector down. To help achieve this, relicensing will only be required every five years, rather than every year, as at present.

"A number of things have not changed. In particular, the requirement in the existing legislation that private investigators not photograph or record people without their written consent will remain in place,

² Private Security Personnel and Private Investigators Bill, 2008 No 297-1, Explanatory note, General policy statement, p. 2.

³ Hon Clayton Cosgrove, Associate Minister of Justice (19/10/2005-19/11/2008), [Speech to the New Zealand Security Conference, 25 June 2008](#). See other background:

Media release, Hon Paul Swain (Associate Minister of Justice (10/12/1999-15/08/2002), [The NZ Security Industry: The Future](#), 20 June, 2002;

Media release, Hon Paul Swain, [Swain Announces Changes to Security Industry](#), 20 June 2002;

Media release, Hon Clayton Cosgrove, Clayton Cosgrove, [Bill to overhaul New Zealand's security industry](#), 25 June, 2008.

to safeguard the right to privacy. It is recognised that private investigators perform a relevant role, particularly in investigating possible offending, including fraud, but there needs to be a balance against privacy abuses by private investigators. A number of high-profile cases over the past few years involving dubious activities by private investigators have, unfortunately, reinforced the need for safeguards.

"I should also emphasise that, as with the existing Act, the new legislation will not give licence and certificate holders any powers that are not possessed by an ordinary citizen.

"How many people will be affected by the new legislation? The changes that I am announcing today are expected to nearly double the number of people who are expected to be licensed to perform private security roles, to approximately 18,000 people.

Main Provisions

Commencement

The Bill comes into force on a date to be appointed by the Governor-General by Order in Council. Different commencement dates may be appointed for different provisions (*Clause 2*).

Purpose

The purpose of the Bill is to ensure that persons offering specified private security services for hire, and personnel providing those services are suitably qualified to carry out that work and do not behave in ways that are contrary to the public interest (*Part 1, Clause 3*).

Persons who must be licensed

The Bill provides that the following persons must hold a licence under the Bill: a private investigator; a security technician; a security consultant; a confidential document destruction agent; a property guard; a personal guard; a crowd controller, and that a person who contravenes this clause commits an offence and is liable on conviction to a fine not exceeding \$40,000 (or \$60,000 for a body corporate) (*Part 2, Subpart 1, Clause 16*).

Definition of private investigator and other occupations

The term "private investigator" means a person who, for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business seeking or obtaining for any person or supplying to any person any information (not contained in a public record) relating to:

- the personal character, actions, or behaviour of any person; or
- the financial position of any person; or
- the occupation or business of any person; or
- the identity or whereabouts of any person.

However, no person is a private investigator by reason of the fact that:

- he or she seeks, obtains, or supplies any information for or to the Crown, or any member of the police, or any local authority, or at the request of a person who is not a client of the business; or only as a necessary, usual, or reasonable incident of any other activity by that person that is not described above; or for any purpose relating to the dissemination of news or other information to the public or to any section of the public; or for any cultural or historical purpose or for any purpose relating to education, literature, or science; or relating only to the person by whom he or she is engaged or retained; or in the course of and for the purposes of the business of a bank, or of a credit bureau, or of a debt collecting agency; or

- he or she is a security technician, security consultant, confidential document destruction agent, property guard, personal guard, or crowd controller.

The Bill provides precise definitions for the other licensed occupations: security technician; security consultant; confidential document destruction agent; property guard; personal guard; crowd controller. In general, the Governor-General may declare by Order in Council that a certain person is not a private investigator, security technician, security consultant, confidential document destruction agent, property guard, personal guard or crowd controller by reason only of the fact that he or she carries on any occupation or business described in the order (*Part 1, Clauses 5-12*).

Responsible employees and exemption

The Bill defines the various classes of responsible employee. For each licensed occupation (described above) there is a category of responsible employee who is an individual employed or engaged to do that work. The categories of responsible employee are private investigator employee, security technician employee, security consultant employee, confidential document destruction agent employee, property guard employee, personal guard employee, and crowd controller employee. Such responsible employees must hold certificates of approval under Clause 39. The Bill exempts members of the police in respect of their employment by the Commissioner of Police, the Commissioner of Police, employees of the Crown in respect of that employment or a person carrying on an occupation or business in accordance with a practising certificate, licence, permit, or other authority under any other enactment from having to hold a licence or certificate of approval (*Part 1, Clauses 13 and 15*;).

Act binds the Crown

Except in respect of Crown employees listed above, the Act arising from this Bill will bind the Crown (*Part 1, Clause 14*).

Persons disqualified from holding a licence

Individuals are disqualified from holding licences where that individual:

- has been ordered by a court to be detained in a hospital due to his or her mental condition and is currently subject to such an order; or
- has ever been subject to an order as an offender to be treated or cared for in a manner that the offender's mental impairment requires, either in the offender's interest, or for the safety of the public, or for the safety of a person or class of person, under Section 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, Section 118 of the Criminal Justice Act 1985, or Section 39J of the Criminal Justice Act 1954 (being an order imposed instead of passing sentence); or
- has ever been ordered by a court to be detained in a penal institution; or
- has ever been convicted of a specified offence as defined in Section 4 of the Criminal Records (Clean Slate) Act 2004; or
- has ever been disqualified from driving under Section 65 of the Land Transport Act 1998 or an earlier equivalent provision; or
- has, within the preceding 7 years, been convicted of any offence under the Fair Trading Act 1986; or offence of dishonesty; or offence of violence; or drug dealing offence as defined in section 2 of the Proceeds of Crime Act 1991; or
- has, within the preceding 7 years, been convicted of any offence under this Bill of working while unlicensed or employing a person without a certificate of approval, or an offence under Clause 66 of this Bill or Section 52 of the Private Investigators and Security Guards Act 1974; or holds a licence or certificate of approval that has been suspended; or has, within the preceding 7 years,

had a licence or certificate of approval cancelled under this Bill or the Private Investigators and Security Guards Act 1974; or

- has not within the preceding 5 years, had 12 months' relevant experience as a licensee or responsible employee in the class or classes of private security business to which the application relates; or
- has not complied with any training or work experience requirements prescribed in regulations made under this Bill.

A company is disqualified from holding a licence where the company:

- has, within the preceding 7 years, been convicted of any: offence under the Fair Trading Act 1986; or offence of dishonesty; or drug dealing offence as defined in section 2(1) of the Proceeds of Crime Act 1991; or has, within the preceding 7 years, been convicted of any offence under this Bill of operating while unlicensed or employing a person without a certificate of approval, or an offence under Clause 66 of this Bill or Section 52 of the Private Investigators and Security Guards Act 1974; or holds a licence that has been suspended; or has, within the preceding 7 years, had a licence cancelled under this Bill or the Private Investigators and Security Guards Act 1974; or
- an officer of the company was, or is, an officer of another company (whether or not that other company is still in existence) that, within the preceding 7 years, had a licence cancelled under this Bill or the Private Investigators and Security Guards Act 1974; or
- where any officer of the company is disqualified on any of the grounds of disqualification set out above for individuals; or
- all officers of the company have not, within the preceding 5 years, had 12 months' relevant experience as a licensee or responsible employee in the class or classes of private security business to which the application relates or they have not complied with any training or work experience requirements prescribed in regulations made under this Bill (*Part 2, Subpart 1, Clauses 17 and 18*).

Applying for, and issuing of, a licence

Detailed requirements are set out for applying for a licence. The Licensing Authority may make inquiries and must serve a copy of the applications on the Police. Every applicant must publish a notice of their application twice in a newspaper or newspapers approved for the purpose by the Licensing Authority. Within one month, the Police or any other person may object to the granting of the licence. The Police may object on any grounds but those grounds must be stated in their objection. Other persons may only object on the grounds, which must be stated, that the applicant is disqualified under Clauses 17 or 18 or "that there are other reasons relating to the applicant's character, circumstances, or background why the applicant is unsuitable to carry on the class or classes of private security business to which the application relates". Copies of objections must also be served on the applicant within seven days after filing with the Licensing Authority. The Bill contains detailed provisions relating to the hearing of the application (unless the Licensing Authority dispenses with a hearing), and the making of the decision on an application, and the issuing of the licence if that is what the Licensing Authority decides to do. No licence may be granted unless the applicant is of or over 18 years of age. If the applicant is a company, every officer of the company must be of or over 18 years of age. The application must have been correctly and completely made (*Part 2, Subpart 1, Clauses 19-29*).

Effect of licence

The Bill provides that the licensee is authorised to carry on the class or classes of private security business for which the licence is issued from the place of business specified in the licence. The

licensee may carry on that class or those classes of business in partnership with another person who is also licensed. The licence is in force for 5 years unless cancelled earlier. The Licensing Authority must notify the Commissioner of Police when a licence is issued. The Bill makes detailed provision in relation to the granting of temporary certificates of approval for licence applicants and for the amendment and renewal of licences. Every 12 months the licensee must send the Licensing Authority a return advising changes of detail such as the licensee's registered office and place of business or employees and the Authority may make appropriate amendments to the licence (*Part 2, Subpart 1, Clauses 30 -38*).

Certificates of approval

The Bill (*Clause 39*) provides that no individual may be employed, engaged as a contractor, act, or hold himself or herself out as a responsible employee (*as defined in Clause 13*) unless that individual holds a certificate of approval. No licensee may employ, engage as a contractor, or permit to act as a responsible employee any individual who does not hold a certificate of approval; and in, the case of crowd control work, no person, not being a licensee, may employ, engage as a contractor, or permit to act as a responsible employee any individual who does not hold a certificate of approval. A person who contravenes these provisions commits an offence and is liable on conviction to a fine not exceeding \$20,000. The Bill sets out certain grounds of disqualification applicable to applicants for certificates of approval. These grounds are identical or analogous to those set out in Clause 17 of the Bill. Provision is made for applications for certificates of approval. The Licensing Authority may make inquiries. Applications do not need to be advertised but the Police must be informed and the Police may make objections which are heard by the Licensing Authority in the same way as for licences. Certificates are issued for terms of 5 years. Temporary certificates may be issued and in certain circumstances a person may employ, engage, or permit a person to act as a responsible employee even though the person does not have a certificate of approval (*Part 2, Subpart 2, Clauses 39-56*).

Responsibilities of licensees and certificate holders

The Bill makes detailed provision for the responsibilities of licensees and certificate holders ranging from when the licensee or certificate holder must produce their licences or certificates to what records must be kept by them and what information must be provided from time to time to the Licensing Authority (notably when there are new responsible employees etc) (*Part 2, Subpart 3, Clauses 57-66*).

Discipline

A detailed and standard disciplinary system is set out in the Bill. If, following a disciplinary hearing by the Licensing Authority against a licensee or a certificate holder, the Authority is satisfied that the grounds for disciplinary action are proved, the Authority has power (and, in some cases, the obligation) to cancel the licence or certificate, or suspend the licence or certificate or impose a fine or reprimand (*Part 4, Clauses 67-80*).

Complaints, Investigation, and Prosecution Unit and registers

The Bill provides for the establishment of a Private Security Personnel Licensing Authority and also for the establishment and maintenance of a register of licensees and a register of certificate holders (*Part 5, Clauses 81-93*).

Appeals

The Bill allows for appeals to a District Court against certain decisions of the Licensing Authority (*Part 6, Clause 94*).

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