

Private Security Personnel and Private Investigators Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Private Security Personnel and Private Investigators Bill and recommends that it be passed with the amendments shown.

Introduction

This bill repeals and replaces the Private Investigators and Security Guards Act 1974, which regulates the private security industry, private investigators, and their staff. The primary purposes of the bill are to

- prevent unsuitable people from working in the private security and investigation industry
- ensure that security personnel and private investigators can, where appropriate, be required to undertake training
- permit regulations to be made prescribing codes of conduct for different licensees and certificate holders

- ensure that the regulatory regime is properly administered and enforced
- ensure that there are appropriate penalties for breaches.

This commentary covers the major amendments that we recommend. We also recommend minor and technical amendments to clarify the intent of the bill, which are not discussed in this commentary.

Commencement

Clause 2 of the bill provides for the legislation to be brought into force on a date or dates appointed by the Governor-General by Orders in Council. The Regulations Review Committee advised us that in order to reduce the risk of the will of Parliament being frustrated by an Executive that no longer supports the policies contained in an Act, it is preferable for the commencement date to be specified in the legislation rather than delegated to the Executive. We agree, and recommend amending clause 2 to provide for a primary commencement date of 1 December 2010.

We recommend inserting new clauses 112, 113, and 113A to specify that anyone holding a licence or certificate under the current Act before 1 December 2010 is deemed to hold the corresponding licence or certificate under the regime proposed by the bill. New clauses 113 and 113B would provide that the licence or certificate will expire on 31 March 2011. If such a licensee or certificate holder applied for a licence or certificate under the new regime their deemed licence or certificate would roll over after 31 March 2011 until their application was determined, provided that their application for renewal was lodged by 31 January 2011.

We further recommend inserting new clause 113C to specify that the new requirements relating to crowd controllers and personal guards will come into force on 1 June 2011.

These transitional provisions would ease the transition to the new licensing system and make the commencement dates of these specified provisions more certain. Furthermore we note that the timing of these transitional provisions would allow the new licensing regime to begin operating before the 2011 Rugby World Cup, which starts in September 2011.

Interpretation

We recommend amending the term “offence of dishonesty” in clause 4 to include offences under sections 104 and 105B of the Crimes Act 1961, and removing the references to these sections of the Crimes Act from the definition of an “offence of violence”. Section 104 of the Crimes Act relates to corruption and bribery of a law enforcement officer and section 105B relates to the misuse of certain personal information. Our recommended amendment addresses the concern that if a company had committed an offence under one of these sections of the Crimes Act they would not have their licence cancelled under the bill as introduced, as it provides for disqualification only for offences of dishonesty and not for offences of violence. We consider that it is appropriate that a company that has committed one of these offences should be disqualified from holding a licence.

Definitions of occupational licence classes

Meaning of security technician

Clause 6(1)(b) defines a security technician as someone who installs, operates, repairs, or removes a camera or similar device “for the purpose of detecting the commission of an offence”. We recommend inserting new clause 6(2) to clarify that a person could not avoid the obligation to hold a licence by arguing that the camera was installed or operated for some purpose other than the detection of an offence. This recognises that cameras might be installed for purposes additional to the detection of an offence, for example for monitoring health and safety practices or compliance with employment contracts.

We recommend deleting clause 6(b) and inserting new clause 6(1)(b) to regulate the installation, operation, repair, or removal of cameras anywhere other than on premises owned or occupied by the security technician or their business partner. As introduced, clause 6(b) would regulate these activities only if they occurred on premises. We consider that it is more appropriate to take a wider approach to the regulation of these activities as some methods of conducting surveillance, such as closed circuit television cameras, could be installed or operated in public areas and streets which are not “premises”. We note that this is also consistent with clause 9(1)(a).

Meaning of confidential document destruction agent

Clause 8 defines a confidential document destruction agent as someone who operates a business that involves the collection and destruction of documents identified as being of a confidential nature. As it is possible for “documents” to be interpreted as property, there might be instances where a confidential document destruction agent might be required to hold a licence as a property guard and as a confidential document destruction agent. We recommend inserting new clause 9(2) to clarify that a confidential document destruction agent would not be required to hold a property guard licence.

Meaning of property guard

We note that there is an inconsistency between the use of the words “property guard” in clause 9(1)(a) and in clause 9(1)(b). As introduced, clause 9(1)(a) defines a property guard as someone who guards real or personal property that belongs to another person “elsewhere than on premises” owned or occupied by the property guard; while clause 9(1)(b) refers to such a guard as someone who monitors security devices “on any premises” that are not owned or occupied by the property guard. The language used in clause 9(1)(a) provides broader coverage, capturing someone who is guarding property in a public area. We prefer this broad coverage and recommend amending clause 9(1)(b) accordingly.

We recommend amending clause 9(1)(b) to clarify that a property guard would be someone who carries out the instantaneous monitoring of cameras or similar devices. As introduced, clause 9(b) could erroneously be interpreted to require that anyone who reviews pre-recorded footage for any purpose has to hold a property guard licence.

Meaning of crowd controller

Clause 11 defines a crowd controller as someone who operates a business that screens entry into a place, keeps order in a place, or removes any persons from a place. We examined whether it might be more appropriate for crowd controllers who work on licensed premises to be licensed and trained under the Sale of Liquor Act 1989 and subject to the control of the Liquor Licensing Authority, rather than the licensing regime under the bill.

We concluded that it would be more appropriate and efficient for crowd controllers working on licensed premises to be regulated by the bill. The Sale of Liquor Act is concerned with controlling the sale and supply of liquor, while the bill is designed to screen out unsuitable and inadequately trained individuals from holding licences. We also considered that such an amendment could result in some people being regulated under two agencies, which could create administrative difficulties. We therefore do not recommend removing crowd controllers who work on licensed premises from the new licensing regime.

Governor-General may exclude certain persons by Order in Council

Clause 12 allows regulations to be made to exempt certain persons who would otherwise be caught by one of the seven categories of occupational licences from the obligation to hold a licence. The Regulations Review Committee expressed concern that the regulation-making power in clause 12 is too broad and that clause 12 does not specify how this power would be exercised. We consider that it is appropriate to place a limit on the power to use regulations to exempt people from the obligation to hold a licence under the legislation, and recommend adopting a similar limitation to that used in sections 156(2) and 156(3) of the Real Estate Agents Act 2008. This would ensure that this regulation-making power was exercised only if the responsible Minister had concluded, after appropriate consultation, that there would be no material benefit in requiring the people in question to hold a licence.

For similar reasons, we recommend inserting new clause 13G(2). Clause 13(3) of the bill as introduced would allow regulations to be made to exempt certain people or classes of people from the obligation to hold a certificate of approval as a crowd controller employee. New clause 13G retains this regulation-making power but inserts a restriction on its use.

Responsible employees

As introduced, clause 13 defines a responsible employee by reference to each category of business described in clauses 5 to 11. To make it clearer to whom the term applies, we recommend deleting clause 13

and inserting new clauses 13 to 13F to specifically define a responsible employee, rather than referring to the definition of each of the classes of licence.

New clauses 13 to 13F specify that a responsible employee is a person who is employed or engaged as a contractor by a licensee. We note that while the bill recognises that a responsible employee could be either employed or engaged as a contractor, it does not do this consistently throughout. We recommend a number of amendments to the bill to ensure that responsible employees who are either employed or engaged as a contractor are treated consistently throughout the bill.

Licences and certificates

Application for licence

Clauses 19 and 20 set out the requirements for applying for an individual licence and a company licence respectively. Clauses 19(1) and 20(1) would require applications to be made in person at a designated District Court. Given the large number of people working in the security industry, which is highly likely to increase when the bill is enacted, we consider that this requirement would create a heavy administrative burden for the courts, and recommend amending these clauses to remove it. We also recommend a similar amendment to clause 42(1), which sets out a similar requirement in respect of applications for a certificate of approval.

In place of this requirement we recommend amending clauses 19(1) and 20(1) to provide that applications must be made to the Authority in a manner prescribed in regulations. This would create flexibility by allowing regulations to be made to adapt the application process to changing practices and technology. We recommend a similar amendment to clause 42.

Clause 19(2)(c) requires that applications specify the proposed registered office of the applicant. We consider that this should not be a requirement, as an applicant may not have a registered office. Rather, applicants should be required to specify the address of their principal place of business. We recommend consequential amendments to the notice of licence application provisions, contained in clause 22.

Notice of application for licence

We recommend amending clause 22 to make the notification requirements for licences more flexible, by requiring that applications be advertised in a manner prescribed in regulations. Clause 22 as introduced would require every applicant to publish two notices of their application. While we appreciate the importance of public notification in the licensing process, we consider that what constitutes an appropriate mode of publication may change over time; our recommended amendment recognises this.

Objections by police to licence and certificate of approval applications

Clause 23(3) provides that if the police object to a licence application, they must serve a copy of the notice of objection on the applicant within seven days after the application is filed with the Authority. We consider this imposes an unnecessary procedural step on the police, and recommend amending clause 23(3) to require the Authority, rather than the police, to serve a copy of any notice of objection on the applicant. We recommend a similar amendment to clause 24(5), which places a similar requirement on any other objectors, and to clause 45(3) which places a similar requirement on the police in respect of objections to a certificate of approval.

Hearing of application for licence

As introduced, clause 25 sets out the timeframes and procedures for hearing a licence application. To ensure that the licensing process is as efficient as possible, we recommend deleting clause 25 and inserting new clause 25 to make it clear that where no objections have been received to a licence application, the application should be heard on papers, and that even if objections have been received for an application, that application would be heard on papers unless the Authority decide otherwise. We recommend a similar amendment to clause 46, which sets out the timeframes and procedures for hearing an application for a certificate of approval.

We recommend inserting new clause 25(2)(b), to allow the Authority to request a written response to an objection from the applicant, where the application is being heard on papers. We recommend a similar amendment to clause 46.

Decision on application for licence

Clause 28 sets out the tests to be applied to an application for, and preconditions to, the granting of a licence. We recommend deleting clause 28(8) and inserting new clause 28(8) to require the Authority to provide the applicant and any person who filed an objection with a written statement of the reasons for its decision on an application for a licence. We consider that this amendment is necessary in the interests of justice. We also note that it is consistent with regulation 8 of the Private Investigators and Security Guards Regulations 1975, which provides that any party to a hearing may request a written statement of the reasons for the decision. We recommend a similar amendment to clause 49, which sets out the tests to be applied to the granting of a certificate of approval.

Issue of licence

We recommend amending clause 29(1)(b) to clarify that where the licensee is an individual the licence must specify the licensee's principal place of business, whereas if a licensee is a company the licence must specify the licensee's registered office. This amendment is consistent with our recommended amendment to clause 19(2)(c). It would also necessitate consequential amendments to clause 32.

Persons not to act as officers of licensed company without consent of Licensing Authority

As introduced, clause 35 would prohibit someone from acting as an officer of a licensed company without the Authority's prior approval. The clause sets out the factors that the Authority must consider in deciding whether to grant approval.

We recommend inserting new clause 35(2A) to facilitate this process by requiring the person to apply using a prescribed form and to pay a prescribed fee. These amendments would reduce the cost of the process, and ensure consistency with the approach taken to applications for licences and certificates of approval.

Amendment of licence

Clause 36 of the bill as introduced would allow a licensee to apply to the Authority to have their licence amended only if they wished to add further classes of private security business. We recommend

amending clause 36 to allow a licensee also to apply to the Authority for the removal from their licence of a class or classes of private security business.

We also recommend inserting new clause 53A to set out a similar process for amendments to a certificate of approval.

Annual return updating licence and certificate of approval information

We recommend deleting clause 38(1)(a) and inserting new clause 38(1)(a) to require licensees to inform the Authority of changes to any of the details that were included in their application for a licence. As introduced clause 38(1)(a) requires licensees to inform the Authority of any change only in the information recorded on the licence. This amendment would ensure that the Authority was advised, for example, if the person had had a relevant conviction since the application; and it is consistent with the requirement under clause 38(1)(b) that the licensee inform the Authority of any change to the details included in the application for any of their employees' certificate of approval.

We recommend a further amendment to limit the disclosure requirement under clause 38(1)(b) to those details of their employees about which the licensee is aware or ought reasonably to be aware.

Application for certificate of approval

Clause 42 sets out the requirements for applying for a certificate of approval, including a requirement that the applicant specify the name of their current employer (or employers if they have more than one). As a person may not be employed when they apply for a new certificate or renewal of an existing one, we recommend amending clause 42(2)(c) to require that the applicant specify the name of their current employer only if they have one.

Emergency appointment of responsible employee

We recommend deleting clause 56 and inserting new clause 56 to specify that an emergency appointment can be made only if the emergency employee has applied for a certificate of approval and paid the prescribed fee. As introduced clause 56 would allow an employer who had too few responsible employees as a result of emergency or

illness to employ or engage someone, or permit a person to act as a responsible employee, without a certificate of approval. We consider that this amendment would reduce the risk of unsuitable people being engaged as emergency responsible employees.

Clause 56(3) as introduced provides that a person who employs or engages someone as an emergency employee must terminate that appointment immediately if the Authority instructs them to do so. To reduce potential unfairness to the emergency employee we recommend that new clause 56(3) provide that, if so instructed by the Authority, an employer must stop an emergency employee from undertaking work for which a certificate of approval is required.

Grounds of disqualification for licensees and certificate holders

As introduced clause 17 provides a number of grounds for which an individual or company may be disqualified from holding a licence; and clause 41 provides a number of grounds for which an individual may be disqualified from holding a certificate of approval. We recommend deleting these clauses and inserting new clauses 56A to 56C to make the disqualification provisions in the legislation more accessible.

In particular we recommend that new clause 56A(f) extend the grounds of disqualification for an individual licence or certificate of approval applicant to include offences against the Arms Act 1983, offences relating to criminal harassment and breaches of a restraining order under the Harassment Act 1997, and offences related to intimate covert filming under the Crimes Act 1961. We consider that a conviction for any of these offences would reflect on a person's suitability to undertake private security or investigation work.

Clause 17(c) of the bill as introduced provides for disqualification if the applicant has been ordered by a court to be detained in a penal institute. We consider that this might unfairly capture a person who has been detained on remand but not convicted, or a person whose sentence of imprisonment or conviction had been quashed on appeal. We therefore recommend that new clause 56A(c) clarify that this ground of disqualification would be applicable only if the applicant were sentenced following a conviction for an offence, and if that conviction or sentence of detention was not quashed on appeal.

As introduced clause 17(f)(i) includes any offence under the Fair Trading Act 1986 as a ground for disqualification from holding a licence. We consider this to be too broad, and recommend that new clause 56A(f)(iii) specify offences under sections 10, 11, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act as grounds for disqualification for an individual or company licence or certificate of approval. For similar reasons we recommend a parallel amendment to new clause 56B, which sets out the grounds of disqualification for a company.

We note that clause 17(g) makes it a ground for disqualification if an applicant had been convicted of working while unlicensed within the preceding seven years under this legislation, but not within the preceding seven years of a corresponding offence under the existing Act. We consider this anomalous and recommend that new clause 56A(f)(viii) be included to remedy it.

Clause 17 contains a loophole in that it does not make a conviction for working without a certificate of approval a ground for disqualifying an applicant for a licence or a certificate of approval. We recommend that new clause 56A be included to address this loophole.

Clause 41(j)(i) of the bill as introduced makes the lack of one year's experience within the previous five years a ground of disqualification of a certificate of approval. The practical effect of this would be that applicants would have to have a minimum amount of security industry experience before they could obtain a certificate of approval. We assume this is an unintended effect as experience could not be obtained without a certificate of approval. We recommend the removal of this ground of disqualification.

Responsibilities of licensees and certificate holders

Production of licence

Clause 57(1)(d) requires a licensee to produce their licence on demand to any person with whom the licensee is dealing in the course of transacting or attempting to transact the business to which the licence relates. We note that "transacting" is a potentially ambiguous term; for example in common usage it can mean either a process in which money changes hands or the performing or carrying out of business. Depending upon which interpretation is adopted it is possible that a certificate holder could be required to produce their certificate of ap-

proval under clause 58 in circumstances where a principal licensee is not. We recommend amending clause 57(1)(d) to remove this ambiguity.

Requirement to wear licence or certificate of approval

As introduced clause 59 requires licensees and responsible employees to wear their licence or certificate of approval at all times when they are working. We heard significant opposition to this requirement, on the basis that it could compromise security operations and adversely affect the privacy of security personnel. We agree that there is a need to protect the safety and privacy of security personnel, and recommend deleting clause 59 and inserting new clause 59 to require licensees and responsible employees to wear an identification badge that has been issued by the Authority rather than their actual licence or certificate of approval. We also recommend inserting new clause 59A to specify the information that must be displayed on the identification badge.

As an additional safeguard we consider that a licensee or certificate-holder should be exempt from the requirement to wear their official badge in circumstances where they reasonably consider that displaying the badge would threaten their safety or the safety of another person, and recommend that new clause 59(4) be inserted to allow this exemption.

We recommend that new clause 59A(2) require all temporary employees to similarly wear an identification badge. This amendment would ensure that temporary certificate holders had the same responsibilities as ordinary certificate-holders under Part 3 of the legislation.

Notice to Licensing Authority of change of employment

Clause 62 requires that a certificate holder notify the Authority within seven days of finishing working for someone who employed them as a responsible employee. We consider that compliance with this requirement is likely to be low and recommend that clause 62 be deleted. We further note that the requirement under clause 38 that licensees provide the Authority with up-to-date information on their responsible employees would capture the information that is intended to be caught by the requirements under clause 62.

Updating certificate information

We recommend deleting clause 63(1) and inserting new clause 63(1) to limit the type of updated information that a certificate holder must provide to the Authority. As introduced, clause 63 requires the certificate holder to notify the Authority if any details in their application for a certificate of approval have changed. We consider that the application of this requirement is too broad, and recommend that a certificate holder be required to advise the Authority only of changes to their residential address or name, or in the status of grounds of disqualification.

Private investigator to display notices at offices

We recommend deleting clause 64(1), which requires private investigators to display their names and the fact that they are licensed private investigators outside their places of business. This recognises that many private investigators work from home, and their privacy might be compromised by this requirement. We also note that clause 64(2), which requires a private investigator to display conspicuously in various documents their name and the fact that they are a private investigator, would ensure that the public was informed of the necessary details. We recommend inserting new clause 64(2A) to revise the information that the private investigator must display.

Private investigator or employee not to take photographs or make recordings

Clause 66 restricts the taking and using of photographs and other recordings by a private investigator or private investigator's employee and the making or using of other recordings without the subject's written consent.

We heard divergent views on the suitability of this clause. Those opposed to the clause argued that the restriction could inhibit the work of private investigators and that the public interest in investigating criminal activity outweighs public privacy. Others argued that the clause should be retained because of the risk of abuse, and unfair conduct by private investigators in the past.

We note that the Law Commission in its Review of the Law of Privacy examined clause 66 in the existing Act. To assist our consideration on this clause we invited the Law Commission to update us

on the progress of its review. The commission suggested that while clause 66 is too restrictive it should not be repealed until legislation has been enacted that provides general protection against intrusive surveillance. The commission's report was published on 26 February 2010.

In our consideration of this clause we have canvassed a number of options on how best to proceed with it. These options were

- deleting clause 66
- inserting a new clause making the repeal of clause 66 conditional on establishing a code of conduct for private investigators
- inserting a new clause making the repeal of clause 66 conditional on the enactment of suitable legislation to protect privacy
- deleting clause 66 and making a code of conduct mandatory for private investigators
- retaining clause 66, but amending it once the Law Commission has published its report.

Our advisers agreed that clause 66 needed to be reformed, but advised against proceeding with most of these options. They suggested that such reform should be addressed in any wider reforms that might result from the Law Commission's review. We acknowledge the advice we received.

Despite the concerns of New Zealand Labour and Green Party members of the committee, we recommend deleting clause 66 and inserting new clause 106A to create a regulation-making power to allow codes of conduct to be made for licensees or certificate holders. New clause 106A(3) would require the Minister to recommend that such regulations be made. Labour and Green Party members are not in favour of deleting clause 66 and replacing it with this regulation-making power, as it is uncertain what the Law Commission will recommend as a result of its review, and whether any changes will be made to the law on surveillance by non-Government agencies. Labour and Green Party members are very concerned that this amendment could give private investigators wider surveillance powers than enforcement agencies, such as the police. Labour and Green Party members consider that this would be highly undesirable and would have preferred to proceed with clause 66 as introduced,

and to consider reforming this provision once the Law Commission had released its report. Whilst voting for the bill to be reported back to the House Labour and Green Party members intend to promote an amendment in this regard in the Committee of the Whole House stage of the bill.

Discipline

Complaint against licensee

Clause 67(2) provides that anyone can make a complaint to the Authority against a licensee with the leave of the Authority. Under clause 67(3) the Authority must refuse to grant leave unless it is satisfied that the complainant has a personal interest in the subject of the complaint and that the complaint was made in good faith. We consider that it is appropriate to extend the class of people who could make a complaint to allow anyone who had an interest greater than that of the public to make a complaint to the Authority, and recommend amending clause 67(3) accordingly. We recommend a similar amendment to clause 68(3), which sets out who could make a complaint about a certificate holder to the Authority.

As introduced clause 67(4) sets out three grounds on which a person could make a complaint. We recommend adding a further ground of complaint, where the licensee has made a false statement in their application for the licence. This amendment would ensure consistency with clause 68, which would allow a complaint to be made where a certificate holder made a false statement in their application for a certificate.

Complaint against certificate holder

We recommend inserting new clause 68(4)(ab) to allow complaints to be made against certificate holders on any of the grounds for cancellation of a certificate under clause 77. As introduced, clause 68(4)(a) would allow complaints to be made against certificate holders on any of the grounds of disqualification under clause 41. This amendment would ensure consistency with clause 67(4)(ab), which would allow a complaint to be made against licence holders on any of the grounds for cancellation of a licence under clause 74.

Suspension of licence or certificate of approval pending determination of complaint

We recommend inserting new clause 70(1A) to give the Authority the flexibility to suspend one or more classes of licence or certificate following a complaint, as appropriate in the circumstances. Clause 70 of the bill as introduced would allow the Authority to suspend a licence or certificate once a complaint had been filed if it were in the public interest to do so. As it would be possible for a licensee to hold more than one class of licence, the Authority should have the option of suspending one or more of these classes of licence.

Disciplinary powers of the Authority in respect of licensees and certificate holders

Clause 72 of the bill as introduced sets out the disciplinary powers of the Authority in respect of a licence. We consider that it is appropriate for the disciplinary powers of the Authority to be widened, and recommend amending clause 72(1)(c) to allow the Authority to order, in appropriate cases, that a licensee undergo training, work under supervision for a period determined by the Authority, work subject to conditions specified in the order for a specified period, and be barred from applying for a licence or certificate of approval for a specified period or until certain conditions have been met. We consider that the regulatory framework and the intent of the bill would be strengthened if the Authority had these additional disciplinary powers. We recommend a similar amendment to clause 75(1)(c), which sets out the disciplinary powers of the Authority in respect of a holder of a certificate of approval.

Discretionary grounds for cancellation of licence

Clause 74(1)(e) would give the Authority the discretion to cancel a licence if the licensee had been guilty of misconduct or gross negligence in the course of the business to which the licence related. We are aware of concern that misconduct might be defined only in codes of conduct, which are to be made through regulations. We agree that misconduct should be defined in the primary legislation, and recommend amending clause 4 to define “misconduct” as conduct that a reasonable person would consider to be disgraceful or that contravenes the bill or any regulations made under it. We note that while

this is a reasonably wide definition, the scale of the offending can be taken into account by the Authority in deciding what disciplinary sanctions to impose. Our recommended definition of misconduct would capture a breach of a code of conduct, as codes of conduct are to be made through regulations.

Licensing Authority and Complaints, Investigation, and Prosecution Unit

Functions of Authority and the unit

We note that the bill as introduced does not include provisions setting out the functions of the Authority and the unit. These functions can only be ascertained by reading through the whole bill. To help make the legislation more accessible, we recommend inserting new clauses 81A and 93A to set out a high-level summary of the functions of the Authority and the unit. New clause 93A summarises the functions of the unit and also expressly provides for it to prosecute criminal offences against the bill.

Term of office of Licensing Authority

Clause 83 of the bill as introduced provides that the Authority is appointed for a fixed term to be determined by the responsible Minister. To make the term more certain, we recommend amending clause 83 to specify that the Authority is to be appointed for a term of three years.

Licensing Authority to be a Commission of Inquiry for certain purposes

Clause 86 specifies that for certain purposes, such as hearing an application for a licence or certificate of approval, the Authority has the same powers as those conferred on a Commission of Inquiry. We recommend amending clause 86(1) to ensure that the Authority is given the powers of a Commission of Inquiry for all its relevant decision-making functions. We note that in the bill as introduced this was not the case for example the Authority would have certain powers of a Commission of Inquiry in relation to applications for more than one class of certificate, but it would not have the same powers in relation to applications for more than one class of licence.

Complaints, Investigations, and Prosecution Unit

We recommend amending clauses 93(1) and 93(2) to allow the unit to be located in a department other than the one which provides the Authority with administrative secretarial support. We consider that it is undesirable for the administrative and enforcement functions of the Authority and the unit to be located within the same department.

Appeals to High Court on questions of law only

Clause 94 of the bill as introduced sets out the rights of appeal from decisions of the Authority to the District Court. We recommend inserting new clause 94A to provide a further right of appeal to the High Court. This amendment is consistent with comments made by the Law Commission in its report on tribunal reform.¹ The commission said that a second tier of appeal is appropriate for most tribunals, but that this right of appeal should be confined to questions of law and should be allowed only by leave. This proposed amendment also recognises that decisions made by the Authority could affect significantly the rights and livelihoods of the people involved and might have implications for public safety and security.

Waiver of ground of disqualification

We recommend deleting clause 100 and inserting new clause 56C to clarify that if a waiver had been granted, the ground on which it was granted could not subsequently become a ground for bringing disciplinary action against the licensee or certificate holder.

Regulations

Fees

Clause 106(1)(c) allows regulations to be made that provide for exemption from fees. The Regulations Review Committee was concerned that neither the bill nor the explanatory note to the bill provided any reasons for this regulation-making power or criteria for its use. We were advised that the power to exempt certain people from the obligation to pay fees is necessary to provide flexibility and to guard against unintended consequences such as undesirable compli-

¹ Law Commission, *Tribunal Reform*, NZLC Special Report 20, 2008.

ance costs. We agree with this justification for this regulation-making power and do not recommend any changes to it.

Existing licences

Clause 113(4) of the bill as introduced provides that existing licences carried over to the new licensing regime expire on 31 March 2011. A person who held a security guard licence under the existing Act would be deemed to hold a licence in all categories of occupational licences created under the new regime, except that of a private investigator. A person who held a private investigator licence under the existing Act would be deemed to hold a licence as a private investigator under the new licensing regime. We consider that this clause does not accurately reflect the licence categories that would be established by the bill and recommend that it be deleted and replaced with new clause 112.

To facilitate the transition of existing licences to the new licensing regime we recommend the following amendments.

New clause 112(1) provides that if the existing licence authorises a person to carry on a business that guards any real or personal property belonging to another person (section 4(1)(a) of the existing Act) or monitors any burglar alarm, camera, or similar device on another person's property (section 4(1)(e) of the existing Act), that person is deemed to hold a licence both as a property guard and as a confidential document destruction agent under the new legislation.

New clause 112(2) specifies that if the existing licence authorises a person to carry on a business that installs, repairs, or removes any burglar alarm or similar warning device or any locking device for a safe or strong room on another person's property (section 4(1)(b) of the existing Act) or installs, operates, removes, or repairs any camera or similar device for the purposes of detecting the commissioning of an offence on another person's property (section 4(1)(c) of the existing Act) that person is deemed to hold a licence as a security technician under the new legislation.

New clause 112(3) prescribes that if the existing licence authorises a person to carry on a business covered by section 4(1)(d) of the existing Act, they should be deemed to hold a licence as a security consultant under the new legislation.

Finally, new clause 112(4) prescribes that if the existing licence authorises a person to carry on a business covered by section 3 of the existing Act, that person should be deemed to hold a private investigator licence under the new legislation.

We also recommend a consequential amendment to delete clause 113 and insert new clause 113 to set out a transitional regime that would apply to existing certificates of approval to reflect our recommended amendments to new clause 112.

Appendix

Committee process

The Private Security Personnel and Private Investigators Bill was referred to us on 29 April 2009. The closing date for submissions was 12 June 2009. We received and considered 40 submissions from interested groups and individuals. We heard 18 submissions.

We received advice from the Ministry of Justice. The Regulations Review Committee reported to us on the powers contained in clauses 2, 12, 13(3), and 106.

Committee membership

Chester Borrows (Chairperson)

Jacinda Ardern

Kanwaljit Singh Bakshi

Simon Bridges

Dr Kennedy Graham

Hon Nathan Guy (from 24 June 2009 until 10 February 2010)

Hekia Parata (from 10 February 2010)

Hon David Parker

Lynne Pillay

Paul Quinn

Dr Richard Worth (until 16 June 2009)

Private Security Personnel and Private
Investigators Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Nathan Guy

Private Security Personnel and Private Investigators Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Private Security Personnel and Private Investigators Act **2008**.

2 Commencement

This Act comes into force on a ~~date to be appointed by the Governor-General by Order in Council and 1 or more orders may be made bringing different provisions into force on different dates:~~ 1 December 2010. 5

Part 1
Preliminary provisions

10

3 Purpose

The purpose of this Act is to ensure that persons offering specified private security and investigation services for hire, and personnel providing those services,—

- (a) are suitably qualified to carry out that work; and 15
- (b) do not behave in ways that are contrary to the public interest.

4 Interpretation

In this Act, unless the context otherwise requires,—

certificate of approval means a certificate of approval issued under **section 50**, or a temporary certificate of approval issued under **section 55**; and **certificate holder** means a person who holds a certificate of approval 20

Complaints, Investigation, and Prosecution Unit means the unit established under **section 93**

confidential document destruction agent has the meaning given to it in **section 8**

confidential document destruction agent employee has the meaning given to it in **section ~~13(1)(d)~~13C** 5

credit bureau means a person, or an association of persons whether incorporated or unincorporated, who, in consideration of the payment of a subscription, fee, or levy, supplies to a subscriber to the service provided by that person or association, or to a member of that association, but to no other person, information relating to the financial position of a person 10

crowd controller has the meaning given to it in **section 11**

crowd controller employee has the meaning given to it in **section ~~13(1)(g)~~ 13F** 15

Crown has the meaning given to it in section 2(1) of the Public Finance Act 1989

debt-collecting agency means a person, or an association of persons whether incorporated or unincorporated, who, for valuable consideration, recovers or attempts to recover for a person any money owing to that person by another person 20

designated District Court means a District Court identified in regulations made under this Act as a District Court where applications may be made under this Act

licence means a licence issued under **section 29** 25

Licensing Authority or **Authority** means the Private Security Personnel Licensing Authority appointed under **section 81**; and includes a Deputy Private Security Personnel Licensing Authority appointed under **section 84**

Minister means the Minister of the Crown who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act 30

misconduct, for the purposes of **sections 67, 68, 74, and 77**, means conduct by a licensee or certificate holder that a reasonable person would consider to be disgraceful or conduct that contravenes this Act or any regulations made under this Act 35

offence of dishonesty means—

- (a) ~~any~~ a crime described in any of sections 104, 105B, 108 to 117 or, and 217 to 266 of the Crimes Act 1961; and
- (b) any offence described in sections 15 to 20 of the Summary Offences Act 1981

5

offence of violence means an offence under—

- (a) any of sections ~~104, 105B,~~ 128B to ~~150~~ 149A, 158 to 181, 188 to 204, 208, 209, and 216B to 216D of the Crimes Act 1961; or
- (b) any of sections 3, 5, 5A, 6 to 6B, 7, 9, 10, 14, ~~15, 18, 19, 20,~~ or 21 of the Summary Offences Act 1981

10

officer, in relation to a company, means—

- (a) a director as that term is defined in section 126 of the Companies Act 1993; and
- (b) the chief executive of the company, or any person occupying the equivalent position

15

personal guard has the meaning given to it in **section 10**

personal guard employee has the meaning given to it in **section ~~13(4)(f)~~ 13E**

Police employee has the meaning given to it in section 4 of the Policing Act 2008

20

private investigator has the meaning given to it in **section 5**

private investigator employee has the meaning given to it in **section ~~13(4)(a)~~**

private security business means any or all of the classes of business described in **sections 5 to 11**

25

property guard has the meaning given to it in **section 9**

property guard employee has the meaning given to it in **section ~~13(4)(e)~~ 13D**

public record means—

30

- (a) a record, register, file, or document that any member of the public is entitled under an enactment, whether on payment of a fee or otherwise, to—

- (i) inspect; or

- (ii) obtain a copy of or an extract from; or

35

- (b) a newspaper within the meaning of section 2 of the Films, Videos, and Publications Classification Act 1993

responsible department means the department of State that is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

responsible employee means any or all of the classes of employees defined in **sections 13 to 13F** 5

responsible Minister means the Minister of the Crown who is responsible for the department that is authorised by the Prime Minister to provide administrative support to the Licensing Authority

security consultant has the meaning given to in **section 7** 10

security consultant employee has the meaning given to it in **section 13(4)(c) 13B**

security technician has the meaning given to it in **section 6**

security technician employee has the meaning given to it in **section 13(4)(b) 13A.** 15

5 Meaning of private investigator

(1) In this Act, **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 described in **subsection (2).** 20

(2) For the purposes of this section, **information**—

(a) means any information relating to—
(i) the personal character, actions, or behaviour of any person; or 25

(ii) the financial position of any person; or

(iii) the occupation or business of any person; or

(iv) the identity or whereabouts of any person; but

(b) does not include information that is contained in a public record. 30

(3) For the purposes of this section but without limiting the meaning of the term **carries on any business**, a person is carrying on a business if he or she holds himself or herself out to the public as being ready to carry on that business.

(4) Despite **subsection (1)**, no person is a private investigator 35 within the meaning of this Act by reason of the fact that—

(a) he or she seeks, obtains, or supplies any information—

- (i) for or to the Crown, or any ~~member of the police constable~~, or any local authority; or
- (ii) at the request of a person who is not a client of the business; or
- (iii) only as a necessary, usual, or reasonable incident of any other activity by that person that is not described in that subsection; or 5
- (iv) for any purpose relating to the dissemination of news or other information to the public or to any section of the public; or 10
- (v) for any cultural or historical purpose or for any purpose relating to education, literature, or science; or
- (vi) relating only to the person by whom he or she is engaged or retained; or 15
- (vii) 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
- (b) he or she is a security technician, security consultant, confidential document destruction agent, property guard, personal guard, or crowd controller. 20

6 Meaning of security technician

- (1) In this Act, **security technician** means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business— 25
 - (a) ~~installing on, repairing on, installing or repairing on,~~ or removing from, any part of any premises that are not owned or occupied by himself or herself or his or her firm or any of his or her partners—
 - (i) a burglar alarm or similar warning device intended to immediately alert a person or persons to the presence of a person or persons in a particular place; or 30
 - (ii) a locking device for a safe or a strongroom; or
 - (b) ~~installing on, operating on, causing to be operated on, repairing on, or removing from any part of any premises that are not owned or occupied by himself or herself or his or her firm or any of his or her partners, for the~~ 35

purpose of detecting the commission of any offence by any person on those premises; any camera or similar device:

(b) installing, operating, causing to be operated, or repairing, on or in, or removing from, any premises or other place not owned or occupied by himself or herself or his or her firm or any of his or her partners, any camera or similar device for the purpose of detecting the commission of any offence by any person. 5

(2) Subsection (1)(b) applies even if more than one purpose exists for the installation, operation, repair, or removal of the camera or similar device so long as one of the purposes is to detect the commission of any offence by any person. 10

7 **Meaning of security consultant**

In this Act, **security consultant** means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business— 15

(a) entering any premises that are not owned or occupied by himself or herself or his or her firm or any of his or her partners for the purpose of selling or attempting to sell any device of the kind referred to in **paragraph (a) or (b) of section 6(1)**; or 20

(b) entering any premises that are not owned or occupied by himself or herself or his or her firm or any of his or her partners for the purpose of advising the owner or occupier of the premises on the desirability of having installed on the premises any, or any further, such device; or 25

(c) entering any premises that are not owned or occupied by himself or herself or his or her firm or any of his or her partners for the purpose of advising the owner or occupier of the premises on the desirability of having guarded the premises or any other property that may from time to time be on the premises or dispatched from the premises. 30 35

8 Meaning of confidential document destruction agent

In this Act, **confidential document destruction agent** means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business—

- (a) collecting, for destruction, documents identified as being of a confidential nature; and
- (b) destroying those documents.

5

9 Meaning of property guard

(1) In this Act, **property guard** means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business—

10

- (a) guarding, elsewhere than on premises owned or occupied by himself or herself or his or her firm or any of his or her partners, any real or personal property belonging to another person; or

15

- (b) ~~monitoring any of the following that is on any premises that are not owned or occupied by himself or herself or his or her firm or any of his or her partners:~~ monitoring in real time, elsewhere than on premises owned or occupied by himself or herself or his or her firm or any of his or her partners, any of the following:

20

- (i) a burglar alarm or similar warning device intended to immediately alert a person or persons to the presence of a person or persons in a particular place;

25

- (ii) a camera or similar device; or

- (c) responding to any device in ~~subparagraphs (i) or (ii) of paragraph (b)(i) or (ii)~~ that has been activated and that is on any part of any premises that are not owned or occupied by himself or herself or his or her firm or any of his or her partners.

30

(2) A person is not a property guard solely because he or she does the work described in **section 8**.

10 Meaning of personal guard

In this Act, **personal guard** means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business—

- (a) guarding a specific person or persons; or 5
- (b) guarding a specific person or persons and keeping order at any place (not being premises or a conveyance licensed under the Sale of Liquor Act 1989) where the person or persons being guarded may be.

11 Meaning of crowd controller

10

- (1) In this Act, **crowd controller** means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business doing all or any of the following:

- (a) screening entry to a place (other than simply ensuring that admission has been paid or that those entering have appropriate invitations or passes): 15
- (b) keeping order in a place (more than merely being expected to draw the attention of others to behaviour that is inappropriate or threatens to become inappropriate): 20
- (c) removing any person from a place.

- (2) A person is not a crowd controller solely because he or she does the work described in **section 10**.

12 Governor-General may exclude certain persons by Order in Council may, by Order in Council, exclude certain persons from sections 5 to 11

25

- (1) The Governor-General may, by Order in Council, made on the recommendation of the Minister,—

- (a) declare that a person is certain persons or classes of persons are not any one of the persons defined in sections 5 to 11 (as specified in the Order in Council) by reason only of the fact that he or she carries they carry on any occupation or business described in the order: 30
- (b) declare that a person is certain persons or classes of persons are not any one of the persons defined in sections 5 to 11 (as specified in the Order in Council) by reason only of the fact that he or she carries they carry on 35

any occupation or business described in the order conditional on—

- (i) ~~that person~~ those persons being a ~~member or affiliate~~ members or affiliates of a named professional organisation or licensed under the law of New Zealand or any other place outside New Zealand; 5
or
 - (ii) some other requirement being satisfied:
 - (c) ~~a person is~~ certain persons or classes of persons are not any one of the persons defined in **sections 5 to 11** (as specified in the Order in Council) if ~~the person carries~~ they carry on an occupation or business only during the period or in the circumstances described in the order. 10
- (2) The Minister must not make a recommendation under **subsection (1)** unless the Minister— 15
- (a) is satisfied that there is no material benefit to be gained by requiring the persons concerned to be licensed; and
 - (b) has consulted the persons or organisations that, in the opinion of the Minister, have an interest in the proposed declaration. 20

13 Responsible employees

(1) In this Act—

- (a) **private investigator employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a private investigator seeks or obtains for any person or supplies to any person any information specified in **section 5(2)**; 25
- (b) **security technician employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a security technician does anything specified in **paragraph (a) or (b) of section 6**; 30
- (c) **security consultant employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a security consultant does anything specified in **paragraph (a), (b), or (c) of section 7**; 35

- (d) **confidential document destruction agent employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a confidential document destruction agent does anything specified in **paragraph (a) or (b) of section 8**: 5
- (e) **property guard employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a property guard does anything specified in **paragraph (a), (b), or (c) of section 9**: 10
- (f) **personal guard employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a personal guard does anything specified in **paragraph (a) or (b) of section 10**: 15
- (g) **crowd controller employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a crowd controller or other person does anything specified in **paragraph (a), (b), or (c) of section 11**: 20
- (2) A person is not a crowd controller employee if—
- (a) he or she is not employed or engaged primarily to do work of a kind specified in **paragraph (a), (b), or (c) of section 11**; but performs that work incidentally to the principal work he or she performs; or 25
- (b) he or she does the work specified in **section 10(b)** and no other work of a kind specified in **paragraph (a), (b), or (c) of section 11**: 30
- (3) The Governor-General may, by Order in Council,—
- (a) declare that certain persons or classes of persons are not crowd controller employees by reason only of the fact that they do anything described in the order: 35
- (b) declare that certain persons or classes of persons are not crowd controller employees if they do anything specified in **paragraph (a), (b), or (c) of section 11** only in the circumstances described in the order:
- (c) declare that certain persons or classes of person are not crowd controller employees for the purpose of their work at a specified event or type of event provided that conditions specified in the order are complied with:

13 **Meaning of private investigator employee**

In this Act, private investigator employee means an individual who in the course of his or her employment, or engagement as a contractor, by a private investigator seeks, or obtains for any person or supplies to any person, any information specified in section 5(2). 5

13A **Meaning of security technician employee**

In this Act, security technician employee means an individual who in the course of his or her employment, or engagement as a contractor, by a security technician— 10

(a) installs or repairs on, or removes from, any part of any premises that are not owned or occupied by the security technician, the security technician's firm, or any of the security technician's partners—

(i) a burglar alarm or similar warning device intended to immediately alert a person or persons to the presence of a person or persons in a particular place; or 15

(ii) a locking device for a safe or a strongroom; or
(b) installs, operates, causes to be operated, or repairs, on or in, or removes from, any premises or other place not owned or occupied by the security technician, the security technician's firm, or any of the security technician's partners any camera or similar device for the purpose of detecting the commission of any offence by any person. 20 25

13B **Meaning of security consultant employee**

In this Act, security consultant employee means an individual who in the course of his or her employment, or engagement as a contractor, by a security consultant—

(a) enters any premises that are not owned or occupied by the security consultant, the security consultant's firm, or any of the security consultant's partners for the purpose of selling or attempting to sell any device of the kind referred to in section 6(1)(a) or (b); or 30

(b) enters any premises that are not owned or occupied by the security consultant, the security consultant's firm, or any of the security consultant's partners for the purpose 35

- of advising the owner or occupier of the premises on the desirability of having installed on the premises any, or any further, such device; or
- (c) enters any premises that are not owned or occupied by the security consultant, the security consultant’s firm, or any of the security consultant’s partners for the purpose of advising the owner or occupier of the premises on the desirability of having guarded the premises or any other property that may from time to time be on the premises or dispatched from the premises.

13C Meaning of confidential document destruction agent employee

In this Act, confidential document destruction agent employee means an individual who in the course of his or her employment, or engagement as a contractor, by a confidential document destruction agent—

- (a) collects, for destruction, documents identified as being of a confidential nature; and
- (b) destroys those documents.

13D Meaning of property guard employee

In this Act, property guard employee means an individual who in the course of his or her employment, or engagement as a contractor, by a property guard—

- (a) guards, elsewhere than on premises owned or occupied by the property guard, the property guard’s firm, or any of the property guard’s partners, any real or personal property belonging to another person; or
- (b) monitors in real time, elsewhere than on premises owned or occupied by the property guard, the property guard’s firm, or any of the property guard’s partners, any of the following:
- (i) a burglar alarm or similar warning device intended to immediately alert a person or persons to the presence of a person or persons in a particular place;
- (ii) a camera or similar device; or

- (c) responds to any device in **paragraph (b)(i) or (ii)** that has been activated and that is on any part of any premises that are not owned or occupied by the property guard, the property guard's firm, or any of the property guard's partners. 5

13E Meaning of personal guard employee

In this Act, **personal guard employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a personal guard—

- (a) guards a specific person or persons; or 10
(b) guards a specific person or persons and keeps order at any place (not being premises or a conveyance licensed under the Sale of Liquor Act 1989) where the person or persons being guarded may be.

13F Meaning of crowd controller employee 15

(1) In this Act, **crowd controller employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a crowd controller or other person—

- (a) screens entry to a place (other than simply ensuring that admission has been paid or that those entering have appropriate invitations or passes): 20
(b) keeps order in a place (more than merely being expected to draw the attention of others to behaviour that is inappropriate or threatens to become inappropriate):
(c) removes any person from a place. 25

(2) A person is not a crowd controller employee if—

- (a) he or she is not employed or engaged primarily to do work of a kind specified in **subsection (1)(a), (b), or (c)**, but performs that work incidentally to the principal work he or she performs; or 30
(b) he or she does the work specified in **section 13E(b)** and no other work of a kind specified in **subsection (1)(a), (b), or (c)**.

13G Governor-General may by Order in Council exclude persons from definition of crowd controller employee

- (1) The Governor-General may, by Order in Council, made on the recommendation of the Minister,—
- (a) declare that certain persons or classes of persons are not crowd controller employees by reason only of the fact that they do anything described in the order: 5
 - (b) declare that certain persons or classes of persons are not crowd controller employees if they do anything specified in **section 13F(1)(a), (b), or (c)** only in the circumstances described in the order: 10
 - (c) declare that certain persons or classes of persons are not crowd controller employees for the purpose of their work at a specified event or type of event provided that conditions specified in the order are complied with. 15
- (2) The Minister must not make a recommendation under **subsection (1)** unless the Minister—
- (a) is satisfied that there is no material benefit to be gained by requiring the persons concerned to hold certificates of approval; and 20
 - (b) has consulted the persons or organisations that, in the opinion of the Minister, have an interest in the proposed declaration.

14 Act binds the Crown

Except as provided in **section 15**, this Act binds the Crown. 25

15 Application of Act in certain cases

Nothing in this Act—

- (a) requires any ~~member of the police~~ Police employee to hold a licence or certificate of approval in respect of any act performed in the course of his or her employment by the Commissioner of Police; or 30
- (b) requires the Commissioner of Police to hold a licence or certificate of approval; or
- (c) requires any employee of the Crown to hold a licence or certificate of approval in respect of— 35
 - (i) any act performed in the course of his or her employment by the Crown; or

- (ii) any act performed by any other employee of the Crown in the course of his or her employment by the Crown; or
- (d) requires any person to hold a licence or certificate of approval in respect of the carrying on by that person of an occupation or business in accordance with a practising certificate, licence, permit, or other authority, granted or issued to him or her under any other enactment. 5

Part 2

Licences and certificates 10

Subpart 1—Licences

Who must be licensed

16 Persons who must hold licence

- (1) The following persons must hold a licence under this Act:
 - (a) a private investigator: 15
 - (b) a security technician:
 - (c) a security consultant:
 - (d) a confidential document destruction agent:
 - (e) a property guard:
 - (f) a personal guard: 20
 - (g) a crowd controller.
- (2) Every person who contravenes this section commits an offence and is liable on summary conviction—
 - (a) in the case of an individual, to a fine not exceeding \$40,000: 25
 - (b) in the case of a body corporate, to a fine not exceeding \$60,000.

Grounds of disqualification: licences

17 Grounds of disqualification for individual applicant

The grounds of disqualification for an individual applicant for a licence are that the individual— 30

- (a) 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

- (b) has ever had an order made in relation to him or her 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, that the offender 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); or 5
- (c) has ever been ordered by a court to be detained in a penal institution; or 10
- (d) has ever been convicted of a **specified offence** as defined in section 4 of the Criminal Records (Clean Slate) Act 2004; or 15
- (e) has ever been disqualified from driving under section 65 of the Land Transport Act 1998 or an earlier equivalent provision; or
- (f) has, within the preceding 7 years, been convicted of any— 20
- (i) offence under the Fair Trading Act 1986; or
 - (ii) offence of dishonesty; or
 - (iii) offence of violence; or
 - (iv) drug dealing offence as defined in section 2 of the Proceeds of Crime Act 1991; or 25
- (g) has, within the preceding 7 years, been convicted of any offence under this Act of working while unlicensed or employing a person without a certificate of approval; or an offence under **section 66** of this Act or sections 16, 34, or 52 of the Private Investigators and Security Guards Act 1974; or 30
- (h) holds a licence or certificate of approval that has been suspended; or
- (i) has, within the preceding 7 years, had a licence or certificate of approval cancelled under this Act or the Private Investigators and Security Guards Act 1974; or 35
- (j) has not—
- (i) within the preceding 5 years, had 12 months² relevant experience as a licensee or responsible

- employee in the class or classes of private security business to which the application relates; or
- (ii) complied with any training or work experience requirements prescribed in regulations made under this Act.

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18 Grounds of disqualification for company

(1) The grounds of disqualification for a company applicant for a licence are that—

(a) the company—

(i) has, within the preceding 7 years, been convicted of any— 10

(A) offence under the Fair Trading Act 1986; or

(B) offence of dishonesty; or

(C) drug dealing offence as defined in section 2(1) of the Proceeds of Crime Act 1991; or 15

(ii) has, within the preceding 7 years, been convicted of any offence under this Act of operating while unlicensed or employing a person without a certificate of approval, or an offence under **section 66** of this Act or section 52 of the Private Investigators and Security Guards Act 1974; or 20

(iii) holds a licence that has been suspended; or

(iv) has, within the preceding 7 years, had a licence cancelled under this Act or the Private Investigators and Security Guards Act 1974; or 25

(b) 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 Act or the Private Investigators and Security Guards Act 1974; or 30

(c) any of the grounds of disqualification in **paragraphs (a) to (i) of section 17** apply to any officer of the company; or

(d) every officer of the company is disqualified under **section 17(j)**. 35

(2) For the purpose of **subsection (1)(c) and (d), section 17** must be read as if the officer were the applicant for the licence.

*Applying for licence***19 Application for licence: individual applicant**

- (1) An application by an individual for a licence must be made ~~in person at a designated District Court or otherwise in accordance with~~ to the Licensing Authority in the manner prescribed by regulations made under this Act and must— 5
- (a) be in the prescribed form, together with 1 additional copy; and
 - (b) be accompanied by 2 identical photographs of the applicant, authenticated in the prescribed manner; and 10
 - (c) be accompanied by the prescribed fee.
- (2) The application must specify—
- (a) the full name, residential address, occupation, and date of birth of the applicant; and
 - (b) the full address of every place of business from which the applicant proposes to carry on the business or businesses to which the application relates; and 15
 - (c) the proposed ~~registered office~~ principal place of business of the applicant, being one of the places of business specified in the application; and 20
 - (d) the particular class or classes of private security business that the applicant proposes to carry on; and
 - (e) whether ~~or not~~ any of the grounds of disqualification in **section 47 56A** apply to the applicant; and
 - (f) whether the applicant has ever— 25
 - (i) been convicted outside New Zealand of an offence; or
 - (ii) had an order imposed in relation to him or her by any court or tribunal outside New Zealand, instead of passing sentence, that the applicant be 30 treated or cared for in relation to the applicant's mental impairment; and
 - (g) any other prescribed information.
- (3) An application may also state an address, other than the residential address of the applicant, at which documents relating 35 to the application may be served on the applicant.

20 Application for licence: company applicant

- (1) An application by a company for a licence must be made ~~in person by the chief executive officer or secretary of the company at a designated District Court or otherwise in accordance with~~ to the Licensing Authority in the manner prescribed by regulations made under this Act and must— 5
- (a) be in the prescribed form, together with 1 additional copy; and
 - (b) specify the names of the officers of the company and be accompanied by a declaration by each of those officers as to whether any ground of disqualification applies to him or her and, if so, which ground; and 10
 - (c) be accompanied by the prescribed fee.
- (2) The application must specify—
- (a) the full name, residential address, occupation, and date of birth of every officer of the company; and 15
 - (b) the full address of every place of business from which the company proposes to carry on the business or businesses to which the application relates; and
 - (c) the proposed registered office of the company, being one of the places of business specified in the application; and 20
 - (d) the particular class or classes of private security business that the company proposes to carry on; and
 - (e) the nature of all other business carried on or proposed to be carried on by the company; and 25
 - (f) whether or not any grounds of disqualification as set out in **section 48 56B** apply in respect of the company; and
 - (g) whether the company or any officer of the company has ever been convicted outside New Zealand of an offence; and 30
 - (h) whether any officer of the company has ever had an order imposed in relation to him or her by any court or tribunal outside New Zealand, instead of passing sentence, that he or she be treated or cared for in relation to his or her mental impairment; and 35
 - (i) any other prescribed information.

21 Licensing Authority may make inquiries and request report

- (1) On receipt of an application under **section 19 or 20**, the Licensing Authority—
- (a) may make whatever inquiries it considers necessary in order to determine whether or not the application should be granted; and 5
- (b) without limiting **paragraph (a)**, may provide a copy of the application to the chief investigator of the Complaints, Investigation, and Prosecution Unit and request the chief investigator to cause a report on the application to be prepared by the unit for the Licensing Authority. 10
- (2) For the purpose of preparing a report under **subsection (1)(b)** the chief investigator of the Complaints, Investigation, and Prosecution Unit and any person authorised by the chief investigator may make whatever inquiries he or she considers necessary in order to verify the information contained in the application. 15

22 Notice of application for licence

- (1) The Licensing Authority must serve a copy of every application for a licence on the Police. 20
- ~~(2) Every applicant for a licence must publish a notice of the application twice, at intervals of not more than 14 days, in a newspaper or newspapers approved for the purpose by the Licensing Authority. 25~~
- (2) Every applicant for a licence must publish a notice of the applicant's intention to make the application in the prescribed form (if any) and in the prescribed manner.
- ~~(3) The notice must be in the prescribed form (if any).~~
- (4) The application must not be heard before the expiry of 1 month after **subsections (1) to (3) and (2)** have been complied with. 30

*Objections***23 Objections by Police to application for licence**

- (1) The Police may, within 1 month after a copy of an application for a licence has been served on them under **section 22(1)**, 35

file with the Licensing Authority a notice of objection to the grant of the application.

- (2) The notice must state the grounds of the objection.
- (3) The ~~police~~ Licensing Authority must serve a copy of the notice of objection on the applicant within 7 days after it is filed with the Licensing Authority. 5

24 Objections by other persons

- (1) Any person other than a ~~member of the police~~ constable may, within 1 month after the first date of publication of a notice under **section 22(2)** in respect of an application for a licence, file with the Licensing Authority a notice of objection to the grant of the application. 10
- (2) No objection may be made under this section except on one of the following grounds:
 - (a) that the applicant is disqualified on 1 or more grounds in **section 17 or 18 56A or 56B**, as the case may be; or
 - (b) 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. 20
- (3) The grounds of objection specified in **subsection (2)** may relate either to the application as a whole or to any particular class or classes of private security business that the applicant proposes to carry on. 25
- (4) The notice must state the grounds of the objection.
- (5) The ~~objector~~ Licensing Authority must serve a copy of the notice of objection on the applicant within 7 days after it is filed with the Licensing Authority.

Hearing of application 30

25 Hearing of application for licence

- (1) Except as provided in **section 26**, the Licensing Authority must fix a time and place for the hearing of an application for a licence, and must give not less than 10 working days' notice of the hearing to— 35
 - (a) the applicant; and

- (b) any person who has filed a notice of objection in accordance with **section 23 or 24**; and
- (c) if the Licensing Authority received a report on the application from the Complaints, Investigation, and Prosecution Unit, the person who wrote the report. 5
- (2) If the Licensing Authority received a report requested under **section 21(b)** and suspects on the basis of that report that there may be grounds for refusing the application, the Licensing Authority must, not later than 10 working days before the date of the hearing, provide the applicant with a statement of the reasons for this. 10
- (3) At the hearing, the applicant, every objector, and any person referred to in **subsection (1)(c)** is entitled to appear, be heard, call evidence, and to cross-examine, and re-examine witnesses. 15
- (4) The applicant, any objector, and any person referred to in **subsection (1)(c)** may conduct his or her case personally or may be represented by counsel.
- (5) The Licensing Authority may from time to time adjourn the hearing to a future time and place fixed by it. 20
- 26 Cases in which hearing may be dispensed with**
- (1) Subject to **sections 27 and 28**, the Licensing Authority may grant an application for a licence without holding a hearing in accordance with **section 25** if no notices of objection to the grant of an application have been filed with the Licensing Authority in accordance with **section 23 or 24**. 25
- (2) The Licensing Authority may refuse an application without holding a hearing in accordance with **section 25** if the Licensing Authority is unable to verify information provided in the application. 30
- 25 Application determined on papers**
- (1) The Licensing Authority must determine an application on the papers if no notices of objection to the grant of the application have been filed with the Licensing Authority in accordance with **section 23 or 24**. 35

- (2) If 1 or more notices of objection to the grant of an application have been filed with the Licensing Authority in accordance with **section 23 or 24**,—
- (a) the Licensing Authority must determine the application on the papers unless it thinks an oral hearing is required; 5
and
- (b) if determining the application on the papers, the Licensing Authority may request that the applicant file a written response to any notice of objection within a period of time specified by the Authority. 10
- (3) The Licensing Authority may refuse an application without holding an oral hearing in accordance with **section 26** if the Licensing Authority is unable to verify information provided in the application.
- 26** **Application determined by oral hearing** 15
- (1) If the Licensing Authority is to hold an oral hearing of an application for a licence, the Licensing Authority must fix a time and place for the hearing, and must give not less than 10 working days' notice of the hearing to—
- (a) the applicant; and 20
- (b) any person who has filed a notice of objection in accordance with **section 23 or 24**; and
- (c) if the Licensing Authority received a report on the application from the Complaints, Investigation, and Prosecution Unit, the chief investigator of the unit. 25
- (2) If the Licensing Authority received a report requested under **section 21(1)(b)** and suspects on the basis of that report that there may be grounds for refusing the application, the Licensing Authority must, not later than 10 working days before the date of the hearing, provide the applicant with a statement of the reasons for this. 30
- (3) At the hearing, the applicant, every objector, and, if the Licensing Authority received a report on the application from the Complaints, Investigation, and Prosecution Unit, the chief investigator of the unit or a person authorised by the chief investigator— 35
- (a) is entitled to appear, be heard, call evidence, and cross-examine and re-examine witnesses; and

(b) may conduct his or her case personally or may be represented by counsel.

(4) The Licensing Authority may from time to time adjourn the hearing to a time and place fixed by it.

Decision on application

5

27 Consideration of application relating to more than 1 class of business

If an application relates to more than 1 class of private security business the Licensing Authority—

- (a) must assess the application in respect of each class of business to which it relates; and 10
- (b) may, under **section 28**,—
- (i) grant the application in respect of all those classes of business; or
- (ii) grant the application in respect of only 1 or more of those classes of business and refuse it in respect of the other 1 or more of those classes of business to which the application relates; or 15
- (iii) refuse the application entirely.

28 Decision on application for licence

20

(1) The Licensing Authority may grant an application only if—

(a) in the case of an applicant who is an individual, the applicant is of or over the age of 18 years; and

~~(b) in the case of an applicant that is a company, no officer of the company is less than 18 years of age; and~~ 25

(b) in the case of an applicant that is a company, each officer of the company is of or over the age of 18 years; and

(c) the requirements of **section 19 or 20**, as the case may be, are satisfied.

(2) **Subsection (3)** applies if the Licensing Authority is satisfied that no grounds of disqualification under **section 47 or 48 56A or 56B**, as the case may be, apply to the applicant. 30

(3) The Licensing Authority must grant the application in respect of a particular class of business to which it relates unless the Licensing Authority is satisfied, based on any other evidence ~~adduced at the hearing~~ provided to the Authority relating to 35

- the character, circumstances, or background of the applicant, that the person is not suitable to carry on that class of business.
- (4) **Subsection (5)** applies if the Licensing Authority is satisfied that 1 or more grounds of disqualification under **section 47 or 48 56A or 56B**, as the case may be, apply to the applicant. 5
- (5) The Licensing Authority may grant the application in respect of a class of business to which it relates if, and only if, the Licensing Authority is satisfied that the person is suitable to carry on that class of business taking into account—
- (a) the grounds on which the applicant is disqualified under **section 47 or 48 56A or 56B**, as the case may be, and the way in which that influences the suitability of the applicant; and 10
- (b) any other evidence ~~adduced at the hearing~~ provided to the Authority relating to the character, circumstances, or background of the applicant. 15
- (6) **Subsections (3) and (5)** are subject to **subsection (1)**.
- (7) The Licensing Authority may impose conditions on the carrying on by the ~~licensee holder~~ licensee of any business in respect of which the licence is issued. 20
- ~~(8) If the Licensing Authority refuses an application or refuses an application only in respect of 1 or more of the classes of business to which the application relates, it must notify the applicant in writing, and give reasons for the refusal.~~
- (8) The Licensing Authority must give written notice to the applicant and any person who filed an objection when it grants or refuses to grant an application and give reasons for the grant or refusal of the application. 25

Issue, duration, etc, of licence

- 29 Issue of licence** 30
- (1) If the Licensing Authority grants an application in whole or in part under **section 28**, the Licensing Authority must issue a licence in the prescribed form specifying—
- (a) the class or, if more than 1, each class of business in respect of which the Authority has granted the applica- 35
tion; and

- (b) the registered office or the principal place of business, as the case may be, of the applicant; and
- (c) the places from which the applicant is authorised to carry on each class of business to which the licence relates; and 5
- (d) any other prescribed matter.
- (2) A licence issued to an individual must contain a photograph of the ~~licence holder~~ licensee.
- 30 Effect of licence**
- (1) Subject to this Act and to any conditions imposed by the Authority, a licence authorises the licensee to carry on the class or classes of private security business for which the licence is issued, on his or her own account during the currency of the licence. 10
- (2) The licensee may carry on that class or those classes of business either by himself or herself or in partnership with any other person or persons who are the holders of licences that include that same authority. 15
- (3) A licence does not authorise a licensee to carry on the business to which the licence relates from any place of business that is not specified in the licence. 20
- 31 Duration of licence**
- (1) Unless cancelled earlier, a licence expires 5 years from its date of issue.
- (2) A licence may be renewed under **section 37**. 25
- (3) Despite **subsection (1)**, if an application for renewal of a licence is made before the expiry of the licence, the licence continues in force until the application for renewal is determined.
- 32 Licensing Authority to notify Commissioner of Police when licence issued** 30
- The Licensing Authority must, after issuing a licence, notify the Commissioner of Police in writing of—
- (a) the full name and (if the licensee is an individual) residential address of the licensee; and
- (b) the nature and number of the licence; and 35

- (c) the date on which it was issued; and
- (d) the registered office of the licensee (if a company) or principal place of business of the licensee (if not a company) and the other places of business specified in the licence.

5

*Temporary certificate of approval for applicant
for licence*

33 Temporary certificate of approval for applicant for licence

- (1) An individual who has applied for a licence under **section 19** may also request in writing that he or she be issued with a temporary certificate of approval under **section 55**. 10
- (2) If an individual makes a request under **subsection (1)** the individual must state the name of his or her current employer (if any), or employers if more than 1.
- (3) If an individual makes a request under **subsection (1)**, **section 55** applies as if— 15
 - (a) the application for a licence is an application under **section 42**; and
 - (b) the application is for a certificate of approval to be a responsible employee of a class that corresponds to the class or classes of private security business that the applicant for the licence proposes to carry on. 20
 - (c) the reference in **section 55(2)(c)** to **section 41** is a reference to **section 47**.

General provisions, amendments, renewals, etc 25

34 Name under which licensee may carry on business

- (1) Unless another name has been approved in writing by the Licensing Authority, no licensee, ~~other than a company,~~ who is an individual may carry on the business to which the licence relates under any name that is not— 30
 - (a) his or her own name; or
 - (b) in the case of a firm, the name of one of the partners.
- (2) An applicant for a licence, or a licensee, may at any time apply in writing to the Licensing Authority to approve a name under **subsection (1)**. 35

- (3) The Licensing Authority must not approve a name under **subsection (1)** if it considers that the name so nearly resembles the name of any other person, firm, or company carrying on a class or classes of private security business as to be likely to deceive, or that the name is that of any other person, firm, or company— 5
- (a) whose licence has been suspended or cancelled under **section 70 or 72**; or
- (b) whose application for a licence has at any time been refused under this Act and who has not subsequently obtained a licence. 10
- (4) No licensee that is a company may carry on the business to which the licence relates under any name other than the name by which the company is registered or incorporated.
- (5) Every licensee who contravenes **subsection (1) or (4)** commits an offence against this Act. 15
- Compare: 1974 No 48 s 31

35 Persons not to act as officers of licensed company without consent of Licensing Authority

- (1) In the case of a licensee that is a company, unless with the prior approval of the Licensing Authority, no person who is not an officer of the company at the time when the application for the licence is granted may subsequently act as an officer of the company. 20
- (2) A licensee may at any time apply in writing to the Licensing Authority for approval of any person under **subsection (1)**. 25
- (2A) An application for approval of any person must be in the prescribed form and accompanied by the prescribed fee (if any).
- (3) The Licensing Authority must not give its approval under **subsection (1)** in respect of a person unless the Licensing Authority is satisfied that— 30
- (a) the officer is of or over the age of 18 years; and
- (b) no ground of disqualification under **section 47 56A** applies to the officer or, if 1 or more grounds do apply, that this does not make the company unsuitable to hold the licence. 35

- (4) Every person who contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.
- (5) Every licensee who, being a company, employs any person or permits any person to act as an officer of the company in contravention of **subsection (1)**, commits an offence and is liable on summary conviction to a fine not exceeding \$20,000. 5
Compare: 1974 No 48 s 32

36 Amendment of licence

- (1) If the Licensing Authority has under **section 29** issued a licence that is limited in its effect to any particular class or classes of private security business, the ~~holder of the licence licensee~~ licensee may at any time during the currency of the licence apply to the Licensing Authority to amend the licence by adding or removing any class or classes of private security business. 10 15
- (2) **Sections 47 to 29 and 32 19 to 29, 32, 56A, and 56B** apply with any necessary modifications.
- (3) If the Licensing Authority grants an application to add, or remove, a ~~new~~ class or classes of private security business to, or from, the licence, the Licensing Authority must, on payment of the prescribed fee (if any), issue to the applicant an amended licence specifying the ~~additional~~ class or classes of private security business that the licensee may carry on. 20

37 Renewal of licence

- (1) A licence may be renewed. 25
- (2) **Sections 47 to 29 and 32 19 to 29, 32, 56A, and 56B** apply to an application for renewal of a licence as if the application were an application for a licence.
- (3) A renewed licence is to be treated for all purposes as a new licence issued under **section 29**. 30

38 Annual return updating licence and certificate of approval information

- (1) At 12-monthly intervals after the date of issue of a licence, the licensee must send to the Licensing Authority a return advising— 5
- (a) ~~whether there has been any change to the details recorded on the licensee's licence under **section 29(2)** (the licensee's registered office and place of business); and~~
- (a) whether there has been any change to the details included in the licensee's application for a licence; and 10
- (b) ~~in respect of each of the licensee's employees (if any) who is a holder of a certificate of approval, whether there has been any change to the details that were included in the application for the employee's certificate of approval.~~ 15
- (b) in respect of each person (if any) who is employed or engaged by the licensee and who is a certificate holder, whether there has been any change to the details that were included in the application for the certificate holder's certificate of approval of which the licensee is aware, or ought reasonably to be aware. 20
- (2) The return must be accompanied by the prescribed fee (if any).
- (3) On receiving a return under **subsection (1)**, the Licensing Authority must, if there has been a change to the details recorded on the licence issued to the licensee, or on a certificate of approval issued to ~~an employee of a person employed or engaged by~~ the licensee, issue an amended licence or certificate of approval, as the case may be. 25
- (4) The amended licence or certificate of approval is not a new or renewed licence or certificate of approval. 30
- (5) If an amended licence or certificate of approval is issued, the licensee or certificate holder, as the case may be, must, within 7 days of receiving the amended licence or certificate, return the old licence or certificate of approval to the Licensing Authority. 35
- (6) If a licensee fails to comply with **subsection (1) or (2)** the licence issued to the licensee is automatically suspended from

the date of the non-compliance until the requirements of **subsection (1) or (2)**, as the case may be, are satisfied.

- (7) A person commits an offence who fails without reasonable excuse to comply with **subsection (5)**.

Subpart 2—Certificates of approval 5

Who must hold certificate of approval

39 Persons who must hold certificate of approval

- (1) The following individuals must hold a certificate of approval under this Act:

- (a) a private investigator employee: 10
- (b) a security technician employee:
- (c) a security consultant employee:
- (d) a confidential document destruction agent employee:
- (e) a property guard employee:
- (f) a personal guard employee: 15
- (g) a crowd controller employee.

- (2) A person commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 who—

- (a) is employed, engaged as a contractor, acts, or holds himself or herself out to any person or to the public as a person of any kind specified in **subsection (1)**; and 20
- (b) does not hold a certificate of approval authorising him or her as a responsible employee of that kind.

- (3) This section is subject to **section 56**.

40 Offences by licensees, etc, relating to requirements to hold certificate of approval 25

- (1) No person who holds a licence may employ, engage as a contractor, or permit to act as a responsible employee any individual who does not hold an appropriate certificate of approval. 30

- (2) No person, not being the holder of a licence, may employ, engage as a contractor, or permit to act as a crowd controller employee any individual who does not hold a certificate of approval as a crowd controller employee.

- (3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.
- (4) It is a defence in any prosecution for an offence against this section if the defendant proves that he or she took all reasonable steps to ascertain whether the person who was employed, engaged, or permitted to act held a certificate of approval. 5
- (5) This section is subject to **section 56**.

Grounds of disqualification: certificates of approval 10

41 Grounds of disqualification

The grounds of disqualification for an applicant for a certificate of approval are that the individual—

- (a) 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 15
- (b) has ever had an order made in relation to him or her 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, that the offender 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); or 20 25
- (c) has ever been ordered by a court to be detained in a penal institution; or
- (d) has ever been convicted of a **specified offence** as defined in section 4 of the Criminal Records (Clean Slate) Act 2004; or 30
- (e) has ever been disqualified from driving under section 65 of the Land Transport Act 1998 or an earlier equivalent provision; or
- (f) has, within the preceding 7 years, been convicted of any— 35
- (i) offence under the Fair Trading Act 1986; or
- (ii) offence of dishonesty; or

- (iii) offence of violence; or
- (iv) drug dealing offence as specified in section 2(1) of the Proceeds of Crimes Act 1991; or
- (g) has, within the preceding 7 years, been convicted of any offence under this Act of working while not holding a relevant certificate of approval or employing a person not holding a relevant certificate of approval; or an offence under **section 66** of this Act or section 52 of the Private Investigators and Security Guards Act 1974; or
- (h) holds a certificate of approval that has been suspended; or
- (i) has, within the preceding 7 years, had a licence or certificate cancelled under this Act or the Private Investigators and Security Guards Act 1974; or
- (j) has not,—
 - (i) 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; and
 - (ii) complied with any training or work experience requirements prescribed in regulations made under this Act.

Applying for certificate of approval

- 42 Application for certificate of approval**
- (1) An application for a certificate of approval must be made in person at a designated District Court or otherwise in accordance with to the Licensing Authority in the manner prescribed by regulations made under this Act and must—
 - (a) be in the prescribed form, together with 1 additional copy; and
 - (b) be accompanied by 2 identical photographs of the applicant, authenticated in the prescribed manner; and
 - (c) be accompanied by the prescribed fee.
 - (2) The application must specify—
 - (a) the applicant's full name, residential address, occupation, and date of birth; and

- (b) the particular class or classes of responsible employee in relation to which a certificate of approval is sought by the applicant; and
- (c) if the applicant is employed, the name of the applicant's current employer, or employers if more than 1; and 5
- (d) whether or not any of the grounds of disqualification in **section 41 56A** apply to the applicant; and
- (e) whether the applicant has ever—
- (i) been convicted outside New Zealand of an offence; or 10
- (ii) had an order imposed in relation to him or her by any court or tribunal outside New Zealand, instead of passing sentence, that he or she be treated or cared for in relation to his or her mental impairment; and 15
- (f) any other prescribed information.
- 43 Licensing Authority may make inquiries and request report**
- (1) On receipt of an application, the Licensing Authority—
- (a) may make whatever inquiries it considers necessary in order to determine whether or not the application should be granted; and 20
- (b) without limiting **paragraph (a)**, may provide a copy of the application to the chief investigator of the Complaints, Investigation, and Prosecution Unit and request the chief investigator to cause a report on the application to be prepared by the unit for the Licensing Authority. 25
- (2) For the purpose of preparing a report under **subsection (1)(b)** the chief investigator of the Complaints, Investigation, and Prosecution Unit and any person authorised by the chief investigator may make whatever inquiries he or she considers necessary in order to verify the information contained in the application. 30
- 44 Notice of application for certificate of approval**
- (1) The Licensing Authority must serve a copy of every application for a certificate of approval on the Police. 35

- (2) The application must not be heard before the expiry of 1 month after **subsection (1)** has been complied with.

Objections

45 Objections by Police to application for certificate of approval

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- (1) The Police may file with the Licensing Authority a notice of objection to the grant of an application for a certificate of approval—

- (a) within 1 month after a copy of the application has been served on them ~~under this section~~ (where if the applicant's employer, on the same date as the application for the certificate of approval was made, applied under **section 19 or 20** for a licence); or

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- (b) within 7 days after the copy is served on them (in any other case).

15

- (2) The notice must state the grounds of the objection.

- (3) ~~The police~~ Licensing Authority must serve a copy of the notice of objection on the applicant within 7 days after it is filed with the Licensing Authority.

Hearing of application

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46 Hearing of application for certificate of approval

- (1) Except as provided in **section 47**, the Licensing Authority must fix a time and place for the hearing of an application for a certificate of approval, and must not give less than 10 working days' notice of the hearing to—

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- (a) the applicant; and

- (b) if the police have filed a notice of objection, to the police; and

- (c) if the Licensing Authority has received a report on the application from the Complaints, Investigation, and Prosecution Unit, the person who wrote the report.

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- (2) **Section 25** applies, with any necessary modifications, in respect of the hearing in the same way as if it were a hearing on an application for a licence.

47 Cases in which hearing may be dispensed with

- (1) Subject to **section 49**, the Licensing Authority may grant an application for a certificate of approval without holding a hearing in accordance with **section 46** if no notices of objection to the grant of an application have been filed with the Licensing Authority in accordance with **section 45**. 5
- (2) The Licensing Authority may refuse an application without holding a hearing in accordance with **section 46** if the Licensing Authority is unable to verify information provided in the application. 10

46 Application determined on papers

- (1) The Licensing Authority must determine an application on the papers if no notice of objection to the grant of the application has been filed with the Licensing Authority in accordance with **section 45**. 15
- (2) If a notice of objection to the grant of an application has been filed with the Licensing Authority in accordance with **section 45**,—
- (a) the Licensing Authority must determine the application on the papers unless it thinks an oral hearing is required; 20
and
- (b) if determining the application on the papers, the Licensing Authority may request that the applicant file a written response to the objection within a period of time specified by the Authority. 25
- (3) The Licensing Authority may refuse an application without holding a hearing in accordance with **section 47** if the Licensing Authority is unable to verify information provided in the application.

47 Application determined by oral hearing 30

- (1) If the Licensing Authority is to hold an oral hearing of an application for a certificate of approval, the Licensing Authority must fix a time and place for the hearing, and must give not less than 10 working days' notice of the hearing to—
- (a) the applicant; and 35
- (b) if the Police have filed a notice of objection, the police;
and

- (c) if the Licensing Authority has received a report on the application from the Complaints, Investigation, and Prosecution Unit, the chief investigator of the unit.
- (2) Section 26 applies, with any necessary modifications, in respect of the hearing in the same way as if it were an oral hearing of an application for a licence. 5

Decision on application

48 Consideration of application relating to more than 1 class of responsible employee

If an application relates to more than 1 class of responsible employee, the Licensing Authority— 10

- (a) must assess the application in respect of each class of responsible employee to which it relates; and
- (b) may, under **section 49**,—
- (i) grant the application in respect of all those classes of responsible employee; or 15
- (ii) grant the application in respect of only 1 or more of those classes of responsible employee and refuse it in respect of the other 1 or more of those classes of responsible employee to which the application relates; or 20
- (iii) refuse the application entirely.

49 Decision on application for certificate of approval

- (1) The Licensing Authority may grant an application only if— 25
- (a) in the case of an applicant applying for a certificate as a responsible employee of a class in **section 13(1)(a), (b), (e), (f), or (g) 13, 13A, 13D, 13E, or 13F**, the applicant is of or over the age of 18 years; and
- (b) the requirements of **section 42** are satisfied.
- (2) **Subsection (3)** applies if the Licensing Authority is satisfied that no grounds of disqualification under **section 44 56A** apply to the applicant. 30
- (3) The Licensing Authority must grant the application in respect of a particular class of responsible employee to which it relates unless the Licensing Authority is satisfied, based on any other evidence ~~adduced at the hearing~~ provided to the Author- 35

- ity relating to the character, circumstances, or background of the applicant, that the person is not suitable to be a responsible employee of that class.
- (4) **Subsection (5)** applies if the Licensing Authority is satisfied that 1 or more grounds of disqualification under **section 41-56A** apply to the applicant. 5
- (5) The Licensing Authority may grant the application in respect of a class of responsible employee to which it relates if, and only if, the Licensing Authority is satisfied that the person is suitable to be a responsible employee of that class taking into account— 10
- (a) the grounds on which the applicant is disqualified under **section 41-56A** and the way in which that influences the suitability of the applicant; and
- (b) any other evidence ~~adduced at the hearing~~ provided to the Authority relating to the character, circumstances, or background of the applicant. 15
- (6) **Subsections (3) and (5)** are subject to **subsection (1)**.
- (7) The Licensing Authority may impose conditions on the performance by the certificate holder of duties as a responsible employee of any particular class in respect of which the certificate is issued. 20
- ~~(8) If the Licensing Authority refuses an application or refuses an application in respect of 1 or more of the classes of responsible employee to which the application relates, it must notify the applicant in writing, and give reasons for the refusal.~~ 25
- (8) The Licensing Authority must give written notice to the applicant and the Police (if an objection was filed) when it grants or refuses to grant an application, and give reasons for the grant or refusal of the application. 30

Issue, duration, etc, of certificate of approval

50 Issue of certificate of approval

- ~~(1) If the Licensing Authority grants an application in whole or in part under **section 49**, the Licensing Authority must issue a certificate of approval in the prescribed form specifying the class or, if more than 1, each class of responsible employee in respect of which the Authority has granted the application.~~ 35

- (1) If the Licensing Authority grants an application in whole or in part under **section 49**, the Licensing Authority must issue a certificate of approval in the prescribed form specifying—
- (a) the class or, if more than 1, each class of responsible employee in respect of which the Authority has granted the application; and 5
 - (b) any other prescribed matter.
- (2) A certificate of approval must contain a photograph of the certificate holder of the certificate.
- 51 Effect of certificate of approval** 10
- Subject to this Act and to any conditions imposed by the Authority, a certificate of approval authorises the holder to work during the currency of the certificate—
- (a) as a responsible employee of any licensee carrying on the business to which the certificate of approval relates; 15
 - or
 - (b) in the case of a crowd controller, as a responsible employee of any person.
- 52 Duration of certificate of approval**
- (1) Unless cancelled earlier, a certificate of approval expires 5 20 years from its date of issue.
- (2) A certificate of approval may be renewed under **section 54**.
- (3) Despite **subsection (1)**, if an application for renewal of a certificate of approval is made before the expiry of the certificate of approval, the certificate of approval continues in force until 25 the application for renewal is determined.
- 53 Licensing Authority to notify Commissioner of Police when certificate of approval issued**
- The Licensing Authority must, after issuing a certificate of approval, notify the Commissioner of Police in writing of— 30
- (a) the full name and residential address of the certificate holder of the certificate of approval; and
 - (b) the nature and number of the certificate of approval; and
 - (c) the date on which it was issued.

53A Amendment of certificate of approval

- (1) If the Licensing Authority has under **section 50** issued a certificate of approval that is limited in its effect to any particular class or classes of responsible employee, the certificate holder may at any time during the currency of the certificate of approval apply to the Licensing Authority to amend the certificate of approval by adding or removing any class or classes of responsible employee. 5
- (2) **Sections 42 to 50, 53, and 56A** apply with any necessary modifications. 10
- (3) If the Licensing Authority grants an application to add, or remove, a class or classes of responsible employee to, or from, the certificate of approval, the Licensing Authority must, on payment of the prescribed fee (if any), issue to the applicant an amended certificate of approval specifying the class or classes of responsible employee in respect of which the holder may carry out work. 15

54 Renewal of certificate of approval

- (1) A certificate of approval may be renewed.
- (2) **Sections 41 to 50 and 53 42 to 50, 53, and 56A** apply to an application for renewal of a certificate of approval as if the application were an application for a certificate of approval. 20
- (3) A renewed certificate of approval is to be treated for all purposes as a new certificate issued under **section 50**.

Temporary certificates of approval 25

55 Temporary certificates of approval

- (1) A person who has applied for a certificate of approval under **section 42** may also apply in writing for a temporary certificate of approval.
- (2) The Licensing Authority may issue a temporary certificate of approval at any time after receiving a correct application for a certificate of approval under **section 42** if,— 30
- (a) in the case of an applicant applying for a certificate as a responsible employee of a class in **section 13(1)(a), (b), (c), (f), or (g) 13, 13A, 13D, 13E, or 13F**, the applicant is of or over the age of 18 years; and 35

- (b) the prescribed fee (if any) is paid; and
- (c) except as provided for in **subsection (3)(b)**, the application does not disclose any ground on which the applicant is disqualified under **section 44 56A**; and
- (d) there is no reason to believe that the application contains statements that are incorrect; and 5
- (e) in the opinion of the Licensing Authority there are no other reasons disclosed by the application why the applicant may be unsuitable to be a responsible employee of the class or classes to which the application relates. 10
- (3) The Licensing Authority may issue a temporary certificate of approval under this section even if—
 - (a) the time for the Police to file an objection under **section 45** has not expired; or
 - (b) ~~the applicant has not completed the training or work experience requirement prescribed in regulations made under this Act.~~ 15
 - (b) the applicant has not met the requirements prescribed in regulations made under **section 106(1)(g)**.
- (4) A temporary certificate of approval issued under **subsection (2)** gives the holder all the rights and duties of a certificate of approval issued under **section 50** to be a responsible employee of the class or classes to which the application relates. 20
- (5) A temporary certificate of approval is in force for a period of 3 months after the date of its issue, or until a certificate of approval is issued to the applicant under **section 50**, whichever comes first. 25

Emergency appointments of responsible employees

- 56 Emergency appointment of responsible employee** 30
- (1) A person who does not hold an appropriate certificate of approval may be employed, engaged on contract, or act, as a responsible employee if the person who employs or engages the person, or permits the person to act—
 - (a) has, due to employee illness or emergency, insufficient responsible employees who hold a certificate of approval to properly carry on his or her business; and 35

- (b) is satisfied on reasonable grounds that the person has applied for an appropriate certificate of approval and that the answers on the application indicate that no ground of disqualification under **section 41** applies; and
- (c) is to the best of his or her knowledge satisfied that the person is not currently charged with an offence that, if it resulted in conviction, would be a ground of disqualification under **section 41**; and
- (d) has no reason to believe that any statement in the application is incorrect; and
- (e) notifies the Licensing Authority in the prescribed manner before employing or engaging the person, or permitting the person to act, as a responsible employee; and
- (f) complies with any requirements prescribed in regulations made under this Act relating to the making of emergency appointments under this section.
- (2) Except with the prior approval of the Licensing Authority, a person must not in reliance on this section employ or engage a person or permit a person to act as a responsible employee, or continue to do so, if the person—
- (a) the person has already employed, engaged, or permitted the person to act as a responsible employee in reliance on this section for a continuous period of 2 weeks; or
- (b) the person has already employed, engaged, or permitted the person to act as a responsible employee in reliance on this section on an occasion more than 2 weeks previously.
- (3) A person who employs or engages a person, or permits a person to act as a responsible employee under **subsection (1)** must terminate that appointment immediately if he or she is instructed to do so in writing by the Licensing Authority.
- (4) The termination of the appointment under **subsection (3)** takes effect when the written notice by the Licensing Authority is served on the person who made the appointment.
- 56** **Emergency appointment of responsible employee**
- (1) A person who does not hold an appropriate certificate of approval may be employed, engaged on contract, or act, as a responsible employee if—

- (a) he or she has applied for a certificate of approval and paid the prescribed fee; and
- (b) the person who engages the person, or permits the person to act,—
- (i) has, owing to employee illness or emergency, insufficient employees who hold a certificate of approval to carry on his or her business; and 5
- (ii) is satisfied on reasonable grounds that the person has applied for an appropriate certificate of approval and that the information provided in the application indicates that no ground of disqualification under **section 56A** exists; and 10
- (iii) is to the best of his or her knowledge satisfied that the person is not currently charged with an offence that, if it resulted in conviction, would be a ground of disqualification under **section 56A**; and 15
- (iv) has no reason to believe that any statement in the application is incorrect; and
- (v) notifies the Licensing Authority in the prescribed manner before employing or engaging the person, or permitting the person to act, as a responsible employee; and 20
- (vi) complies with any requirements prescribed in regulations made under this Act relating to the making of emergency appointments under this section. 25
- (2) Except with the prior approval of the Licensing Authority, a person (Y) must not in reliance on this section employ or engage a person, or permit a person to act, as a responsible employee, or continue to do so, if Y— 30
- (a) has already employed, engaged, or permitted the person to act as a responsible employee in reliance on this section for a continuous period of 2 weeks; or
- (b) has already employed, engaged, or permitted the person to act as a responsible employee in reliance on this section on an occasion more than 2 weeks previously. 35
- (3) If under **subsection (1)** a person (Y) employs or engages a person, or permits a person to act, as a responsible employee, Y

must immediately stop the person from undertaking any work for which the person would be required to hold a certificate of approval if Y is instructed by the Licensing Authority to do so by service of a notice in writing.

Subpart 3—Grounds of disqualification 5

Grounds of disqualification: individual

56A Grounds of disqualification for individual applicant

The grounds of disqualification for an individual applicant for a licence, or an applicant for a certificate of approval, are that the individual—

- (a) has been ordered by a court to be detained in a hospital owing to his or her mental condition and is currently subject to such an order; or 10
- (b) has ever had an order made in relation to him or her 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, that the offender 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); or 15
- (c) has ever been ordered by a court to be detained in a penal institution following conviction for an offence and that conviction or order has not been quashed on appeal; or 25
- (d) has ever been convicted of a specified offence as defined in section 4 of the Criminal Records (Clean Slate) Act 2004; or
- (e) has ever been disqualified from driving under section 65 of the Land Transport Act 1998 or an earlier equivalent provision; or 30
- (f) has, within the preceding 7 years, been convicted of any—
 - (i) offence under the Arms Act 1983; or 35
 - (ii) offence under any of sections 216H to 216J of the Crimes Act 1961; or

- (iii) offence under section 10, 11, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986; or
- (iv) offence under section 8 or 25 of the Harassment Act 1997; or
- (v) offence against section 6 of the Misuse of Drugs Act 1975 in relation to a Class A controlled drug, a Class B controlled drug, or a Class C controlled drug, in relation to which the amount, level, or quantity at and over which the drug is presumed to be for supply is specified in Schedule 5 of that Act; or 5
- (vi) offence of dishonesty; or
- (vii) offence of violence; or
- (viii) offence under this Act of working while not holding a licence or relevant certificate of approval or employing or engaging a person without a relevant certificate of approval, or an offence under section 16, 34, or 52 of the Private Investigators and Security Guards Act 1974; or 10
- (g) holds a licence or certificate of approval that has been suspended; or 20
- (h) has, within the preceding 7 years, had a licence or certificate of approval cancelled under this Act or the Private Investigators and Security Guards Act 1974; or
- (i) does not meet the requirements prescribed in regulations made under **section 106(1)(g)**; or 25
- (j) in the case of an applicant for a licence, 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. 30

Grounds of disqualification: company

56B Grounds of disqualification for company

- (1) The grounds of disqualification for a company applicant for a licence are that— 35
 - (a) the company has, within the preceding 7 years, been convicted of any—

- (i) offence under section 10, 11, 12, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986; or
- (ii) offence of dishonesty; or
- (iii) offence against section 6 of the Misuse of Drugs Act 1975 in relation to a Class A controlled drug, a Class B controlled drug, or a Class C controlled drug, in relation to which the amount, level, or quantity at and over which the drug is presumed to be for supply is specified in Schedule 5 of that Act; or 5
- (iv) offence under this Act of operating while unlicensed or employing or engaging a person without a certificate of approval, or an offence under section 16, 34, or 52 of the Private Investigators and Security Guards Act 1974; or 10
- (b) the company holds a licence that has been suspended; or
- (c) the company has, within the preceding 7 years, had a licence cancelled under this Act or the Private Investigators and Security Guards Act 1974; or 20
- (d) 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 Act or the Private Investigators and Security Guards Act 1974; or 25
- (e) any of the grounds of disqualification in **section 56A(a) to (h)** apply to any officer of the company; or
- (f) every officer of the company is disqualified under **section 56A(i) and (j)**.
- (2) For the purposes of **subsection (1)(e) and (f)**, **section 56A** must be read as if the officer were the applicant for the licence. 30

Waiver of ground of disqualification

56C Waiver of ground of disqualification while licence or certificate of approval in force

- (1) This section applies if, while a licence or certificate of approval is in force, an event occurs that means that 1 or more grounds of disqualification apply to the licensee or certificate holder under **section 56A or 56B**, as the case may be. 35

- (2) The licensee or certificate holder may apply in writing to the Licensing Authority for a waiver of the disqualification.
- (3) The application must be accompanied by the prescribed fee, if any.
- (4) The Licensing Authority may waive the disqualification if the Authority is satisfied that the licensee or certificate holder is, despite the disqualification, suitable to be a licensee or certificate holder, as the case may be, in relation to the class or classes of business or work to which the licence or certificate relates. 5
10
- (5) A waiver of disqualification under this section expires on the expiry of the licence or certificate of approval in respect of which it was granted.
- (6) If a waiver of disqualification has been granted under this section, no complaint may be made under **Part 4** against the licensee or certificate holder on the grounds that he or she is disqualified in the respect covered by the waiver. 15

Part 3 Responsibilities of licensees and certificate holders

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57 Production of licence

- (1) A licensee must produce his or her licence on demand to—
- (a) the Licensing Authority; or
 - (b) any ~~member of the police constable~~; or
 - (c) a person authorised by the chief investigator of the Complaints, Investigation, and Prosecution Unit; or
 - (d) any person with whom the licensee is dealing ~~in the course of transacting or attempting to transact the when carrying on or attempting to carry on any private security business~~ to which the licence relates. 25
30
- (2) If the licensee is a company, it is sufficient compliance with the requirements of **subsection (1)** if the licence is kept in the company's registered office and is made available for inspection on demand by any of the persons referred to in that subsection. 35

- (3) A licensee who knowingly contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

Compare: 1974 No 48 s 45

58 Production of certificate of approval 5

- (1) ~~The holder of a certificate of approval~~ A certificate holder must produce his or her certificate of approval on demand to—

- (a) the Licensing Authority; or
- (b) any ~~member of the police constable~~; or
- (c) a person authorised by the chief investigator of the 10
Complaints, Investigation, and Prosecution Unit; or
- (d) any person with whom the certificate holder is dealing in the course of performing his or her duties as a responsible employee.

- (2) ~~The holder of a certificate of approval~~ A certificate holder 15
must, on demand by any ~~other~~ person specified in **subsection (1)**, inform that ~~other~~ person of the name and address of the person by whom the holder is employed or engaged as a responsible employee.

- (3) ~~The holder of a certificate of approval~~ A certificate holder who 20
knowingly contravenes **subsection (1) or (2)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

Compare: 1974 No 48 s 46

59 Requirement to wear licence or certificate of approval 25

- (1) An individual who is the holder of a licence to carry on any of the classes of private security business described in **sections 6 to 11** must wear the licence, at all times during the course of carrying on that business.

- (2) The holder of a certificate of approval as a responsible employee of any kind described in **paragraphs (b) to (g) of section 13** must wear the certificate of approval at all times during the course of performing his or her duties as a responsible employee. 30

- (3) The licence or certificate of approval, as the case may be, must 35
be worn in a position that is readily visible.

- (4) ~~A licensee or certificate holder who intentionally contravenes **subsections (1) or (2)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.~~

59 Requirement to wear identification badge

- (1) An individual who is the holder of a licence to carry on any of the classes of private security business described in **sections 6 to 11** must wear an identification badge issued by the Authority at all times during the course of carrying on or attempting to carry on that business. 5
- (2) The holder of a certificate of approval as a responsible employee of any kind described in **sections 13A to 13F** must wear an identification badge issued by the Authority at all times during the course of performing his or her duties as a responsible employee. 10
- (3) The identification badge must be worn in a position that is readily visible. 15
- (4) Despite **subsections (1) and (2)**, no licensee or certificate holder is required to wear an identification badge if the licensee or certificate holder reasonably believes that wearing it would threaten his or her safety or the safety of any person. 20
- (5) A licensee or certificate holder who intentionally contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

59A Identification badge

- (1) An identification badge must contain the following information: 25
- (a) a unique identifier number or code:
 - (b) a photograph of the licensee or certificate holder:
 - (c) the class or classes of work that the licensee or certificate holder is authorised to carry out: 30
 - (d) the expiry date of the licence or the certificate of approval.
- (2) In the case of an identification badge to be worn by the holder of a temporary certificate of approval, the identification badge must identify the wearer as the holder of a temporary certificate of approval. 35

- (3) An identification badge must not include the name or address of the licensee or certificate holder.

60 Licensee and certificate holder to keep records

A licensee or certificate holder ~~of a certificate of approval~~ or person who employs or engages any crowd controller employee commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who fails without reasonable excuse to comply with any requirement to keep records that is prescribed in regulations made under **section 106**. 5

61 Access by Police and Complaints, Investigation, and Prosecution Unit to records 10

- (1) A licensee or certificate holder or person who employs or engages any crowd controller employee must, when required to do so by a member of the police constable or a person authorised by the chief investigator of the Complaints, Investigation, and Prosecution Unit (**authorised person**),— 15
- (a) show the member of the police constable or authorised person without delay any record or document that is required by regulations made under this Act to be kept by the licensee or certificate holder: 20
- (b) make a copy of all or specified parts of a record or document of a kind referred to in **paragraph (a)** and give it to the member of the police constable or authorised person, or if that is impracticable, give the member of the police constable or authorised person the record or document or specified part of it. 25
- (2) If a licensee or certificate holder or person who employs or engages any crowd controller employee gives a member of the police constable or authorised person a record or document, or a specified part of it, under **subsection (1)(b)**, the member of the police constable or authorised person must— 30
- (a) give a receipt for the record or document or specified part of it; and
- (b) return it within 2 hours.
- (3) A licensee or certificate holder or person who employs or engages any crowd controller employee commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 35

if the licensee or certificate holder or person fails without reasonable excuse to comply with **subsection (1)**.

62 Notice to Licensing Authority of change of employment

- (1) If a holder of a certificate of approval leaves the employment of any person by whom the holder was employed as a responsible employee, the holder must within 7 days give written notice to the Licensing Authority of— 5
- (a) the name of his or her former employer; and
 - (b) the date on which he or she left the employment of that employer. 10
- (2) If a holder of a certificate of approval commences employment with any person as a responsible employee, the holder must within 7 days give written notice to the Licensing Authority of— 15
- (a) the name and address of his or her new employer; and
 - (b) the date on which he or she commenced employment with that employer.
- (3) A holder of a certificate of approval commits an offence if he or she fails without reasonable excuse to comply with **subsection (1) or (2)**. 20
- Compare: 1974 No 48 s 47

63 Updating certificate information

- (1) If any details that were included in an application for a certificate of approval change (for example, the certificate holder's address); the holder of the certificate of approval must advise the Licensing Authority of that change. 25
- (1) A certificate holder must advise the Licensing Authority—
- (a) of any change to the certificate holder's name or residential address; or
 - (b) if, subsequent to the application for a certificate of approval, any of the grounds of disqualification described in **section 56A** apply to him or her. 30
- (2) A holder of a certificate of approval certificate holder commits an offence if he or she fails without reasonable excuse to comply with **subsection (1)**. 35

64 Private investigator to display notices at offices

- (1) A licensee authorised to carry on the business of a private investigator must at all times exhibit at every place of business specified in his or her licence, in a place where it can be easily read from outside that place of business, a conspicuous notice stating— 5
- (a) his or her full name; and
 - (b) the fact that he or she is the holder of a licence authorising him or her to carry on the business of a private investigator; and 10
 - (c) if the business is not carried on in his or her own name, the name under which he or she carries on the business.
- (2) A licensee authorised to carry on the business of a private investigator must cause the information specified in **subsection (1)(a) to (c) (2A)** to be conspicuously displayed on— 15
- (a) all notices, advertisements, and other publications issued by him or her or on his or her behalf, in the course of or in connection with the business of a private investigator; and
 - (b) all letters, accounts, and other documents sent out by him or her or on his or her behalf, in the course of or in connection with the business of a private investigator. 20
- (2A) The information referred to in **subsection (2)** is—
- (a) the licensee's full name; and
 - (b) the fact that the licensee is the holder of a licence authorising him or her to carry on the business of a private investigator; and 25
 - (c) if the business is not carried on in the licensee's own name, the name under which he or she carries on the business. 30
- (3) A licensee authorised to carry on the business of a private investigator must cause to be conspicuously shown on all letters sent out or published by him or her or on his or her behalf, in the course of or in connection with the business of a private investigator, a statement to the effect that he or she has no more authority than that of an ordinary private citizen to require a reply to the letter. 35

- (4) A licensee who knowingly contravenes **subsection (1), (2), (2) or (3)** commits an offence.
Compare: 1974 No 48 s 48

65 Private investigator to render account to principal

- (1) A licensee authorised to carry on the business of a private investigator must render an account as specified in **subsection (2)**— 5
- (a) within 7 days after being requested to do so by any person for whom the licensee or his or her firm is acting in the course of the business of a private investigator; or 10
 - (b) if no request is made, then within 28 days after the licensee or the firm ceases to act for that person.
- (2) The account referred to in **subsection (1)** must be rendered in writing to the person referred to in **subsection (1)** and must set out full particulars of all money that has been received by the licensee or the firm for or on behalf of that person, and the application of that money. 15
- (3) A licensee who has rendered an account under **subsection (1)** in respect of any money expended by that licensee or by that licensee's firm in the course of acting for any person may appropriate any money standing in his or her account to the credit of that person in satisfaction of the account rendered. 20
- (4) Except as provided in **subsection (3)**, every licensee must,— 25
- (a) within 7 days after being requested to do so by any person for whom the licensee or his or her firm is acting in the course of the business of a private investigator, pay to that person all money held for that person; or
 - (b) if no request is made, then within 28 days after the licensee or the firm ceases to act for that person pay to that person all money held for that person. 30
- (5) Every licensee who contravenes **subsection (1) or (3)** commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.
Compare: 1974 No 48 s 51

66 Private investigator or employee not to take photographs or make recordings without consent

- (1) No person may, in the course of or in connection with the business of a private investigator,—
- (a) take or cause to be taken, or use or accept for use, any photograph, cinematographic picture, or videotape recording of another person without the prior consent in writing of that other person; or
- (b) by any mechanical device record or cause to be recorded the voice or speech of another person without the prior consent in writing of that other person.
- (2) Nothing in **subsection (1)** applies to the taking or using by any person of any photograph for the purposes of identifying any other person on whom any legal process is to be or has been served.
- (3) A person who contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.
- (4) No photograph or cinematographic picture, or videotape recording taken, or other recording made, in contravention of **subsection (1)** is admissible as evidence in any civil proceedings.

Compare: 1974 No 48 s 52

Part 4 Discipline

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Complaints

67 Complaint against licensee

- (1) A ~~member of the police constable~~ may at any time file a written complaint with the Licensing Authority against a licensee.
- (2) A person other than a ~~member of the police constable~~ may at any time, with the leave of the Authority, file a written complaint with the Authority against a licensee.
- (3) The Authority must refuse leave under **subsection (2)** unless the Authority is satisfied that the complainant has a ~~personal~~ an interest, greater than that of the public generally, in the subject matter of the complaint, and that the complaint is made in good faith and is not frivolous or vexatious.

- (4) No complaint may be made under this section except on 1 or more of the following grounds:
- (a) ~~that there are 1 or more grounds for cancelling the licence under **section 73 or 74**:~~
 - (a) that 1 or more grounds of disqualification under **section 56A or 56B**, as the case may be, now apply to the licensee: 5
 - (ab) that there are 1 or more grounds for cancelling the licence under **section 74**:
 - (b) that the licensee has contravened any provision of this Act or regulations made under this Act: 10
 - (c) that the licensee or, if the licensee is a company, any officer of the company, has been guilty of misconduct or gross negligence in the course of the business to which the licence relates: 15
 - (d) that a false statement was made in the application for the licence.
- (5) The complaint must specify the grounds on which it is made.
- (6) The complainant must, within 7 days after filing the complaint with the Licensing Authority, serve a copy of the complaint on the licensee. 20

Compare: 1974 No 48 s 53

68 Complaint against certificate holder

- (1) A ~~member of the police constable~~ may at any time file a written complaint with the Licensing Authority against a certificate holder. 25
- (2) A person other than a ~~member of the police constable~~ may at any time, with the leave of the Authority, file a written complaint with the Authority against a certificate holder.
- (3) The Authority must refuse leave under **subsection (2)** unless the Authority is satisfied that the complainant has ~~a personal an~~ an interest, greater than that of the public generally, in the subject matter of the complaint, and that the complaint is made in good faith and is not frivolous or vexatious. 30
- (4) No complaint may be made under this section except on 1 or more of the following grounds: 35

- (a) that 1 or more grounds of disqualification under **section 41 56A** now apply to the certificate holder:
 - (ab) that there are 1 or more grounds for cancelling the certificate of approval under **section 77**:
 - (b) that the certificate holder has contravened any provision of this Act or regulations made under this Act: 5
 - (c) that the certificate holder has been guilty of misconduct or gross negligence in the course of being a responsible employee:
 - (d) that a false statement was made in the application for the certificate of approval. 10
 - (5) The complaint must specify the grounds on which it is made.
 - (6) The complainant must, within 7 days after filing the complaint with the Licensing Authority, serve a copy of the complaint on the certificate holder. 15
- Compare: 1974 No 48 s 59

69 Licensing Authority may refer matter to Police or to Complaints, Investigation, and Prosecutions Unit

- (1) On receipt of a complaint from a person under **section 67(2) or 68(2)**, the Licensing Authority may— 20
 - (a) send a copy of the complaint to the Commissioner of Police and request the Commissioner to cause a report on the complaint to be prepared by the Police for the Licensing Authority; or
 - (b) send a copy of the complaint to the person in charge of the Complaints, Investigation, and Prosecution Unit and request the chief investigator to cause a report on the complaint to be prepared for the Licensing Authority. 25
- (2) In any other case where the Licensing Authority suspects on reasonable grounds that there may be any grounds for complaint against a licensee or certificate holder, the Licensing Authority may— 30
 - (a) refer the matter to the Commissioner of Police and request the Commissioner to investigate it with a view to deciding whether a complaint against the licensee or certificate holder should be filed under **section 67(1) or 68(1)**; or 35

- (b) refer the matter to the chief investigator of the Complaints, Investigation, and Prosecution Unit and request the chief investigator to cause a report on the ~~complaint~~ matter to be prepared by the unit for the Licensing Authority.

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70 Suspension of licence or certificate of approval pending determination of complaint

- (1) The Licensing Authority may ~~suspend~~ make an order suspending a licence or certificate if a complaint has been filed against the holder of it under **section 67 or 68** if and the Licensing Authority is satisfied that it is necessary or desirable to do so having regard to—
- (a) the interests of the public; and
- (b) the possibility of further loss or damage occurring if the Licensing Authority does not make an order under this section.
- (1A) A licence or certificate may be suspended either in whole or in part in respect of 1 or more classes (of business or responsible employee) for which it was granted.
- (2) The Licensing Authority is not obliged to give notice to the licensee or certificate holder that it intends to make an order of suspension under this section.
- (3) The Licensing Authority must notify the licensee or certificate holder in writing of any order of suspension made by it under this section and of its reasons for making the order.
- (4) As soon as practicable after the notification under **subsection (3)**, the Licensing Authority must give the licensee or certificate holder an opportunity to make representations to the Licensing Authority for the revocation of the order.
- (5) If an order of suspension is made under this section, the order—
- (a) comes into force when the licensee or certificate holder is notified of the order in accordance with **subsection (3)**; and
- (b) lasts until the complaint is heard and determined by the Licensing Authority in accordance with this Part.
- (6) During the period that a licence is suspended—

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- (a) the licence has no effect and must not be renewed; and
 (b) no new licence may be issued authorising the licensee to carry on the class of business, or (if more than 1) any 1 or more of the classes of business, to which the suspended licence relates. 5
- (7) During the period that a certificate of approval is suspended—
 (a) the certificate has no effect and must not be renewed; and
 (b) no new certificate may be issued authorising the holder to be a responsible employee of any class, or (if more than 1) any 1 or more of the classes of responsible employee, to which the suspended certificate relates. 10
- (8) The Licensing Authority may at any time, on its own motion or on the application of the licensee or the certificate holder, revoke an order of suspension made under this section. 15
 Compare: 1974 No 48 s 55

Disciplinary hearing

71 Hearing

- (1) The Licensing Authority—
 (a) must hold a hearing if a complaint has been filed with the Licensing Authority against a licensee under **section 67** or certificate holder under **section 68**, and the Licensing Authority is satisfied that the requirements of the relevant section have been complied with; and 20
 (b) may on its own motion hold a hearing if it has received a report requested under **section 69(2)** and suspects on reasonable grounds that there may be grounds of the kind in **section 67(4)** for disciplinary action against a licensee or grounds of the kind in **section 68(4)** for disciplinary action against a certificate holder. 25 30
- (2) The Licensing Authority must fix a time and place for the hearing.
- (3) The Licensing Authority must give not less than 10 working days' notice of the hearing—
 (a) to the licensee or certificate holder; and 35
 (b) to the complainant (if any); and

- (c) if the Licensing Authority wishes the Police to attend, to the Commissioner of Police; and
 - (d) if the Licensing Authority received a report from the Complaints, Investigation, and Prosecution Unit, the chief investigator of the unit. 5
- (4) If the Licensing Authority is holding a hearing under **subsection (1)(b)**, the Licensing Authority must, not later than 10 working days before the date of the hearing, provide the licensee or certificate holder with a statement of the reasons for this. 10
- (5) At the hearing, the following persons are entitled to appear, be heard, call evidence, and to cross-examine and re-examine witnesses:
- (a) the complainant (if any); and
 - (b) the licensee or certificate holder; and 15
 - (c) the Commissioner of Police or any other ~~member of the police~~ constable on the Commissioner's behalf; and
 - (d) the chief investigator of the Complaints, Investigation, and Prosecution Unit or any other person authorised by the chief investigator. 20
- (6) Any party at the hearing may conduct his or her case personally or may be represented by counsel.
- (7) The Licensing Authority may from time to time adjourn the hearing to a future time and place fixed by it.

Powers of Authority: licensees 25

72 Disciplinary powers of Licensing Authority in respect of licensee

- (1) If, after a hearing in accordance with **section 71**, the Licensing Authority is satisfied that the grounds for disciplinary action in the complaint or under **section 71(1)(b)**, as the case may be, have been proved, the Licensing Authority— 30
- (a) must cancel the licence if **section 73** applies;
 - (b) may cancel the licence if **section 74** applies;
 - (c) may, in addition to cancellation under **paragraph (a)**, or in addition to or instead of cancellation under **paragraph (b)**, do all or any of the following things that may be appropriate: 35

- (i) make an order suspending the licence for a period, not exceeding 3 years, that the Licensing Authority specifies in the order:
- (ia) make an order that the licensee undergo training:
- (ib) make an order that the licensee work under supervision for a period that the Licensing Authority specifies in the order: 5
- (ic) make an order that the licensee work subject to conditions and for a period that the Licensing Authority specifies in the order: 10
- (id) bar the licensee from applying for a licence or certificate of approval for a period that the Licensing Authority specifies in the order or until certain conditions are met:
- (ii) fine the licensee any amount not exceeding \$2,000: 15
- (iii) reprimand the licensee:
- (iv) if the Licensing Authority is satisfied in the case of a licensee that is a company that the grounds for disciplinary action relate to any conduct or omission by a particular officer of the company, make an order directing the licensee to terminate the employment of that officer within the time the Licensing Authority specifies in the order. 20
- (2) If, after the hearing, the Licensing Authority is not satisfied that the grounds for disciplinary action have been proved, the Authority must dismiss the matter. 25
- (3) A cancellation must be in writing, with reasons, and state the date on which the cancellation takes effect.
- (4) While any order of suspension of a licence made under this section continues in force,— 30
- (a) the licence ~~ceases to have~~ has no effect and must not be renewed; and
- (b) no new licence may be issued authorising the licensee to carry on the class of private security business, or (if more than 1) any 1 or more of the classes of private security business, to which the suspended licence relates. 35

- (5) A fine imposed by the Licensing Authority on a licensee under **subsection (1)** is a debt due by the licensee to the Crown, and is recoverable in any court of competent jurisdiction.
- ~~(6) The Licensing Authority must as soon as practicable give notice in writing to the licensee, the Commissioner of Police, any complainant, and the chief investigator of the Complaints, Investigation, and Prosecution Unit of the decision made by the Authority under this section, and of any penalty imposed.~~ 5
- (6) The Licensing Authority must as soon as practicable give notice in writing of the decision made by the Authority under this section, and of any penalty imposed, to— 10
- (a) the licensee; and
- (b) the Commissioner of Police; and
- (c) any complainant; and
- (d) the chief investigator of the Complaints, Investigation, and Prosecution Unit. 15
- (7) If the Licensing Authority makes an order under **subsection ~~(1)(e)~~ (1)(c)(iv)**, it must as soon as practicable also give notice in writing of the order to the officer to whom it relates.
- 73 Mandatory grounds for cancellation of licence** 20
- (1) This section applies (and, under **section 72**, cancellation of the licence is mandatory) if—
- (a) the Licensing Authority is satisfied that 1 or more grounds for disqualification under **section 47 or 48 56A or 56B**, as the case may be, now apply to the licensee and the Licensing Authority is satisfied that, because of this, the licensee is not suitable to hold a licence; or 25
- (b) the Licensing Authority is satisfied that the licence was issued by ~~fraud or mistake~~: mistake or by reason of fraud on the part of the applicant for the licence. 30
- (2) **Subsection (3)** applies if—
- (a) the licensee is a company; and
- (b) the reason that the Licensing Authority is satisfied that the licensee is unsuitable to be a licensee under **subsection (1)(a)** is because an officer of the company is disqualified under **section 47 56A**. 35

- (3) The Licensing Authority must not cancel the company's licence if—
- (a) the person became an officer of the company after the company obtained its licence; and
 - (b) within 2 weeks of the person becoming an officer of the company, the company applied to the Licensing Authority under **section 35(2)** for the approval of the officer; and
 - (c) either—
 - (i) the Licensing Authority has not yet determined whether or not to approve the officer; or
 - (ii) the Licensing Authority has advised the company, in writing, that it refuses to approve the officer but less than 2 weeks has elapsed since the advice was sent.

74 Discretionary grounds for cancellation of licence

- (1) This section applies (and, under **section 72**, the Authority may cancel the licence) if—
- (a) a person specified in **subsection (2)** has breached a condition of the licence imposed under **section 28(7)**;
 - (b) a person specified in **subsection (2)** has been convicted of an offence under any of the provisions specified in **Schedule 1**;
 - (c) a person specified in **subsection (2)** in the course of carrying on the business to which the licence relates uses any dog and, in respect of that dog, is convicted of an offence against any of the provisions of the Dog Control Act 1996;
 - (d) a person specified in **subsection (2)**, having been convicted of an offence against this Act is, within 3 years after the date of the conviction, again convicted of an offence against this Act;
 - (e) a person specified in **subsection (2)** has been guilty of misconduct or gross negligence in the course of the business to which the licence relates;
 - (f) a person specified in **subsection (2)** has—
 - (i) been convicted outside New Zealand of an offence; or

- (ii) had an order imposed in relation to him or her by any court or tribunal outside New Zealand, instead of passing sentence, that he or she be treated or cared for in relation to his or her mental impairment: 5
- (g) a person specified in **subsection (2)** is adjudged bankrupt, or makes any assignment for the benefit of his or her creditors, or makes any composition with his or her creditors:
- (h) in the case of a licensee that is a company, the High Court makes an order for the winding up of the licensee, or the licensee passes a resolution for voluntary winding up: 10
- (i) in the case of a licensee that is a company, the licensee fails to comply with an order made under **section ~~72(1)(e)~~ 72(1)(c)(iv)** in respect of any officer of the company: 15
- (j) the Licensing Authority determines that a false statement was made in the application for a licence of any person specified in **subsection (2)**. 20
- (2) The persons referred to in **subsection (1)** are—
 - (a) the licensee; and
 - (b) in the case of a licensee that is a company, any officer of the company.

Powers of Authority: certificate holders of certificates of approval 25

75 Disciplinary powers of Licensing Authority in respect of holder of certificate of approval

- (1) If, after a hearing in accordance with **section 71**, the Licensing Authority is satisfied that the grounds for disciplinary action in the complaint or under **section 71(1)(b)**, as the case may be, have been proved, the Licensing Authority— 30
 - (a) must cancel the certificate of approval if **section 76** applies:
 - (b) may cancel the certificate of approval if **section 77** applies: 35
 - (c) may, in addition to cancellation under **paragraph (a)**, or in addition to or instead of cancellation under **para-**

- graph (b)**, do all or any of the following things that may be appropriate:
- (i) make an order suspending the certificate of approval for a period, not exceeding 3 years, that the Licensing Authority specifies in the order: 5
 - (ia) make an order that the certificate holder undergo training:
 - (ib) make an order that the certificate holder work under supervision for a period that the Licensing Authority specifies in the order: 10
 - (ic) make an order that the certificate holder work subject to conditions and for a period that the Licensing Authority specifies in the order:
 - (id) bar the certificate holder from applying for a licence or certificate of approval for a period that the Licensing Authority specifies in the order or until certain conditions are met: 15
 - (ii) fine the certificate holder of the certificate of approval any amount not exceeding \$2,000:
 - (iii) reprimand the certificate holder of the certificate of approval. 20
- (2) If, after a hearing, the Licensing Authority is not satisfied that the grounds for disciplinary action have been proved, the Authority must dismiss the matter.
- (3) A cancellation must be in writing, with reasons, and state the date on which the cancellation takes effect. 25
- (4) While any order of suspension of a certificate of approval made under this section continues in force,—
- (a) the certificate of approval ceases to have effect and must not be renewed; and 30
 - (b) no new licence in respect of the business or (if more than 1) any 1 or more of the businesses to which the certificate relates or new certificate of approval of the same type may be issued to the holder.
- (5) A fine imposed by the Licensing Authority on ~~the holder of a certificate of approval~~ a certificate holder under this section is a debt due by the holder to the Crown, and is recoverable in any court of competent jurisdiction. 35

- (6) The Licensing Authority must as soon as practicable give notice in writing of the decision made by the Authority under this section, and of any penalty imposed by the Authority to—
- (a) the certificate holder ~~of the certificate of approval~~; and
 - (b) the person by whom he or she is for the time being employed; and
 - (c) the Commissioner of Police; and
 - (d) the complainant (if any) if the complainant is not a ~~member of the police constable~~; and
 - (e) the chief investigator of the Complaints, Investigation, and Prosecution Unit.

76 Mandatory grounds for cancellation of certificate of approval

This section applies (and, under **section 75**, cancellation of the certificate of approval is mandatory) if—

- (a) the Licensing Authority is satisfied that 1 or more grounds of disqualification under **section 41 56A** now apply to the certificate holder and the Licensing Authority is satisfied that, because of this, the certificate holder is not suitable to hold a certificate; or
- (b) the Licensing Authority is satisfied that the certificate was issued by ~~fraud or mistake~~: mistake or by reason of fraud on the part of the applicant for the certificate.

77 Discretionary grounds for cancellation of certificate

This section applies (and, under **section 75**, the Authority may cancel the licence) if—

- (a) the certificate holder has breached a condition of the certificate of approval imposed under **section 50(2) 49(7)**;
- (b) the certificate holder has been convicted of an offence under any of the provisions specified in **Schedule 2 1**;
- (c) the certificate holder, in the course of carrying on the business to which the certificate relates, uses any dog and, in respect of that dog, is convicted of an offence against any of the provisions of the Dog Control Act 1996:

- (d) the certificate holder, having been convicted of an offence against this Act is, within 3 years after the date of the conviction, again convicted of an offence against this Act:
- (e) the certificate holder has been guilty of misconduct or gross negligence in the course of ~~the business to which the licence relates~~ carrying out the work to which the certificate relates: 5
- (f) the certificate holder has—
- (i) been convicted outside New Zealand of an offence; or 10
- (ii) had an order imposed in relation to him or her by any court or tribunal outside New Zealand, instead of passing sentence, that he or she be treated or cared for in relation to his or her mental impairment: 15
- (g) the certificate holder is adjudged bankrupt, or makes any assignment for the benefit of his or her creditors, or makes any composition with his or her creditors:
- (h) the Licensing Authority determines that a false statement was made in the application for the certificate. 20

General provisions

78 Evidence of convictions in proceedings before Licensing Authority

For the purposes of any proceedings under this Part, a certificate containing the substance of the conviction of any person of any offence purporting to be signed by the Registrar of the Court by which the person was convicted is sufficient evidence of that conviction without proof of the signature or official character of the person appearing to have signed the certificate. 25 30

Compare: 1974 No 48 s 61

79 Cancelled and suspended licences and certificates of approval must be returned to Licensing Authority

- (1) A person whose licence or certificate of approval is cancelled or suspended under this Part must return it to the Licensing 35

- Authority within 7 days after being notified of the cancellation or suspension.
- (2) A person commits an offence if he or she fails without reasonable excuse to comply with **subsection (1)**.
Compare: 1974 No 48 s 62 5
- 80 Penalties for offences not affected**
Nothing in this Part limits the jurisdiction of any court, or limits or affects any other provisions in this Act relating to the punishment of offences.
Compare: 1974 No 48 s 63 10

Part 5 Licensing Authority and Complaints, Investigation, and Prosecution Unit

Licensing Authority

- 81 Private Security Personnel Licensing Authority** 15
- (1) The Governor-General may, by warrant, on the recommendation of the responsible Minister, appoint a person to be the Private Security Personnel Licensing Authority.
- (2) Subject to **section 82(2)**, the office of Licensing Authority may be held concurrently with any other office. 20
Compare: 1974 No 48 s 5
- 81A Functions of Authority**
- The functions of the Authority are—
- (a) to discharge its functions under **Part 2** in relation to consideration of applications for licences and certificates of approval and the issue of licences and certificates of approval: 25
- (b) to exercise its powers under **Part 4** in relation to the discipline of licensees and certificate holders:
- (c) to discharge its functions under **sections 90 to 92** in relation to the keeping of registers of licensees and certificate holders. 30

82 Qualifications of Licensing Authority

- (1) No person may hold office as Licensing Authority unless he or she is a barrister or solicitor of the High Court of not less than 5 years' standing.
- (2) No public servant may hold office as the Licensing Authority. 5
Compare: 1974 No 48 s 6

83 Term of office of Licensing Authority

- (1) The Licensing Authority—
- (a) must be appointed for a ~~fixed term as determined by the responsible Minister~~ term of 3 years; and 10
- (b) may from time to time be reappointed.
- (2) The Licensing Authority may at any time resign from office by notice in writing to the responsible Minister.
- (3) The Governor-General may, on the recommendation of the responsible Minister, at any time remove the Licensing Authority for inability to perform the functions of office, bankruptcy, neglect of duty, or misconduct, and the person removed is not entitled to compensation. 15
Compare: 1974 No 48 s 7

84 Deputy Private Security Personnel Licensing Authority 20

- (1) The Governor-General may, by warrant, on the recommendation of the responsible Minister, appoint 1 or more Deputy Private Security Personnel Licensing Authorities if the Minister is satisfied that—
- (a) the Licensing Authority is unable, because of absence (whether by reason of leave, ill health, or any other reason), to exercise his or her functions of office; or 25
- (b) the amount of work to be done by the Licensing Authority is more than can reasonably be done by 1 person at that time. 30
- (2) No person who is incapable of holding office as Licensing Authority may be appointed to be a Deputy Licensing Authority.
- (3) A Deputy Licensing Authority must be appointed for a fixed term as determined by the responsible Minister.

- (4) A Deputy Licensing Authority has all the powers, duties, and functions of the Licensing Authority, subject to the control of the Licensing Authority.
- (5) The Governor-General may, on the recommendation of the Responsible Minister at any time remove a Deputy Licensing Authority for inability to perform the functions of office, bankruptcy, neglect of duty, or misconduct, and the person removed is not entitled to compensation. 5
- (6) The fact that a Deputy Licensing Authority exercises the powers, duties, and functions of the Licensing Authority is conclusive evidence of his or her authority to do so. 10
- (7) No appointment of a deputy under this section, and no act done by him or her when acting as Licensing Authority, may be questioned in any proceedings on the grounds that the occasion for the appointment had not arisen or had ceased. 15

Compare: 1974 No 48 s 8

85 Remuneration, and status under certain Acts

- (1) The Licensing Authority and any Deputy Licensing Authority must be paid fees and expenses in accordance with the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies, as if the Licensing Authority were the chairperson of a statutory body and any Deputy Licensing Authority were a member of that body. 20
- (2) For the purposes of the State Sector Act 1988 and the Government Superannuation Fund Act 1956, a Licensing Authority or Deputy Licensing Authority is not, by reason merely of that appointment, employed in the service of the Crown. 25

Compare: 1974 No 48 s 9

86 Licensing Authority to be a Commission of Inquiry for certain purposes 30

- (1) For the purposes of hearing and determining any matter under any of **sections 25, 36, 37, 46, 48, 54, 55, 70, 71, 72, and 75**, the Licensing Authority has the same powers as are conferred on a Commission of Inquiry by sections 4, 10, and 35

~~11 of the Commissions of Inquiry Act 1908 in respect of an inquiry under that Act.~~

- (1) Where under this Act the Licensing Authority has the function of hearing or determining any matter, the Licensing Authority has the same powers as are conferred on a Commission of Inquiry by sections 4, 4B, 4C, 4D, 10, and 11 of the Commissions of Inquiry Act 1908 in respect of an inquiry under that Act. 5
- (2) Subject to the other provisions of this Act, the provisions of the Commissions of Inquiry Act 1908 referred to in **subsection (1)** and sections 5, 6, 7, 9, 12, and 14 of that Act apply. 10
- (3) At the hearing of any matter under any of **sections 25 26, 36, 37, 46 47, 53A, and 54**, the Licensing Authority may receive as evidence any statement, document, information, or matter that in his or her opinion may assist him or her to deal with the matter, whether or not it would be otherwise admissible in a court of law. 15

Compare: 1974 No 48 s 10

87 Protection of Licensing Authority and Deputy Licensing Authorities

Neither the Licensing Authority nor any Deputy Licensing Authority is personally liable for any act done or omission made by him or her while acting in good faith while performing or exercising his or her functions, powers, and duties under this Act. 20

Compare: 1974 No 48 s 11

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88 Administrative and secretarial services

The chief executive of the responsible department must provide for the Licensing Authority and any Deputy Licensing Authorities the administrative and secretarial services that may be necessary to enable those persons to exercise their functions and powers, and perform their duties, under this Act. 30

Compare: 1974 No 48 s 12

89 Delegations

- (1) The Licensing Authority may, in writing, delegate to any person—
- (a) ~~the power under **section 26** to grant an application for a licence without holding a hearing:~~ 5
 - (a) the power under **section 25** to grant an application for a licence without holding an oral hearing, if no notices of objection have been filed:
 - (b) the power under **section 33** to issue a temporary licence certificate of approval: 10
 - (c) the power of the Licensing Authority under **section 38:**
 - (d) ~~the power under **section 47** to grant an application for a certificate of approval without holding a hearing:~~
 - (d) the power under **section 46** to grant an application for a certificate of approval without holding an oral hearing, if no notices of objection have been filed: 15
 - (e) the power under **section 55** to issue a temporary certificate of approval:
 - (f) the functions of the Licensing Authority under **section 90** (registers). 20
- (2) Subject to any general or special directions given or conditions attached to a delegation, the person to whom a delegation is made under this section must perform and may exercise the power or functions in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation. 25
- (3) A person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (4) A delegation may be to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or specified classes of offices. 30
- (5) A delegation is revocable in writing at will, and a delegation does not prevent the exercise of any function, duty, or power by the Licensing Authority. 35
- (6) A delegation continues in force according to its tenor until revoked, even if the Licensing Authority who made it has ceased to hold office.

*Registers***90 Registers**

- (1) The Licensing Authority must establish and maintain the following registers:
- (a) a register of licensees: 5
 - (b) a register of certificate holders.
- (2) The register of licensees must show in relation to each ~~licence holder~~ licensee—
- ~~(a) the full name, residential address, and occupation of the licence holder; and~~ 10
 - (a) the full name and, if the licensee is an individual, the residential address and occupation of the licensee; and
 - (b) the date on which the licence was issued; and
 - (c) the class or classes of private security business in respect of which the licence was issued; and 15
 - (d) every date on which the licence was renewed; and
 - (e) the registered office of the holder (if a company) or principal place of business of the holder (if not a company), and every other place of business specified in the licence; and 20
 - (f) details, including dates, of any suspension or cancellation of the licence; and
 - (g) any other prescribed information.
- (3) The register of certificate holders must show in relation to each certificate holder— 25
- (a) the full name, residential address, and occupation of the certificate holder; and
 - (b) the date on which the certificate of approval was issued; and
 - (c) the class or classes of responsible employee in respect of which the certificate was issued; and 30
 - (d) every date on which the certificate of approval was renewed; and
 - (e) details, including dates, of any suspension or cancellation of the certificate of approval; and 35
 - (f) any other prescribed information.
- (4) The Licensing Authority must determine the form of the registers, and may amend the form from time to time as he or she

considers necessary, providing that the content of the registers is as required by **subsections (2) and (3)**.

Compare: 1974 No 48 s 13

91 Inspection of registers

- (1) The Licensing Authority must take all reasonable steps to ensure— 5
- (a) that the information contained in the registers is available to members of the public to view at all reasonable times; and
 - (b) that members of the public may copy or purchase all, or any part of, the information contained in the registers at no more than a reasonable cost. 10
- (2) Despite **subsection (1)**,—
- (a) no residential address recorded under **section 90(2)(a) or 90(3)(a)** may be made available to the public for inspection; and 15
 - (b) no copy of a register or part of a register provided to a member of the public may contain a residential address recorded under **section 90(2)(a) or 90(3)(a)**. 15

92 Statement by Licensing Authority as to contents of register 20

A written statement of either of the following kinds signed by the Licensing Authority is, in any judicial proceedings, sufficient evidence, until the contrary is proved, of the matters referred to in the statement: 25

- (a) a statement to the effect that any specified person is or is not the holder of a licence or certificate of approval, or was or was not the holder of a licence or certificate of approval at any particular time or during any period specified in the statement; or 30
- (b) a statement as to any entry in a register.

Compare: 1974 No 48 s 15

*Complaints, Investigation, and Prosecution Unit***93 Complaints, Investigation, and Prosecution Unit**

- (1) The chief executive of the ~~responsible~~ department of State designated by the Prime Minister must provide a Complaints, Investigation, and Prosecution Unit consisting of employees of ~~the responsible that~~ department. 5
- (2) The chief executive of the ~~responsible~~ department designated under **subsection (1)** must designate an employee of ~~the responsible that~~ department to be the chief investigator of the unit. 10
- (3) The chief investigator of the unit, and persons authorised by the chief investigator, have the ~~functions and~~ powers conferred on them by this Act.

93A Functions of Complaints, Investigation, and Prosecution Unit 15

The functions of the Complaints, Investigation, and Prosecution Unit are—

- (a) to prepare reports on applications for licences and certificates of approval when requested under **Part 2**;
- (b) to take part in oral hearings of applications for licences and certificates of approval as provided for in **Part 2**; 20
- (c) to prepare reports on complaints against licensees and certificate holders and matters referred by the Authority when requested under **Part 4**;
- (d) to take part in disciplinary hearings as provided for in **Part 4**; 25
- (e) to institute prosecutions for contraventions of this Act, and regulations made under this Act, in the cases that the chief investigator of the unit considers appropriate.

Part 6 30**General and miscellaneous provisions***General provisions***94 Appeals to District Court**

- (1) The following persons have a right of appeal to a District Court against a decision of the Licensing Authority under this Act: 35

- (a) if an application is refused (whether in whole or in part), the applicant; and
- (b) if an applicant is dissatisfied with a condition imposed by the Authority under **section 28(7) or 49(7)**, the applicant; and 5
- (c) if an application is granted (in whole or in part), a person who objected to the granting of the application; and
- (d) if a licence is suspended or cancelled, the licensee; and
- (e) if a certificate of approval is suspended or cancelled, the person whose certificate of approval is suspended or cancelled; and 10
- (f) if the employment of an officer of a company that is a licensee is terminated, the officer; and
- (g) if a licensee or person holding a certificate of approval is fined, the licensee or person; and 15
- (h) if there was a complaint made by a ~~member of the police constable~~ under **Part 4** but the licence or certificate of approval in relation to which the complaint was made was not suspended or cancelled, the Commissioner of Police. 20
- (2) An appeal under this section must be brought within 28 days after the date on which the appellant was notified in writing by the Licensing Authority of the decision appealed against, or within any further period that the court may allow.
- ~~(3) The appeal must be made by way of originating application in accordance with the District Courts Rules 1992, and must be filed in the office of the District Court nearest to the registered office of the licensee or to the place of employment of the holder of the certificate of approval, as the case may require.~~ 25
- (3) The appeal— 30
- (a) must be made by way of originating application in accordance with the District Courts Rules 2009; and
- (b) must be filed in the office of the District Court nearest to the registered office of the licensee (if a company) or principal place of business of the licensee (if not a company), or to the place of employment or engagement of the certificate holder, as the case may require. 35
- (4) On hearing the appeal, the court may—

- (a) confirm, vary, or reverse the decision appealed against;
or
 - (b) in the case of an order suspending a licence or certificate of approval, vary the period of the suspension; or
 - (c) refer the matter back to the Licensing Authority with directions to him or her to reconsider the whole or any specified part of the matter. 5
- (5) Subject to any order of the court, every decision of the Licensing Authority against which an appeal is made continues in force and has effect according to its tenor pending the determination of the appeal. 10
- ~~(6) The decision of the court on the appeal is final.~~
Compare: 1974 No 48 s 64

94A Appeals to High Court on questions of law only

If a party to proceedings before the District Court under **section 94** is dissatisfied with any determination of the court as being erroneous in point of law, the party may, with the leave of the High Court, appeal to the High Court on a question of law only. 15

95 Power of Police and Complaints, Investigation, and Prosecution Unit to require information 20

- (1) Any ~~member of the police constable~~ or a person authorised by the chief investigator of the Complaints, Investigation, and Prosecution Unit (**authorised person**) who has reasonable cause to suspect that a person has committed or is committing or is attempting to commit any offence against this Act may require that person to give particulars of his or her— 25
- (a) name and address; and
 - (b) date of birth.
- (2) If the ~~member of the police constable~~ or authorised person has reasonable grounds to suspect that any particulars provided under **subsection (1)** are false, he or she may require the person to supply satisfactory evidence of those particulars. 30
- (3) If any person, without reasonable excuse, refuses or fails to supply any particulars or evidence when required to do so by any ~~member of the police constable~~ or authorised person under 35

this section, and persists in that refusal or failure after being cautioned by the ~~member of the police constable~~ or authorised person, that person may be arrested, without warrant, by any ~~member of the police constable~~.

- (4) A person commits an offence who, having been required by a ~~member of the police constable~~ or authorised person to supply particulars or evidence under this section, without reasonable excuse,— 5
- (a) refuses or fails to supply the particulars or evidence; or
 - (b) knowingly or recklessly supplies any particulars or evidence that are false in a material respect. 10
- (5) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$20,000.

96 Providing false information

A person commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, who— 15

- (a) is required by or under this Act to provide information to the Licensing Authority, a person authorised by the chief investigator of the Complaints, Investigation, and Prosecution Unit, or a ~~member of the police constable~~; 20
and
- (b) gives false information knowing that it is false or being reckless as to whether it is false.

97 Liability of officers of company for offences

If a company commits an offence against this Act, every officer of the company is guilty of the same offence, and is liable to the same penalty, unless he or she proves that the offence was committed either without his or her knowledge or without his or her consent. 25

98 General penalty for offences

A person who commits an offence under this Act, or against any regulations made under this Act, for which no penalty is otherwise provided by this Act or by the regulations, is liable on summary conviction to a fine not exceeding \$2,000. 30

- 99 Defence to charges involving failure to show or make copy of document, or show or make available any thing**
- (1) It is a defence to a charge under this Act involving a failure, following a request by a ~~member of the police constable~~, to show, make a copy of, and give a document, or a failure to show or make available any other thing, to that ~~member constable~~ if—
- (a) the ~~member constable~~ was not in uniform and did not, at the time of making the request, produce evidence that he or she was a ~~member of the police constable~~; or
- (b) the request was made at a time or in a manner that was unreasonable in the circumstances.
- (2) This section does not limit any other defences that may be available.
- 100 Waiver of ground of disqualification while licence or certificate of approval in force**
- (1) This section applies if, while a licence or certificate of approval is in force, an event occurs that means that 1 or more grounds of disqualification apply to the licensee or certificate holder under ~~section 17, 18, or 41~~, as the case may be.
- (2) The licensee or certificate holder may apply in writing to the Licensing Authority for a waiver of the disqualification.
- (3) The application must be accompanied by the prescribed fee, if any.
- (4) The Licensing Authority may waive the disqualification if the Authority is satisfied that the licensee or certificate holder is, despite the disqualification, suitable to be a licensee or certificate holder, as the case may be, in relation to the class or classes of business to which the licence or certificate relates.
- (5) A waiver of disqualification under this section expires on the expiry of the licence or certificate of approval in respect of which it was granted.

Miscellaneous provisions

101 Licence or certificate not to confer additional powers on holder

- (1) No person, by virtue of being the holder of a licence or certificate of approval, has any power or authority that he or she would not have if this Act had not been passed. 5
- (2) No person, being the holder of a licence or certificate of approval, may—
- (a) either orally or in writing claim, suggest, or imply that, by virtue of his or her licence, certificate of approval, occupation, or business, he or she has any power or authority that he or she does not in law have; or 10
 - (b) use or attempt to use his or her licence or certificate of approval for the purpose of exercising, claiming, suggesting, or implying such a power or authority; or 15
 - (c) either orally or in writing describe or refer to himself or herself as a detective or by any other expression or term containing the word “detective”; or
 - (d) wear any article of clothing, badge, or other article, that is likely to cause any member of the public to believe that the holder of the licence or certificate of approval is a ~~member of the police~~ constable. 20
- (3) Every person who contravenes **subsection (2)** commits an offence and is liable on summary conviction to a fine not exceeding \$20,000. 25
- Compare: 1974 No 48 s 66

102 Misleading conduct

- (1) This section applies to the following classes of private security personnel:
- (a) a property guard, personal guard, crowd controller: 30
 - (b) a property guard employee, personal guard employee, or crowd controller employee.
- (2) No person who does not hold a licence or certificate of approval as a class of person to whom this section applies may, with the intention of misleading any other person to believe that he or she is the holder of a licence or certificate of approval,— 35

- (a) put on, or assume, any dress indicating that he or she is a person of that class; or
 - (b) wear any insignia indicating that he or she is person of that class.
- (3) Every person who contravenes **subsection (1)** commits an offence against this Act. 5

103 Lost licences and certificates of approval

If the Licensing Authority is satisfied that a holder of a licence or certificate of approval has lost his or her licence or certificate of approval the Licensing Authority may issue to the holder a substitute license or certificate of approval— 10

- (a) on payment of the prescribed fee (if any); and
- (b) on receipt of 2 identical photographs of the holder that, in the opinion of the Licensing Authority, comply with the requirements (if any) of any regulations made under this Act. 15

Compare: 1974 No 48 s 67

104 Voluntary surrender of licence or certificate of approval

- (1) A holder of a licence or certificate of approval may at any time surrender his or her licence or certificate of approval by delivering it with a notice in writing to that effect to the Licensing Authority. 20
- (2) On receipt of the documents by the Licensing Authority, the licence or certificate of approval ceases to have effect.
- (3) If a holder of a licence or certificate of approval gives a notice under **subsection (1)** to the Licensing Authority, he or she must also, within 7 days, serve a copy of the notice on the Commissioner of Police. 25
- (4) The surrender of a licence or certificate of approval under **subsection (1)** does not affect the liability of the holder— 30
 - (a) to pay any fees or other money payable in accordance with the provisions of this Act on or before the date on which the licence or certificate of approval would expire if it had not been surrendered; or

- (b) to perform any duty or obligation that he or she was required to perform on or before the date specified in **paragraph (a)**; or
- (c) for any act done or default or omission made before the date of surrender. 5

Compare: 1974 No 48 s 68

105 Change of place of business

- (1) A licensee may at any time apply in writing to the Licensing Authority to amend his or her licence by—
 - (a) changing the registered office of the licensee; or 10
 - (b) specifying any additional place from which the licensee may carry on the business or businesses to which the licence relates; or
 - (c) deleting any place of business specified in the licence.
- (2) Every application must be accompanied by the licence to which it relates. 15
- (3) If the Licensing Authority grants the application, the Authority must endorse the licence accordingly and return it to the licensee, and must also notify the Commissioner of Police in writing of that fact. 20

Compare: 1974 No 48 s 69

106 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 25
 - (a) prescribing forms to be used for the purposes of this Act:
 - (b) prescribing the matters for which fees are payable under this Act and the amount of those fees:
 - (c) providing for the exemption from fees, in whole or in part: 30
 - (d) prescribing the circumstances in which the Licensing Authority may waive or refund a prescribed fee in a particular case:
 - (e) ~~designating all District Courts or any 1 or more District Courts as District Courts where applications may be made under sections 19, 20, and 42:~~ 35

- (e) prescribing the manner in which applications under sections 19, 20, and 42 are to be made:
- (f) prescribing information required to be supplied with an application for a licence or certificate, which may include information to establish the applicant's identity or, in the case of a company applicant, the identity of an officer of the company: 5
- ~~(g) prescribing—~~
- (i) ~~courses of training required to be completed by applicants for licences and certificates of approval or for renewal of licences and certificates of approval:~~ 10
- (ii) ~~the organisation or organisations that may provide the training courses referred to in **subparagraph (i)** (the training providers):~~ 15
- (g) prescribing the competency, knowledge, and skills required by applicants for licences and certificates of approval or for renewal of licences and certificates of approval, including without limitation, by—
- (i) requiring that a particular course of study or training has been successfully completed: 20
- (ii) requiring a person to have met a specified standard or other measure of competency, knowledge, and skills:
- ~~(h) providing for the monitoring of the training providers by the Licensing Authority:~~ 25
- (h) prescribe the organisation or organisations that may provide the courses of study or training referred to in **paragraph (g)(i)** and provide for the monitoring of those organisations by the Licensing Authority: 30
- ~~(i) prescribing the experience or training that is equivalent, or substantially equivalent, to the completion of a training course prescribed under **paragraph (g)**:~~
- (j) prescribing requirements and other matters relating to the making of emergency appointments under **section 56:** 35
- (k) requiring records or other documents to be kept by any class or classes of licensees, certificate holders, or per-

- sons other than licensees who employ or engage crowd controller employees under the Act:
- (f) ~~prescribing codes of conduct for licence holders or certificate holders, and providing that a contravention of a code by a holder of a licence or certificate of approval to whom that code applies is misconduct or is evidence of misconduct by that person in the course of the business to which his or her licence or certificate of approval relates:~~ 5
 - (m) prescribing offences in respect of the contravention of or non-compliance with any regulations made under ~~this Act~~ this section or **section 106A**, and prescribing the amount of any fine that may be imposed in respect of such offence, being an amount not exceeding \$2,000 and, where the offence is a continuing one, a further amount not exceeding \$20 for every day during which the offence has continued: 10
 - (n) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect. 15
- (2) ~~Regulations made under **subsection (1)(g)** may—~~ 20
- (a) ~~prescribe different training requirements in relation to—~~
 - (i) ~~different classes of private security business or different classes of responsible employees:~~ 25
 - (ii) ~~different types of work within a class of private security business or class of responsible employees:~~
 - (b) ~~exempt certain persons from all or part of the prescribed training requirements.~~ 30
- (2) Regulations made under **subsection (1)(g)** may—
- (a) prescribe different requirements in relation to—
 - (i) different classes of private security business or different classes of responsible employees: 35
 - (ii) different types of work within a class of private security business or class of responsible employees:
 - (b) exempt certain persons or classes of persons from all or part of the prescribed requirements.

- (3) Regulations made under **subsection (1)(i)** may—
- (a) prescribe separate requirements or separate codes of conduct in relation to different classes of private security business or different classes of responsible employees: 5
 - (b) prescribe a code of conduct for 1 or more classes of private security business or different classes of responsible employees and not for others.

106A Codes of conduct

- (1) The Governor-General may, from time to time, by Order in Council made on the recommendation of the Minister, make regulations prescribing codes of conduct for licensees or certificate holders. 10
- (2) Regulations made under **subsection (1)** may—
- (a) prescribe separate requirements or separate codes of conduct in relation to different classes of private security business or different classes of responsible employees: 15
 - (b) prescribe a code of conduct for 1 or more classes of private security business or different classes of responsible employees and not for others. 20
- (3) Without limiting **subsection (1)**, the Minister must recommend that the Governor-General make regulations under that subsection, to be in force at all times on and after 1 December 2010, prescribing a code of conduct containing matters that the Minister is satisfied are necessary or desirable in relation to the surveillance of individuals by private investigators and private investigator employees. 25

107 Service of documents

- (1) Any notice or other document that under this Act may be or is required to be given to or served on any applicant for a licence or certificate of approval may be served— 30
- (a) by delivering it to the applicant personally; or
 - (b) by leaving it or sending it by post addressed to the applicant at his or her residential address, principal place of business, or registered office specified in his or her application; or 35

- (c) by leaving it at any address for service specified in his or her application.
- (2) Any notice or other document that under this Act may be or is required to be given to or served on a holder of a licence or certificate of approval may be served by delivering it to him or her personally, or by leaving it or sending it by post addressed to him or her—
- (a) at his or her usual or last known place of residence in New Zealand; or
- (b) in the case of a licensee, at his or her registered office, principal place of business, or at any other place of business specified in his or her licence; or
- (c) in the case of a certificate holder of a certificate of approval, at the place of business at which he or she is employed or engaged.
- (3) In the absence of proof to the contrary, a notice or other document sent by post in accordance with **subsection (1) or (2)** must be treated as having been given to the person at the time when the letter would have been delivered in the ordinary course of post.
- (4) In proving service of the notice, it is sufficient to prove that it was properly addressed and posted.
- (5) Where under this Act any notice or other document is to be given to or served on the Police, it may be given to or served on the senior member, for the time being, of the police in the district or place of residence of the applicant, or holder of the licence or certificate of approval, to whom the notice or other document relates.

Compare: 1974 No 48 s 72

108 Photographs

If under this Act any photograph is to be submitted to the Licensing Authority, the Licensing Authority may require that the photograph comply with the requirements of any regulations made under this Act.

Compare: 1974 No 48 s 72B

109 Civil remedies not affected

Nothing in this Act affects any civil remedy that any person may have against a holder of a licence or certificate of approval in respect of any matter.

Compare: 1974 No 48 s 73

5

Repeals, revocations, and amendments

110 Repeals

The Private Investigators and Security Guards Act 1974 is repealed.

110A Revocations

10

The following enactments are revoked:

(a) the Private Investigators and Security Guards Act Commencement Order 1975 (SR 1975/187);

(b) the Private Investigators and Security Guards Regulations 1975 (SR 1975/188).

15

111 Amendments to other enactments

(1) The Acts listed in **Schedule 2** are amended in the manner indicated in that schedule.

(2) The regulations listed in **Schedule 3** are amended in the manner indicated in that schedule.

20

Transitional and savings provisions

112 Existing licences

(1) A person who, immediately before the commencement of this section, held a licence as a security guard under the Private Investigators and Security Guards Act 1974 is deemed to hold a licence under this Act as—

25

(a) a security guard; and

(b) a private security prisoner guard; and

(c) a bodyguard; and

(d) a security technician; and

30

(e) a security consultant; and

(f) a crowd controller.

(2) A person who, immediately before the commencement of this section, held a licence under the Private Investigators and Se-

curity Guards Act 1974 is deemed to hold a licence under this Act as a private investigator.

- (3) A licensee deemed by **subsection (1) or (2)** to be held under this Act expires on 31 March 2011.
- (4) Nothing in **section 38** applies to a licensee deemed by **subsection (1) or (2)** to be held under this Act. 5

113 Existing certificates of approval

- (1) A person who, immediately before the commencement of this section, held a certificate of approval as a responsible employee in relation to a security guard is deemed to hold a certificate of approval under this Act— 10
 - (a) a property guard employee; and
 - (b) a personal guard employee; and
 - (c) a security technician employee; and
 - (d) a security consultant employee; and 15
 - (e) a crowd controller employee.
- (2) A person who, immediately before the commencement of this section, held a certificate of approval as a responsible employee in relation to a private investigator is deemed to hold a certificate of approval under this Act as a private investigator employee. 20
- (3) A certificate deemed by **subsection (1) or (2)** to be held under this Act expires on 31 March 2011.

112 Existing licences

- (1) A person who, immediately before the commencement of this Act, held a licence as a security guard under the Private Investigators and Security Guards Act 1974 for the classes of business described in section 4(1)(a) or (e) of that Act is deemed to hold a licence under this Act as a property guard and a confidential document destruction agent. 25 30
- (2) A person who, immediately before the commencement of this Act, held a licence as a security guard under the Private Investigators and Security Guards Act 1974 for the classes of business described in section 4(1)(b) or (c) of that Act is deemed to hold a licence under this Act as a security technician. 35

- (3) A person who, immediately before the commencement of this Act, held a licence as a security guard under the Private Investigators and Security Guards Act 1974 for the class of business described in section 4(1)(d) of that Act is deemed to hold a licence under this Act as a security consultant. 5
- (4) A person who, immediately before the commencement of this Act, held a licence as a private investigator under the Private Investigators and Security Guards Act 1974 is deemed to hold a licence under this Act as a private investigator.
- 113 Application of Act to, and expiry of, existing licences** 10
- (1) This section applies to a licence that is deemed by **section 112** to be held under this Act.
- (2) Any matters specified on the licence under section 26(3) or 28(2) of the Private Investigators and Security Guards Act 1974 are deemed to be conditions imposed under **section 28(7)** of this Act. 15
- (3) Nothing in **section 38** applies in respect of the licence.
- (4) The licence expires—
- (a) on the date an application for a licence under this Act is determined, if the licensee applies for the licence before the close of 31 January 2011; or 20
- (b) in every other case, on 31 March 2011.
- 113A Existing certificates of approval**
- (1) A person who, immediately before the commencement of this Act, held a certificate of approval as a responsible employee in relation to a security guard licensed under the Private Investigators and Security Guards Act 1974 to carry on the classes of business described in section 4(1)(a) or (e) of that Act is deemed to hold a certificate of approval under this Act as a property guard employee and a confidential document destruction agent employee. 25 30
- (2) A person who, immediately before the commencement of this Act, held a certificate of approval as a responsible employee in relation to a security guard licensed under the Private Investigators and Security Guards Act 1974 to carry on the classes of business described in section 4(1)(b) or (c) of that Act is 35

deemed to hold a certificate of approval under this Act as a security technician employee.

- (3) A person who, immediately before the commencement of this Act, held a certificate of approval as a responsible employee in relation to a security guard licensed under the Private Investigators and Security Guards Act 1974 to carry on the class of business described in section 4(1)(d) of that Act is deemed to hold a certificate of approval under this Act as a security consultant employee. 5
- (4) A person who, immediately before the commencement of this Act, held a certificate of approval as a responsible employee in relation to a private investigator is deemed to hold a certificate of approval under this Act as a private investigator employee. 10

113B Expiry of existing certificates of approval

- (1) This section applies to a certificate of approval that is deemed by **section 113A** to be held under this Act. 15
- (2) The certificate of approval expires—
- (a) on the date an application for a certificate of approval under this Act is determined, if the certificate holder applies for the certificate before the close of 31 January 2011; or 20
- (b) in every other case, on 31 March 2011.

113C Transition period for business or work of personal guard or crowd controller

- (1) A person who is a personal guard within the meaning of **section 10** is not required to hold a licence under this Act in respect of that class of business until 1 June 2011. 25
- (2) A person who is a crowd controller within the meaning of **section 11** is not required to hold a licence under this Act in respect of that class of business until 1 June 2011. 30
- (3) A person who performs the work of a personal guard employee described in **section 13E** is not required to hold a certificate of approval under this Act in respect of that class of work until 1 June 2011.
- (4) A person who performs the work of a crowd controller employee described in **section 13F** is not required to hold a cer- 35

tificate of approval under this Act in respect of that class of work until 1 June 2011.

114 Applications in progress

- (1) This section applies to any application for a licence or certificate of approval made under the Private Investigators and Security Guards Act 1974 that, immediately before the commencement of this ~~section~~ Act, was not yet determined. 5
- (2) The Private Investigators and Security Guards Act 1974 continues to apply to the application as if it had not been repealed.
- (3) If an application to which this section applies is granted, ~~section 112 or 413~~ **113A** applies to the licence or certificate of approval as if the licence or certificate had been in force immediately before the commencement of this Act. 10

115 Disciplinary proceedings in progress

- (1) This section applies to any complaint made against a licensee or certificate holder under section 53 of the Private Investigators and Security Guards Act 1974 that, immediately before the commencement of this section, was not yet determined. 15
- (2) The Private Investigators and Security Guards Act 1974 continues to apply in respect of the complaint as if it had not been repealed. 20

116 Provisions relating to Registrar

- (1) The Registrar under the Private Investigators and Security ~~Guard~~ Guards Act 1974 remains in office ~~for so long as is required~~ until the close of 30 June 2011 to determine the applications and proceedings referred to in **sections 114 and 115**. 25
- (2) For the purposes of **sections 114 and 115**, the Registrar has all the necessary powers and may exercise, despite the repeal of the Private Investigators and Security ~~Guard~~ Guards Act 1974 by this Act, the powers conferred on the Registrar by that Act. 30
- (2A) After 30 June 2011, any applications or proceedings still to be completed must be referred to the Licensing Authority, and **sections 114 and 115** apply. 35

- (2B) As soon as practicable after 30 June 2011, the Registrar must provide the Licensing Authority with—
- (a) all information that the Registrar holds in respect of applications and proceedings in progress; and
 - (b) the registers kept under section 13 of the Private Investigators and Security Guards Act 1974. 5
- (3) To avoid doubt, nothing in this Act entitles the Registrar to any compensation in respect of the repeal of the Private Investigators and Security Guards Act 1974, including for any salary or allowances that would otherwise be payable for the remainder of the term of an appointment affected by the repeal. 10

117 Savings provision for Order in Council

The Private Investigators (Exclusion of Occupations) Order 1976 (SR 1976/128) continues to have effect and may be amended, revoked, or replaced under **section 12**. 15

Schedule 1

ss 74, 77

**Discretionary grounds for cancellation of
licence or certificate**

- 1 Any of **sections 68, 79, 101, or 102** of this Act.
 - 2 ~~Any provision of the Arms Act 1983.~~ 5
 - 3 Section 29 or 30 of the Summary Offences Act 1981.
 - 4 Sections 3, 4, or 9 of the Trespass Act 1980.
-

Schedule 2
Amendments to Acts

s 111(1)

Dog Control Act 1996 (1996 No 13)

Section Definition of working dog in section 2: repeal paragraph (b)(v) of the definition of **working dog** and substitute: 5

“(v) owned by a property guard as defined in **section 9** of the Private Security Personnel and Private Investigators Act **2008** or a property guard employee as defined in **section ~~13(1)(e)~~ 13D** of that Act, and kept solely or principally for the purpose of doing the things specified in **paragraphs (a) to (c) of section 9(1)(a) to (c)** of that Act; or” 10

Financial Transactions Reporting Act 1996 (1996 No 9)

Section 3(2): omit “security guard within the meaning of section 4 of the Private Investigators and Security Guards Act 1974” and substitute “security technician, security consultant, confidential document destruction agent, or property guard within the meaning of **section 9** of the Private Security Personnel and Private Investigators Act **2008**”. 15 20

Ombudsmen Act 1975 (1975 No 9)

Part 2 of Schedule 1: insert the following item in its appropriate alphabetical order: “Private Security Personnel Licensing Authority”.

Police Act 1958 (1958 No 109)

Section 6(5): Add the following paragraph: 25

“(f) **section 15** of the Private Security Personnel and Private Investigators Act **2008**”.

Privacy Act 1993 (1993 No 28)

Schedule 2: insert in the its appropriate alphabetical order the following item: 30

Private Security Personnel and Private **Section 90**
Investigators Act **2008**

Resource Management Act 1991 (1991 No 69)

Section 38(2)(a): repeal paragraph (a) and substitute:

- “(a) the holder of a licence as a property guard issued under **section 29** of the Private Security Personnel and Private Investigators Act **2008**; or”.

5

Schedule 3 **s ~~109(2)~~ 111(2)**
Amendments to regulations

**Domestic Violence (Public Registers) Regulations 1998 (SR
1998/342)**

Schedule 1: Insert in the appropriate alphabetical order the following 5
item:

Private Security Personnel and Private **Section 90**
Investigators Act **2008**

Land Transport (Driver Licensing) Rule 1999 (SR 1999/100)

Rule 26(2)(f)(iii): omit “security guard” and substitute “personal
guard”.

Rule 26(3): revoke the definition of **security guard** and substitute: 10
“**personal guard** has the meaning given to it in **section 10**
of the Private Security Personnel and Private Investigators Act
2008”.

Land Transport (Road User) Rule 2004 (SR 2004/427)

Rule 7.4(4)(c): omit “security guard’s licence issued under the Pri- 15
vate Investigators and Security Guards Act 1974” and substitute “li-
cence as a property guard under the Private Security Personnel and
Private Investigators Act **2008**”.

Legislative history

11 September 2008
29 April 2009

Introduction (Bill 297–1)
First reading and referral to Justice and Electoral
Committee
