

South Australia

# Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005

An Act to amend the *Gaming Machines Act 1992*, the *Liquor Licensing Act 1997* and the *Security and Investigation Agents Act 1995*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005*.

## 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

## 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Gaming Machines Act 1992*

### 4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *approved* insert:

*approved crowd controller* means a person approved under Part 4 Division 10A of the *Liquor Licensing Act 1997* to act as a crowd controller for licensed premises, but does not include a person whose approval has been revoked or suspended;

- (2) Section 3(1)—after the definition of *approved gaming machine* insert:

*approved gaming machine employee* in relation to the gaming operations conducted on licensed premises means a person who is approved under Part 4 as a gaming machine employee in respect of those operations;

- (3) Section 3(1), definition of *authorised person*—delete the definition and substitute:

*authorised person*, in relation to premises to which a gaming machine licence relates, means—

- (a) the licensee; or
- (b) a responsible person for the licensed premises; or
- (c) an approved gaming machine manager or approved gaming machine employee for the licensed premises; or
- (d) an inspector; or
- (e) a police officer; or
- (f) an approved crowd controller;

- (4) Section 3(1)—after the definition of *the Court* insert:

*criminal intelligence* means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, or to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement;

- (5) Section 3(1)—after the definition of *prescribed gaming machine component* insert:

*responsible person* for licensed premises means a person who is, in accordance with section 97 of the *Liquor Licensing Act 1997*, responsible for supervising and managing the business conducted under the liquor licence in respect of the licensed premises;

## **5—Amendment of section 7—Conduct of proceedings**

- (1) Section 7(2)—delete "subsection (3)" and substitute:  
section 12
- (2) Section 7(3)—delete subsection (3)

## **6—Insertion of Part 2 Division 4**

Part 2—after Division 3 insert:

### **Division 4—Criminal intelligence**

#### **12—Criminal intelligence**

- (1) No information provided by the Commissioner of Police to the Authority or the Commissioner may be disclosed to any person (except the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure) if the information is classified by the Commissioner of Police as criminal intelligence.
- (2) If the Commissioner—
  - (a) refuses an application for a licence, consent or approval, or takes or proposes to take disciplinary action against a licensee, or revokes or proposes to revoke an approval; and
  - (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,

the Commissioner is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the licensee were to continue to be licensed, or that it would be contrary to the public interest if the approval were to continue in force.

- (3) In any proceedings under this Act, the Commissioner—
  - (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
  - (b) may take evidence consisting of or relating to information classified by the Commissioner of Police as criminal intelligence by way of affidavit of a police officer of or above the rank of superintendent.

- (4) If the Commissioner of Police lodges an objection to an application under this Act because of information that is classified by the Commissioner of Police as criminal intelligence—
  - (a) the Commissioner of Police is not required to serve a copy of the notice of objection on the applicant; and
  - (b) the Commissioner must, at least 7 days before the day appointed for the hearing of the application, advise the applicant in writing that the Commissioner of Police has objected to the application on the ground that to grant the application would be contrary to the public interest.
- (5) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

#### **7—Amendment of section 19—Certain criteria must be satisfied by all applicants**

- (1) Section 19(2)(b)—delete paragraph (b) and substitute:
  - (b) the reputation, honesty and integrity (including the creditworthiness) of the person are matters to which consideration must be given; and
- (2) Section 19(2)(c)—before "honesty" insert:

reputation,

#### **8—Insertion of section 20**

After section 19 insert:

##### **20—Applications to be given to Commissioner of Police**

- (1) The Commissioner must give the Commissioner of Police a copy of each application for a licence.
- (2) As soon as reasonably practicable following receipt of an application under subsection (1), the Commissioner of Police—
  - (a) must make available to the Commissioner information about criminal convictions; and
  - (b) may make available to the Commissioner other information to which the Commissioner of Police has access,relevant to whether the application should be granted.

#### **9—Amendment of section 24—Discretion to grant or refuse application**

Section 24—after subsection (2) insert:

- (3) An application for a licence can only be granted if the Commissioner is satisfied that to grant the application would not be contrary to the public interest.

## **10—Amendment of section 28—Certain gaming machine licences only are transferable**

Section 28(4)—delete subsection (4) and substitute:

- (4) For the purpose of determining whether a person is a fit and proper person to hold a licence or to occupy a position of authority in a trust or corporate entity that holds a licence—
  - (a) the Commissioner may cause the person's photograph and fingerprints to be taken; and
  - (b) the reputation, honesty and integrity (including the creditworthiness) of the person are matters to which consideration must be given; and
  - (c) the reputation, honesty and integrity of the person's known associates (including persons who are relatives) must also be considered.

## **11—Insertion of sections 28AA and 28AAB**

After section 28 insert:

### **28AA—Applications to be given to Commissioner of Police**

- (1) The Commissioner must give the Commissioner of Police a copy of each application for consent under section 28.
- (2) As soon as reasonably practicable following receipt of an application under subsection (1), the Commissioner of Police—
  - (a) must make available to the Commissioner information about criminal convictions; and
  - (b) may make available to the Commissioner other information to which the Commissioner of Police has access,relevant to whether the application should be granted.

### **28AAB—Discretion to grant or refuse application under section 28**

- (1) Subject to this Act, the Commissioner has an unqualified discretion to grant or refuse an application for consent under section 28 on any ground, or for any reason, that the Commissioner thinks fit.
- (2) The Commissioner should not grant an application for consent under section 28 as a matter of course without a proper inquiry into its merits (whether or not the Commissioner of Police has intervened in the proceedings or there are any objections to the application).
- (3) An application for consent under section 28 can only be granted if the Commissioner is satisfied that to grant the application would not be contrary to the public interest.

## **12—Amendment of section 30—Objections**

Section 30(2)—delete "A copy" and substitute:

Subject to section 12, a copy

## **13—Amendment of section 31—Intervention by Commissioner of Police**

Section 31(1)—delete subsection (1) and substitute:

- (1) The Commissioner of Police may intervene in any proceedings before the Commissioner on an application under this Part for the purpose of introducing evidence or making submissions and, in particular, may intervene on the question of—
  - (a) whether a person is a fit and proper person; or
  - (b) whether, if the application were to be granted, public disorder or disturbance would be likely to result; or
  - (c) whether to grant the application would be contrary to the public interest.

## **14—Amendment of section 36—Cause for disciplinary action against licensees**

(1) Section 36—after paragraph (g) insert:

- (h) it would be contrary to the public interest if the licensee were to continue to be licensed.

(2) Section 36—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) In determining whether there is proper cause for disciplinary action against a licensee under subsection (1), regard may be had to such evidence of the conduct (no matter when the conduct is alleged to have occurred) of the licensee or persons with whom the licensee associates (or has associated at any relevant time) as the Commissioner considers relevant, including information that existed at the time the licence was granted, regardless of whether that information was known or could have been made known to the Commissioner at that time.

## **15—Amendment of section 36A—Inquiry**

Section 36A(2)—delete "section, and" and substitute:

section and, subject to section 12,

## **16—Insertion of section 41A**

After section 41 insert:

### **41A—Applications to be given to Commissioner of Police**

- (1) The Commissioner must give the Commissioner of Police a copy of each application for approval made under this Part other than under section 40 or 41.

- (2) As soon as reasonably practicable following receipt of an application under subsection (1), the Commissioner of Police—
  - (a) must make available to the Commissioner information about criminal convictions; and
  - (b) may make available to the Commissioner other information to which the Commissioner of Police has access,relevant to whether the application should be granted.

### **17—Amendment of section 42—Discretion to grant or refuse approval**

- (1) Section 42—after subsection (1) insert:
  - (1a) An application for approval can only be granted if the Commissioner is satisfied that to grant the application would not be contrary to the public interest.
- (2) Section 42(6)(a)—delete paragraph (a) and substitute:
  - (a) the reputation, honesty and integrity (including the creditworthiness) of the person; and
- (3) Section 42(6)(b)—before "honesty" insert:

reputation,

### **18—Amendment of section 43—Intervention by Commissioner of Police**

Section 43(1)—delete subsection (1) and substitute:

- (1) The Commissioner of Police may intervene in proceedings before the Commissioner on an application for approval under this Part other than under section 40 or 41 for the purpose of introducing evidence or making submissions and, in particular, may intervene on the question of whether the person to whom the application relates is a fit and proper person or whether to grant the application would be contrary to the public interest.

### **19—Amendment of section 44—Revocation of approval**

Section 44(2)(a)—after "including" insert:

, subject to section 12,

### **20—Amendment of section 58—Powers in relation to minors in gaming areas**

Section 58—after subsection (4) insert:

- (5) An authorised person must comply with any procedures prescribed under section 116(3a) of the *Liquor Licensing Act 1997* in relation to the removal by authorised persons (within the meaning of that Act) of minors from licensed premises.

## **21—Amendment of section 60—Power to remove persons who have been barred**

Section 60—after subsection (2) insert:

- (3) An authorised person must comply with any procedures prescribed under the *Liquor Licensing Act 1997* in relation to the removal by authorised persons (within the meaning of that Act) of persons from licensed premises.

## **22—Amendment of section 67—Power to remove offenders**

- (1) Section 67(1)—delete "The holder of a gaming machine licence or an approved gaming machine manager for the licensed premises, if satisfied that a person who is in a gaming area on the premises" and substitute:

An authorised person, if satisfied that a person who is in a gaming area on licensed premises

- (2) Section 67(3)—delete "The holder of a gaming machine licence or an approved gaming machine manager for the licensed premises" and substitute:

An authorised person

- (3) Section 67(3)—delete "the premises" and substitute:

licensed premises

- (4) Section 67—after subsection (4) insert:

(4a) The regulations may prescribe procedures to be observed by authorised persons in or in connection with the prevention of persons from entering gaming areas.

(4b) An authorised person must comply with any procedures—

- (a) prescribed under subsection (4a); or
- (b) prescribed under the *Liquor Licensing Act 1997* in relation to the removal by authorised persons (within the meaning of that Act) of persons from licensed premises.

## **23—Insertion of section 70A**

Part 6—after section 70 insert:

### **70A—Procedure in relation to criminal intelligence**

In any proceedings under this Part, the Court or the Authority—

- (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and

- (b) may take evidence consisting of or relating to information classified by the Commissioner of Police as criminal intelligence by way of affidavit of a police officer of or above the rank of superintendent.

## 24—Insertion of section 85A

After section 85 insert:

### 85A—Destruction of fingerprints

- (1) This section applies—
  - (a) to fingerprints taken under section 19, 28 or 42 in connection with an application for a licence, consent or approval if the application is refused; or
  - (b) to fingerprints taken under section 19, 28 or 42 in connection with an application for a licence, consent or approval if the application is granted and—
    - (i) in the case of a licence—the licence is revoked or surrendered, or the holder, being a body corporate, dissolved; or
    - (ii) in the case of an approval—the approval is revoked.
- (2) A person whose fingerprints have been taken for the purposes of this Act may, if the fingerprints are fingerprints to which this section applies, apply to the Commissioner of Police to have the fingerprints, and any copies of the fingerprints, destroyed.
- (3) The Commissioner of Police may grant or refuse the application as the Commissioner of Police sees fit.

## Part 3—Amendment of *Liquor Licensing Act 1997*

### 25—Amendment of section 4—Interpretation

- (1) Section 4—after the definition of *adjacent* insert:

*approved crowd controller* means a person approved under Part 4 Division 10A to act as a crowd controller for licensed premises, but does not include a person whose approval has been suspended or revoked;
- (2) Section 4—after the definition of *Court* insert:

*criminal intelligence* means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, or to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement;

## **26—Amendment of section 17—Division of responsibilities between the Commissioner and the Court**

- (1) Section 17(b)—after "the Commissioner must" insert:

, subject to subsection (2),
- (2) Section 17—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
  - (2) The Commissioner is not required to attempt conciliation in relation to an application to which an objection has been lodged by the Commissioner of Police on the ground that to grant the application would be contrary to the public interest.

## **27—Insertion of Part 2 Division 6**

Part 2—after Division 5 insert:

### **Division 6—Criminal intelligence**

#### **28A—Criminal intelligence**

- (1) No information provided by the Commissioner of Police to the Commissioner may be disclosed to any person (except the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure) if the information is classified by the Commissioner of Police as criminal intelligence.
- (2) If a licensing authority—
  - (a) refuses an application for a licence, the transfer of a licence or an approval, or takes disciplinary action against a person, or revokes or proposes to revoke an approval under Part 4 Division 10A; and
  - (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,the licensing authority is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the person were to be or continue to be licensed or approved, or that it would be contrary to the public interest if the approval were to continue in force.
- (3) If the Commissioner of Police lodges an objection to an application under Part 4 because of information that is classified by the Commissioner of Police as criminal intelligence—
  - (a) the Commissioner of Police is not required to serve a copy of the notice of objection on the applicant; and

- (b) the licensing authority must, at least 7 days before the day appointed for the hearing of the application, advise the applicant in writing that the Commissioner of Police has objected to the application on the ground that to grant the application would be contrary to the public interest.
- (4) If the Commissioner or the Commissioner of Police lodges a complaint under Part 8 in respect of a person because of information that is classified by the Commissioner of Police as criminal intelligence, the complaint need only state that it would be contrary to the public interest if the person were to be or continue to be licensed or approved.
- (5) In any proceedings under this Act, the Commissioner, the Court or the Supreme Court—
  - (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
  - (b) may take evidence consisting of or relating to information classified by the Commissioner of Police as criminal intelligence by way of affidavit of a police officer of or above the rank of superintendent.
- (6) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

## **28—Insertion of section 51A**

After section 51 insert:

### **51A—Applications to be given to Commissioner of Police**

- (1) This section applies to an application for—
  - (a) the grant of a licence (other than a temporary or limited licence); or
  - (b) the transfer of a licence; or
  - (c) approval of a person or persons as a responsible person or responsible persons for a business under a licence; or
  - (d) approval of a person to assume a position of authority in a trust or corporate entity that holds a licence; or
  - (e) the conversion of a temporary licence into a permanent licence; or
  - (f) approval of an agreement or arrangement under which an unlicensed person may participate in the proceeds of the business carried on under a licence.

- (2) The Commissioner—
  - (a) must give a copy of each application to which this section applies; and
  - (b) may give a copy of any other application,  
to the Commissioner of Police.
- (3) As soon as reasonably practicable following receipt of an application under subsection (2), the Commissioner of Police—
  - (a) must make available to the Commissioner information about criminal convictions; and
  - (b) may make available to the Commissioner other information to which the Commissioner of Police has access,  
relevant to whether the application should be granted.

### **29—Amendment of section 53—Discretionary powers of licensing authority**

Section 53—after subsection (1) insert:

- (1a) An application must be refused if the licensing authority is satisfied that to grant the application would be contrary to the public interest.

### **30—Amendment of section 55—Factors to be taken into account in deciding whether a person is fit and proper**

(1) Section 55(1)—delete subsection (1) and substitute:

- (1) In deciding whether a person is a fit and proper person for a particular purpose under this Act, a licensing authority must take into consideration—
  - (a) the reputation, honesty and integrity (including the creditworthiness) of the person; and
  - (b) the reputation, honesty and integrity of people with whom the person associates.

(2) Section 55—after subsection (2) insert:

- (3) For the purposes of determining whether a person is a fit and proper person for a particular purpose under this Act, the Commissioner may cause the person's photograph and fingerprints to be taken.

### **31—Insertion of Part 4 Division 10A**

Part 4—after Division 10 insert:

#### **Division 10A—Approval of crowd controllers**

##### **71A—Approval of crowd controllers**

- (1) The Commissioner may, on application, approve a person to act as a crowd controller for licensed premises.

- (2) The Commissioner cannot approve a person to act as a crowd controller unless the person has the appropriate knowledge, experience and skills for the purpose.
- (3) If an applicant for approval does not have the appropriate knowledge, experience and skills to act as a crowd controller, the Commissioner may nevertheless approve the person and impose a condition on the approval that the person undertake specified accredited training within a specified time of obtaining the approval.

#### **71B—Use of force by approved crowd controller**

An approved crowd controller must not use force to remove a person from licensed premises except under the direct supervision of the licensee or the responsible person for the premises.

#### **71C—Revocation of approval**

- (1) The Commissioner has an unqualified discretion to revoke an approval given under this Division on such ground or for such reason as he or she thinks fit.
- (2) The Commissioner must, before exercising powers under subsection (1) in relation to a person—
  - (a) give written notice to the person of the proposed revocation, including, subject to section 28A, a statement of the reasons that the Commissioner considers justify the revocation; and
  - (b) allow the person a period of 21 days (or such longer period as the Commissioner may in a particular case allow) to show cause why the approval should not be revoked.
- (3) The Commissioner may suspend an approval pending final determination of the question as to whether the approval should be revoked.
- (4) On revoking an approval, the Commissioner must cause notice of the revocation to be given, personally or by post, to all persons affected by the revocation.

#### **71D—Application of Division**

This Division is in addition to, and does not derogate from, the *Security and Investigation Agents Act 1995*.

### **32—Insertion of section 75A**

Part 4 Division 13—before section 76 insert:

#### **75A—Intervention by Commissioner of Police**

The Commissioner of Police may intervene in proceedings before a licensing authority for the purpose of introducing evidence, or making submissions, on any question before the authority and, in particular, may, if the proceedings are in connection with an application under this Part, intervene on the question of—

- (a) whether a person is a fit and proper person; or
- (b) whether, if the application were to be granted, public disorder or disturbance would be likely to result; or
- (c) whether to grant the application would be contrary to the public interest.

### **33—Amendment of section 76—Other rights of intervention**

Section 76(1)—delete subsection (1)

### **34—Amendment of section 77—General right of objection**

Section 77(2)—delete "A copy" and substitute:

Subject to section 28A, a copy

### **35—Amendment of section 116—Power to require minors to leave licensed premises**

- (1) Section 116—after subsection (3) insert:
  - (3a) The regulations may prescribe procedures to be observed by authorised persons in or in connection with the removal of minors from licensed premises.
  - (3b) An authorised person must comply with any procedures prescribed under subsection (3a).
- (2) Section 116(4), definition of *authorised person*, (a)—delete "or an agent or employee of the licensee"
- (3) Section 116(4), definition of *authorised person*—after paragraph (c) insert:
  - (d) an approved crowd controller;

### **36—Amendment of section 118—Application of Part**

Section 118—after its present contents (now to be designated as subsection (1)) insert:

- (2) This Part does not apply to a person approved as a crowd controller under Part 4 Division 10A.

### **37—Amendment of section 119—Cause for disciplinary action**

- (1) Section 119(1)(b)—after subparagraph (vi) insert:
  - (via) if there has been a breach of a provision of this Act or the *Gaming Machines Act 1992* relating to the prevention of a person from entering, or the removal of a person from, licensed premises; or
- (2) Section 119(1)—after paragraph (d) insert:
  - (e) if the person is or has been licensed or approved under this Act but it would be contrary to the public interest if the person were to be or continue to be licensed or approved.
- (3) Section 119—after subsection (1) insert:
  - (2) In determining whether there is proper cause for disciplinary action against a person who is or has been licensed or approved under this Act, regard may be had to such evidence of the conduct (no matter when the conduct is alleged to have occurred) of the person or persons with whom the person associates (or has associated at any relevant time) as the Court considers relevant, including information that existed at the time the licence or approval was granted, regardless of whether that information was before or could have been brought before the licensing authority at that time.

### **38—Amendment of section 120—Disciplinary action before the Court**

- (1) Section 120(1)—delete ", on grounds stated in the complaint,"
- (2) Section 120—after subsection (1) insert:
  - (1a) The complaint must, subject to section 28A, state the grounds for disciplinary action.

### **39—Amendment of section 124—Power to refuse entry or remove persons guilty of offensive behaviour**

- (1) Section 124—after subsection (1) insert:
  - (1a) The regulations may prescribe procedures to be observed by authorised persons in or in connection with the prevention of persons from entering, and the removal of persons from, licensed premises.
  - (1b) An authorised person must comply with any procedures prescribed under subsection (1a).
- (2) Section 124(6), definition of *authorised person*, (a)—delete "or an agent or employee of the licensee"
- (3) Section 124(6), definition of *authorised person*—after paragraph (c) insert:
  - (d) an approved crowd controller.

#### **40—Amendment of section 127—Power to remove person who is barred**

- (1) Section 127—after subsection (2) insert:
  - (2a) The regulations may prescribe procedures to be observed by authorised persons in or in connection with the prevention of persons from entering, and the removal of persons from, licensed premises.
  - (2b) An authorised person must comply with any procedures prescribed under subsection (2a).
- (2) Section 127(3), definition of *authorised person*, (a)—delete "or an agent or employee of the licensee"
- (3) Section 127(3), definition of *authorised person*—after paragraph (c) insert:
  - (d) an approved crowd controller.

#### **41—Insertion of section 131A**

Part 11 Division 1—before section 132 insert:

##### **131A—Failing to leave licensed premises on request**

- (1) A person on licensed premises who—
  - (a) —
    - (i) is under the age of 18 years and on the licensed premises for the purpose of consuming liquor in contravention of this Act; or
    - (ii) is intoxicated or behaving in an offensive or disorderly manner; or
    - (iii) is barred from the licensed premises under Part 9 Division 3; or
    - (iv) is otherwise on the premises in contravention of this Act; and
  - (b) fails, without reasonable excuse, to leave the licensed premises immediately on being requested to do so by an authorised person,

is guilty of an offence.  
Maximum penalty: \$1 250.
- (2) In this section—

*authorised person* means—

  - (a) the licensee; or
  - (b) a responsible person for the licensed premises; or
  - (c) an inspector or a police officer; or
  - (d) an approved crowd controller.

#### 42—Insertion of section 137A

After section 137 insert:

##### 137A—Destruction of fingerprints

- (1) This section applies—
  - (a) to fingerprints taken under section 55 in connection with an application for a licence or approval if the application is refused; or
  - (b) to fingerprints taken under section 55 in connection with an application for a licence or approval if the application is granted and—
    - (i) in the case of a licence—the licence expires or is revoked or surrendered, or the holder, being a body corporate, dissolved; or
    - (ii) in the case of an approval—the approval is revoked.
- (2) A person whose fingerprints have been taken for the purposes of this Act may, if the fingerprints are fingerprints to which this section applies, apply to the Commissioner of Police to have the fingerprints, and any copies of the fingerprints, destroyed.
- (3) The Commissioner of Police may grant or refuse the application as the Commissioner of Police sees fit.

#### Part 4—Amendment of *Security and Investigation Agents Act 1995*

##### 43—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *agent* insert:

*approved psychological assessment* means a form of psychological assessment approved by the Commissioner for the purpose of determining whether a person is fit and proper to hold a security agents licence;
- (2) Section 3—after the definition of *Court* insert:

*criminal intelligence* means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, or to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement;
- (3) Section 3, definition of *director*—after paragraph (b) insert:

and

  - (c) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the body corporate or who has the capacity to affect significantly the body corporate's financial standing;

- (4) Section 3—after the definition of *director* insert:

*holder of a security agents licence* includes the holder of a security agents licence that has been suspended;

- (5) Section 3—after the definition of *security agent* insert:

*security agents licence* includes a restricted security agents licence;

#### **44—Insertion of sections 5A and 5B**

Part 1—after section 5 insert:

##### **5A—Enforcement**

- (1) The powers of authorised officers under sections 77 and 78 of the *Fair Trading Act 1987* may be exercised by police officers for the enforcement of this Act, and those sections apply for that purpose as if police officers were authorised officers.
- (2) However, section 78(4) of the *Fair Trading Act 1987* does not apply to a police officer in uniform.

##### **5B—Criminal intelligence**

- (1) No information provided by the Commissioner of Police to the Commissioner may be disclosed to any person (except the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure) if the information is classified by the Commissioner of Police as criminal intelligence.
- (2) If the Commissioner—
  - (a) refuses an application for a security agents licence, or imposes a condition on a security agents licence, or suspends a security agents licence; and
  - (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,

the Commissioner is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the licence were to continue in force without the condition, or that it would be contrary to the public interest if the licensee were to continue to be licensed.

- (3) If the Commissioner of Police objects to an application under section 8A because of information that is classified by the Commissioner of Police as criminal intelligence, the Commissioner must, as soon as reasonably practicable after receiving the notice of objection, instead of serving a copy of the notice of objection on the applicant, advise the applicant in writing that the Commissioner of Police has objected to the application on the ground that to grant the application would be contrary to the public interest.

- (4) If the Commissioner or the Commissioner of Police lodges a complaint under Part 4 because of information that is classified by the Commissioner of Police as criminal intelligence, the complaint need only state that it would be contrary to the public interest if the person specified in the complaint were to be or continue to be licensed.
- (5) In any proceedings under this Act, the Commissioner or the Court—
  - (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
  - (b) may take evidence consisting of or relating to information classified by the Commissioner of Police as criminal intelligence by way of affidavit of a police officer of or above the rank of superintendent.
- (6) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

#### **45—Insertion of sections 8A to 8C**

After section 8 insert:

#### **8A—Applications for security agents licence to be furnished to Commissioner of Police**

- (1) The Commissioner must, in relation to each application for a security agents licence—
  - (a) give the Commissioner of Police a copy of the application; or
  - (b) notify the Commissioner of Police of the identity of the applicant or, if the applicant is a body corporate, the identity of each director of the body corporate.
- (2) As soon as reasonably practicable following receipt of an application, or information in respect of an application, under subsection (1), the Commissioner of Police—
  - (a) must make available to the Commissioner information about criminal convictions; and
  - (b) may make available to the Commissioner other information to which the Commissioner of Police has access,relevant to whether the application should be granted.

- (3) The Commissioner of Police may, following receipt of an application, or information in respect of an application, under subsection (1), object to the application by notice in writing provided to the Commissioner within the prescribed period.
- (4) A notice of objection under subsection (3) must state grounds for the objection.
- (5) Subject to section 5B, a copy of the notice of objection must be served by the Commissioner on the applicant as soon as reasonably practicable after the notice is received by the Commissioner.
- (6) The Commissioner must, before deciding whether to grant or refuse the application, give the applicant a reasonable opportunity to respond to the notice of objection.

**8B—Applicant for security agents licence must be required to provide fingerprints**

- (1) If a person applies for a security agents licence, the Commissioner must, by notice in writing, request—
  - (a) if the person is a natural person—the person; and
  - (b) if the person is a body corporate—each director of the body corporate,

to attend at a specified time and place for the purpose of having his or her fingerprints taken by a police officer.
- (2) If a person fails to attend for the taking of fingerprints in accordance with a request under subsection (1), the Commissioner must, by notice in writing, require the person, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to make good the default.
- (3) If the person fails to comply with the notice under subsection (2), the Commissioner must, without further notice, refuse the application (but may keep the fee that accompanied the application).
- (4) If the Commissioner has requested a person to attend for the taking of fingerprints under subsection (1), the Commissioner is not required to consider the application in relation to which the request has been made until the fingerprints have been taken and relevant information provided to the Commissioner by the Commissioner of Police in accordance with this section.
- (5) As soon as reasonably practicable after fingerprints have been taken from a person by a police officer pursuant to a request under this section, the Commissioner of Police must make available to the Commissioner such information to which the Commissioner of Police has access about the identity, antecedents and criminal history of the person as the Commissioner of Police considers relevant.

### **8C—Applicant for security agents licence may be required to undergo psychological assessment**

- (1) If an applicant for a security agents licence is seeking authorisation to perform the function of controlling crowds, the Commissioner may, for the purpose of determining whether the applicant is fit and proper to hold such a licence, request the applicant to take part, at the cost of the applicant, in an approved psychological assessment.
- (2) If a person fails to take part in a psychological assessment in accordance with a request under subsection (1), the Commissioner may, by notice in writing, require the person, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to make good the default.
- (3) If the person fails to comply with the notice under subsection (2), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.
- (4) If the Commissioner has requested a person to take part in a psychological assessment under subsection (1), the Commissioner is not required to consider the application in relation to which the request has been made until the applicant has been assessed and the results of the assessment provided to the Commissioner.

### **46—Amendment of section 9—Entitlement to be licensed**

- (1) Section 9(1)—delete "A natural" and substitute:  
Subject to section 9A, a natural
- (2) Section 9(2)—delete "A body corporate" and substitute:  
Subject to section 9A, a body corporate

### **47—Insertion of section 9A**

After section 9 insert:

#### **9A—Factors to be taken into account in deciding whether to grant application for security agents licence**

- (1) In deciding whether a person is a fit and proper person to hold a security agents licence, or to be the director of a body corporate that is the holder of a security agents licence, the Commissioner must take into consideration—
  - (a) the reputation, honesty and integrity of the person; and
  - (b) the reputation, honesty and integrity of people with whom the person associates.
- (2) If the Commissioner of Police has objected to an application for a security agents licence under section 8A(3), the Commissioner must take into consideration the grounds for the objection when assessing the application.

- (3) An application for a security agents licence can only be granted if the Commissioner is satisfied that to grant the application would not be contrary to the public interest.

#### **48—Amendment of section 11—Appeals**

- (1) Section 11—after subsection (1) insert:
  - (1a) The Commissioner of Police may appeal to the Court against a decision of the Commissioner granting an application for a security agents licence.
- (2) Section 11(3)—delete "The Commissioner" and substitute:

Subject to section 5B, the Commissioner
- (3) Section 11(3)—after "the applicant" insert:

or the Commissioner of Police
- (4) Section 11(4)—after "the applicant" insert:

or the Commissioner of Police

#### **49—Insertion of sections 11AB to 11AD**

After section 11A insert:

##### **11AB—Power of Commissioner to require security agent to provide fingerprints**

- (1) The Commissioner may, by notice in writing, require—
  - (a) a natural person who is the holder of a security agents licence; or
  - (b) a director of a body corporate that is the holder of a security agents licence,

to attend at a specified time and place for the purpose of having his or her fingerprints taken by a police officer.
- (2) As soon as reasonably practicable after fingerprints have been taken from a person by a police officer pursuant to a requirement under subsection (1), the Commissioner of Police must make available to the Commissioner such information to which the Commissioner of Police has access about the identity, antecedents and criminal history of the person as the Commissioner of Police considers relevant.

##### **11AC—Power of Commissioner to require security agents authorised to control crowds to undertake training**

- (1) The Commissioner may, by notice in writing, require the holder of a security agents licence that authorises the licensee to perform the function of controlling crowds to complete an approved security industry training course within a period specified by the Commissioner.

(2) If a licensed security agent has been required by the Commissioner to complete a training course under subsection (1), the security agent must, when next lodging an annual return following the end of the period within which he or she has been required to complete the course, provide the Commissioner with evidence that the course has been completed to a satisfactory standard.

(3) In this section—

*annual return* means the return required to be lodged by a licensed agent under section 12(2)(b);

*approved security industry training course* means a course of training approved by the Commissioner for the purposes of this Act.

### **11AD—Power of Commissioner to require security agents authorised to control crowds to take part in psychological assessment**

The Commissioner may, for the purpose of determining whether the holder of a security agents licence that authorises the licensee to perform the function of controlling crowds is a fit and proper person, by notice in writing, require the licensee to attend at a specified time and place for the purpose of taking part in an approved psychological assessment.

### **50—Amendment of section 12—Duration of licence and annual fee and return etc**

(1) Section 12(3)—delete "under section 11A" and substitute:

or requirement under section 11A, 11AB, 11AC or 11AD

(2) Section 12(4)—delete "28 days after service of the notice" and substitute:

a time fixed by the notice (which may not be less than 28 days after service of the notice)

### **51—Amendment of section 12A—Employment of security agents or investigation agents**

(1) Section 12A—delete "an agent" and substitute:

a security agent or investigation agent

(2) Section 12A—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) A person (whether licensed under this Act or not) must not engage another to perform the function of controlling crowds unless the person personally performing the function holds a licence authorising him or her to do so.

Maximum penalty: \$20 000.

## 52—Insertion of Part 3A

After Part 3 insert:

### **Part 3A—Regulation of security agents**

#### **Division 1—Suspension, cancellation and disqualification**

##### **23A—Circumstances in which Commissioner may suspend security agents licence**

- (1) Subject to section 23B, if—
  - (a) the holder of a security agents licence, or a director of a body corporate that is the holder of a security agents licence, is charged with an offence of a class specified by regulation in relation to the functions authorised by the licence; or
  - (b) the Commissioner is satisfied, for any other reason, that it would be contrary to the public interest if the holder of a security agents licence were to continue to be licensed,the Commissioner may, by notice in writing to the holder of the licence (a *suspension notice*), suspend the licence for a specified period or until further notice.
- (2) Suspension of a licence under this section takes effect immediately on service of a suspension notice advising that the licence has been suspended.
- (3) A person on whom a suspension notice has been served may, within the period of 21 days following service of the notice, make written representations to the Commissioner as to why his or her security agents licence should not be suspended.
- (4) The Commissioner must, at the end of the period of 28 days following service of a suspension notice under this section—
  - (a) confirm or revoke the suspension; and
  - (b) advise the holder of the licence in writing of the Commissioner's decision; and
  - (c) if the holder of the licence has surrendered the licence and the Commissioner's decision is to revoke the suspension—return the licence to the holder of the licence.
- (5) The Commissioner must, in determining whether to confirm or revoke suspension of a security agents licence, have regard to any representations received from the holder of the licence under subsection (3).
- (6) The Commissioner may, at any time, on his or her own initiative, or on application by a person whose licence is suspended, revoke the suspension of a security agents licence under this section.

### **23B—Circumstances in which Commissioner must suspend security agents licence**

- (1) If the holder of a security agents licence that authorises the licensee to perform the function of controlling crowds is charged by a police officer or the Director of Public Prosecutions with an offence of a class specified by regulation in relation to the functions authorised by the licence, the Commissioner must, by notice in writing to the holder of the licence (a *suspension notice*), suspend the licence until further notice.
- (2) Suspension of a licence under this section takes effect immediately on service of a suspension notice advising that the licence has been suspended.
- (3) Suspension of a licence under this section may not be revoked by the Commissioner unless—
  - (a) the holder of the licence has been found not guilty by a court of the criminal charges relevant to the licence having been suspended, or those charges have been withdrawn or dismissed; and
  - (b) the Commissioner is satisfied that revocation of the suspension would not be contrary to the public interest.
- (4) The Commissioner must, as soon as reasonably practicable after becoming aware that all charges relevant to suspension of a licence under this section have been finalised—
  - (a) confirm or revoke the suspension; and
  - (b) advise the holder of the licence in writing of the confirmation or revocation; and
  - (c) if the holder of the licence has surrendered the licence and the suspension is revoked—return the licence to the licence holder.

### **23C—Content of suspension notice**

- (1) A suspension notice must include—
  - (a) subject to section 5B, a statement of the Commissioner's reasons for the suspension; and
  - (b) in the case of a notice under section 23A, a statement that—
    - (i) the Commissioner is required, at the end of 28 days following service of the notice, to confirm or revoke the suspension; and
    - (ii) the holder of the licence may, within 21 days of having received the notice, provide the Commissioner with reasons why the licence should not be suspended; and

- (c) a direction that the person must, within 7 days of service of the notice, surrender the suspended licence to the Commissioner.
- (2) A person who, without reasonable excuse, fails to surrender his or her licence in accordance with a direction under subsection (1) is guilty of an offence.  
Maximum penalty: \$1 250.

### **23D—Service of suspension notice**

- (1) Subject to this section, a suspension notice must be served personally on the person whose licence is to be suspended by the notice.
- (2) If personal service cannot be effected promptly, it will be sufficient service for the notice—
  - (a) to be left for the person with someone apparently over the age of 16 years; or
  - (b) to be posted in an envelope addressed to the person, at the person's address for service.
- (3) The person's address for service is the address of which the Commissioner has been last notified in writing by the person as the person's address for service.

### **23E—Appeal**

- (1) A person whose security agents licence has been suspended under section 23A or 23B may appeal to the Court against the decision of the Commissioner to suspend the licence.
- (2) The Court must hear and determine an appeal under this section as expeditiously as possible.
- (3) If an appeal under this section is not determined within 3 months of the commencement of the appeal, the suspension to which the appeal relates will, unless the Court orders otherwise, be stayed until the appeal is finally determined or withdrawn.

### **23F—Immunity**

No liability attaches to the Commissioner or the Crown for the exercise or purported exercise in good faith of the Commissioner's power to suspend a security agents licence.

### **23G—Cancellation of licence**

- (1) If the holder of a security agents licence is found guilty of an offence of a class specified by regulation in relation to the functions authorised by the licence, the licence is cancelled and the licensee must, within 7 days of that finding, surrender the licence (if it has not already been surrendered) to the Commissioner.

- (2) A person who, without reasonable excuse, fails to surrender his or her licence in accordance with subsection (1) is guilty of an offence.  
Maximum penalty: \$1 250.

### **23H—Review of licence**

- (1) If disciplinary action is taken on the prescribed number of occasions within the prescribed period against a person, or a number of persons, employed or otherwise engaged in the business of an agent carrying on business as a security agent, the Commissioner must review the licence of the agent to determine if the licence should be suspended or a complaint lodged in respect of the agent under section 26.
- (2) In this section—  
*disciplinary action* means—
- (a) suspension or cancellation of a licence under this Part; or
  - (b) disciplinary action under section 29.

## **Division 2—Alcohol and drug testing of persons authorised to control crowds**

### **23I—Definitions for this Division**

In this Division—

*alcotest* means a test by means of apparatus approved for the purpose of conducting alcotests under the *Road Traffic Act 1961*;

*analyst* means—

- (a) a person appointed as an analyst for the purposes of the *Road Traffic Act 1961*; or
- (b) a person holding an office of a class approved for the purposes of the *Road Traffic Act 1961*;

*approved blood test kit* means a kit of a kind declared by the Governor by regulation to be an approved blood test kit for the purposes of the *Road Traffic Act 1961*;

*authorised officer* means an authorised officer under the *Fair Trading Act 1987*;

*breath analysing instrument* means apparatus of a kind approved as a breath analysing instrument under the *Road Traffic Act 1961*;

*breath analysis* means an analysis of breath by a breath analysing instrument;

*licensee* means the holder of a security agents licence that authorises the licensee to perform the function of controlling crowds;

*prescribed concentration of alcohol* means any concentration of alcohol in the blood.

**23J—Security agent authorised to control crowds may be required to undertake drug testing**

- (1) A police officer or an authorised officer may, by notice in writing, direct a licensee to attend at a specified time and place for the purpose of undertaking a drug testing procedure to determine the level of any prescribed drug in any form in the blood or urine of the agent.
- (2) A notice under subsection (1) must specify what sample or samples are to be taken.
- (3) A police officer or authorised officer may give directions reasonably required for purposes connected with the administration or enforcement of this section.
- (4) If a sample of blood or urine given by a licensee under this section is found on analysis to be a non-complying sample (within the meaning of the regulations), the Commissioner or the Commissioner of Police may—
  - (a) determine the costs and expenses of carrying out the analysis; and
  - (b) recover the amount so determined from the licensee as a debt in a court of competent jurisdiction.
- (5) Regulations may be made under this section—
  - (a) regulating the manner of taking and dealing with samples of blood and urine and their analysis; and
  - (b) providing for certificate evidence for use in any proceedings as to the taking and analysis of any urine or blood sample and the authority of a person to carry out an analysis; and
  - (c) requiring a licensee to produce the prescribed form of identification at the time a sample of blood or urine is taken, and providing that a failure to do so is taken to be a failure to comply with a direction under this section.

**23K—Security agent authorised to control crowds may be required to undertake alcohol testing**

- (1) A police officer may require a licensee, while performing the function of controlling crowds, to submit to an alcotest.
- (2) If an alcotest conducted under subsection (1) indicates that the prescribed concentration of alcohol may be present in the blood of the licensee, a police officer may require the licensee to submit to a breath analysis.
- (3) Performance of a breath analysis required under subsection (2) must be commenced within 2 hours of the licensee having submitted to the alcotest indicating that the prescribed concentration of alcohol may be present in the blood of the licensee.

- (4) The regulations may prescribe the manner in which an alcotest or breath analysis is to be conducted and may, for example, require that more than one sample of breath is to be provided for testing or analysis and, in such a case, specify which reading of the instrument or apparatus will be taken to be the result of the alcotest or breath analysis for the purposes of this and any other Act.

### **23L—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood**

If a licensee submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

### **23M—Evidence etc**

- (1) If the requirements and procedures in relation to breath analysing instruments and breath analysis under this Act, including subsections (4) and (5), have been complied with, it must be presumed, in the absence of proof to the contrary, that the concentration of alcohol so indicated was present in the blood of the licensee at the time of the analysis.
- (2) No evidence can be adduced in rebuttal of the presumption created by subsection (1) except—
- (a) evidence of the concentration of alcohol in the blood of the licensee as indicated by analysis of a sample of blood taken and dealt with in accordance with the procedures prescribed by regulation; and
  - (b) evidence as to whether the results of analysis of the sample of blood demonstrate that the breath analysing instrument gave a false reading of the concentration of alcohol present in the blood of the licensee.
- (3) If it is proved in proceedings that a concentration of alcohol was present in the licensee's blood at the time of a breath analysis, it must be conclusively presumed that that concentration of alcohol was present in the licensee's blood throughout the period of two hours immediately preceding the analysis.
- (4) As soon as practicable after a licensee has submitted to an analysis of breath by means of a breath analysing instrument, the person operating the instrument must deliver to the licensee a statement in writing specifying—
- (a) the reading produced by the breath analysing instrument; and
  - (b) the date and time of the analysis.

- (5) If a licensee has submitted to an analysis of breath by means of a breath analysing instrument and the concentration of alcohol indicated as being present in the blood of that licensee by the breath analysing instrument is the prescribed concentration of alcohol, the person operating the instrument must immediately—
- (a) give the person the prescribed oral advice and deliver to the person the prescribed written notice as to the operation of this Act in relation to the results of the breath analysis and as to the procedures prescribed for the taking and analysis of a sample of the person's blood; and
  - (b) at the request of the person made in accordance with the regulations, deliver an approved blood test kit to the person.
- (6) A certificate—
- (a) purporting to be signed by the Commissioner of Police and to certify that a person named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments; or
  - (b) purporting to be signed by a person authorised to operate breath analysing instruments by the Commissioner of Police and to certify that—
    - (i) the apparatus used by the authorised person was a breath analysing instrument within the meaning of this Act; and
    - (ii) the breath analysing instrument was in proper order and was properly operated; and
    - (iii) the provisions of this Act with respect to breath analysing instruments and the manner in which an analysis of breath by means of a breath analysing instrument is to be conducted were complied with,
- is, in the absence of proof to the contrary, proof of the matters so certified.
- (7) A certificate purporting to be signed by a police officer and to certify that an apparatus referred to in the certificate is or was of a kind approved under the *Road Traffic Act 1961* for the purpose of performing alcotests is, in the absence of proof to the contrary, proof of the matter so certified.
- (8) A certificate purporting to be signed by a police officer and to certify that a person named in the certificate submitted to an alcotest on a specified day and at a specified time and that the alcotest indicated that the prescribed concentration of alcohol may then have been present in the blood of that person is, in the absence of proof to the contrary, proof of the matters so certified.

- (9) A certificate purporting to be signed by an analyst, certifying as to the concentration of alcohol, or any drug, found in a specimen of blood identified in the certificate expressed in grams in 100 millilitres of blood is, in the absence of proof to the contrary, proof of the matters so certified.
- (10) A certificate purporting to be signed by a person authorised to operate breath analysing instruments by the Commissioner of Police and to certify that—
- (a) a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument on a day and at a time specified in the certificate; and
  - (b) the breath analysing instrument produced a reading specified in the certificate; and
  - (c) a statement in writing required by subsection (4) was delivered in accordance with that subsection,

is, in the absence of proof to the contrary, proof of the matters so certified.

- (11) A certificate purporting to be signed by a person authorised to operate breath analysing instruments by the Commissioner of Police and to certify—
- (a) that, on a date and at a time specified in the certificate, a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument; and
  - (b) that the prescribed oral advice and the prescribed written notice were given and delivered to the person in accordance with subsection (5)(a); and
  - (c) that—
    - (i) the person did not make a request for an approved blood test kit in accordance with the regulations; or
    - (ii) at the request of the person, a kit that, from an examination of its markings, appeared to the person signing the certificate to be an approved blood test kit was delivered to the person in accordance with subsection (5)(b),

is, in the absence of proof to the contrary, proof that the requirements of subsection (5) were complied with in relation to the person.

- (12) A certificate purporting to be signed by a police officer and to certify that a person named in the certificate was, at the time of being directed to submit to an alcotest, performing the function of controlling crowds is, in the absence of proof to the contrary, proof of the matter so certified.

- (13) A certificate purporting to be signed by a police officer and to certify that a person named in the certificate was required under this Division to submit to an alcotest or breath analysis and refused or failed to comply with all reasonable directions of a police officer in relation to the requirement is, in the absence of proof to the contrary, proof of the matter so certified.

### **23N—Commissioner of Police must report results of breath analysis to Commissioner**

The Commissioner of Police must, as soon as reasonably practicable after a police officer has required a licensee to submit to an alcotest or breath analysis, provide a report to the Commissioner setting out—

- (a) whether or not the licensee complied with the requirement; and
- (b) if the licensee complied with the requirement—the result of the alcotest or analysis.

### **23O—Cancellation of licence**

- (1) The Commissioner may, subject to this section, cancel a security agents licence if—
- (a) the licensee fails, without reasonable excuse, to comply with—
    - (i) a notice or direction under section 23J; or
    - (ii) a requirement or direction under section 23K; or
  - (b) a sample of the blood or urine of the licensee taken in accordance with section 23J is found on analysis to be a non-complying sample (within the meaning of the regulations); or
  - (c) the results of a breath analysis undertaken in accordance with this Division demonstrate that the prescribed concentration of alcohol was present in the licensee's blood at a time when the licensee was performing the function of controlling crowds.
- (2) The Commissioner must, before exercising powers under subsection (1) in relation to a licensee—
- (a) give written notice to the licensee of the proposed cancellation, including a statement of the reasons that the Commissioner considers justify the cancellation; and
  - (b) allow the licensee a period of 14 days (or such longer period as the Commissioner may in a particular case allow) to show cause why the licence should not be cancelled.

- (3) At the end of the period allowed by the Commissioner under subsection (2), the Commissioner must—
  - (a) determine, having regard to any response received from the licensee, whether or not to proceed with cancellation of the licence; and
  - (b) advise the licensee by notice in writing of the Commissioner's determination.
- (4) A notice under subsection (3)(b) must, if the licence is to be cancelled, specify the date from which the cancellation is to take effect (which must be not less than 14 days from the date of the notice) and the grounds for the Commissioner's determination.

### **23P—Surrender of licence**

- (1) A person whose security agents licence has been cancelled under section 23O must, within 7 days of the date on which the cancellation takes effect, surrender the licence to the Commissioner.
- (2) A person who, without reasonable excuse, fails to surrender his or her licence in accordance with subsection (1) is guilty of an offence.  
Maximum penalty: \$1 250.

### **23Q—Appeal**

A person whose security agents licence has been cancelled under section 23O may appeal to the Court against the decision of the Commissioner to cancel the licence.

### **53—Amendment of section 25—Cause for disciplinary action**

Section 25(1)—after paragraph (e) insert:

- (f) in the case of a natural person licensed or formerly licensed as a security agent—
  - (i) the person is not a fit and proper person; or
  - (ii) the person has contravened a provision of the *Gaming Machines Act 1992* or the *Liquor Licensing Act 1997* relating to the prevention of a person from entering, or the removal of a person from, licensed premises (within the meaning of the *Liquor Licensing Act 1997*); or
  - (iii) it would be contrary to the public interest if the licensee were to be or continue to be licensed; or
- (g) in the case of a body corporate licensed or formerly licensed as a security agent—
  - (i) a director of the body corporate is not a fit and proper person; or
  - (ii) it would be contrary to the public interest if the body corporate were to be or continue to be licensed.

#### **54—Amendment of section 26—Complaints**

- (1) Section 26—after "The Commissioner" insert:

, a police officer

- (2) Section 26—after "setting out" insert:

, subject to section 5B,

#### **55—Insertion of section 27A**

After section 27 insert:

##### **27A—Procedure in the case of complaint against security agent**

- (1) On the hearing of a complaint against a person licensed or formerly licensed as a security agent, the Court—
- (a) is not bound by the rules of evidence but may inform itself as it thinks fit; and
  - (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (2) In determining whether there is proper cause for disciplinary action against a person licensed or formerly licensed as a security agent, regard may be had to such evidence of the conduct (no matter when the conduct is alleged to have occurred) of the person or persons with whom the person associates (or has associated at any relevant time) as the Court considers relevant, including information that existed at the time the licence was granted, regardless of whether that information was known or could have been made known to the Commissioner at that time.

#### **56—Insertion of section 36A**

After section 36 insert:

##### **36A—Destruction of fingerprints**

- (1) This section applies—
- (a) to fingerprints taken under section 8B in connection with an application for a security agents licence if the application is refused; or
  - (b) to fingerprints taken under section 8B in connection with an application for a security agents licence if the application is granted and the licence is cancelled or voluntarily surrendered, or the holder, being a body corporate, dissolved; or
  - (c) to fingerprints taken under section 11AB of the holder of a security agents licence or a director of the holder of a security agents licence if the licence is cancelled or voluntarily surrendered, or the holder, being a body corporate, dissolved.

- (2) A person whose fingerprints have been taken under this Act may, if the fingerprints are fingerprints to which this section applies, apply to the Commissioner of Police to have the fingerprints, and any copies of the fingerprints, destroyed.
- (3) The Commissioner of Police may grant or refuse the application as the Commissioner of Police sees fit.

**57—Amendment of section 39—Commissioner of Police to conduct investigations and make available relevant information**

Section 39—after its present contents (now to be designated as subsection (1)) insert:

- (2) The Commissioner of Police must, as soon as reasonably practicable after becoming aware of information relevant to a matter that might constitute proper cause for disciplinary action under this Act, make the information available to the Commissioner.

**58—Amendment of section 44—Prosecutions**

Section 44(2)—after paragraph (c) insert:

- (d) a police officer.

**59—Amendment of Schedule 2—Repeal and transitional provisions**

Schedule 2—after clause 2 insert:

**3—Transitional provisions relating to *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005***

- (1) The Commissioner must, within 2 years after the day on which section 1 of the *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005* comes into operation, by notice in writing, require—
  - (a) each natural person who is on that day the holder of a security agents licence; and
  - (b) each director of a body corporate that is on that day the holder of a security agents licence,to attend at a specified time and place for the purpose of having his or her fingerprints taken by a police officer.
- (2) As soon as reasonably practicable after fingerprints have been taken from a person by a police officer pursuant to a requirement under subclause (1), the Commissioner of Police must make available to the Commissioner such information to which the Commissioner of Police has access about the identity, antecedents and criminal history of the person as the Commissioner of Police considers relevant.
- (3) If a person fails to comply with a notice under subclause (2), the Commissioner may, by notice in writing, require the person to make good the default.

- (4) If the person fails to comply with the notice within a time fixed by the notice (which may not be less than 28 days after service of the notice), the person's licence is cancelled.
- (5) A person whose fingerprints have been taken under this clause may, if his or her security agents licence is cancelled or voluntarily surrendered, or if he or she was required to provide the fingerprints because he or she was the director of a body corporate that has since dissolved, apply to the Commissioner of Police to have the fingerprints, and any copies of the fingerprints, destroyed.
- (6) The Commissioner of Police may grant or refuse the application as the Commissioner of Police sees fit.

## **Schedule 1—Transitional provisions**

### **1—*Gaming Machines Act 1992***

- (1) An amendment to the *Gaming Machines Act 1992* effected by a provision of this Act applies in respect of an application under that Act if the application is determined after the commencement of that provision irrespective of whether the application was lodged before or after that commencement.
- (2) An amendment to the *Gaming Machines Act 1992* effected by a provision of this Act applies in respect of a licence or approval granted under that Act, or a person licensed or approved under that Act, whether the licence or approval was granted before or after the commencement of that provision.

### **2—*Liquor Licensing Act 1997***

- (1) An amendment to the *Liquor Licensing Act 1997* effected by a provision of this Act applies in respect of an application under that Act if the application is determined after the commencement of that provision irrespective of whether the application was lodged before or after that commencement.
- (2) An amendment to the *Liquor Licensing Act 1997* effected by a provision of this Act applies in respect of a licence or approval granted under that Act, or a person licensed or approved under that Act, whether the licence or approval was granted before or after the commencement of that provision.

### **3—*Security and Investigation Agents Act 1995***

- (1) An amendment to the *Security and Investigation Agents Act 1995* effected by a provision of this Act applies in respect of an application under that Act if the application is determined after the commencement of that provision irrespective of whether the application was lodged before or after that commencement.
- (2) An amendment to the *Security and Investigation Agents Act 1995* effected by a provision of this Act applies in respect of a licence granted under that Act, or a person licensed under that Act, whether the licence was granted before or after the commencement of that provision.

- (3) An amendment to the *Security and Investigation Agents Act 1995* effected by a provision of this Act that provides for the suspension or cancellation of a person's licence if the person is charged with or found guilty of an offence applies only if the offence is committed, or alleged to have been committed, after the commencement of that provision.

## Schedule 2—Statute law revision amendment of *Gaming Machines Act 1992*

Provision amended	How amended
Section 3(1) definition of <i>authorised officer</i> , (c)	Delete "member of the police force" and substitute: police officer
Section 8(2)(a)	Delete "member of the police force" and substitute: police officer
Section 44A(4)(a)(i)	Delete " <i>Corporations Law</i> " and substitute: <i>Corporations Act 2001</i> of the Commonwealth
Section 70(1)	Delete "notwithstanding" and substitute: despite

## Schedule 3—Statute law revision amendment of *Security and Investigation Agents Act 1995*

Provision amended	How amended
Section 4(a)	Delete "member of the police force of this State" and substitute: police officer
Section 4(d)	Delete " <i>Local Government Act 1934</i> " and substitute: <i>Local Government Act 1999</i>
Section 4(f)(vi)	Delete "or the <i>Starr-Bowkett Societies Act 1975</i> "
Section 4(f)(viii)	Delete " <i>Consumer Credit Act 1972</i> " and substitute: <i>Credit Administration Act 1995</i>
Section 4(f)(ix)	Delete " <i>Insurance (Agents and Brokers) Act 1984</i> " and substitute: <i>Insurance Contracts Act 1984</i>
Section 20(1)(a)	Delete "member of the police force" and substitute: police officer
Section 22	Delete "member of the police force" wherever occurring and substitute in each case: police officer