



REPUBLIC OF NAURU

Private Security Bill 2012

Serial No. 11 of 2012

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REPUBLIC OF NAURU

Private Security Bill 2012

Serial No. 11 of 2012

A Bill for:

An Act to regulate the provision of private security services and for related purposes

Certified on []

Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Private Security Act 2012*.

2 Commencement

This Act commences 1 month after certification.

3 Act binds Republic

Except as expressly stated, this Act binds the Republic.

PART 2 – INTERPRETATION

4 Definitions

In this Act:

‘bodyguard’, see section 7;

‘crowd controller’, see section 8;

‘information notice’, for a decision, means a written notice to a person specifying the following:

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person may apply to the Minister for review of the decision within 28 days after receiving the notice;

‘licence fee’, for a security licence, means the fee prescribed by regulation for the licence;

‘licensee’, for a security licence, means the holder of the licence;

‘Licensing Authority’ means the person appointed under section 10;

‘proposed decision notice’, for a proposed decision, means a written notice to a person specifying the following:

- (a) the proposed decision;
- (b) the reasons for the proposed decision;
- (c) that the person may make written submissions to the person giving the notice about the proposed decision within 7 days after receiving it;

‘security activity’, see section 5;

‘security licence’ means a licence to conduct one or more security activities issued under section 13;

'security officer', see section 6.

5 Meaning of 'security activity'

- (1) A person conducts a **'security activity'** if, as part of a business or the person's employment, the person does any of the following:
- (a) acts as a security officer;
 - (b) acts as a bodyguard;
 - (c) acts as a crowd controller;
 - (d) operates a security firm.
- (2) Subsection (1) does not apply to:
- (a) a public officer who conducts an activity mentioned in subsection (1) as part of the person's employment as a public officer; or
 - (b) the Republic.

6 Meaning of 'security officer'

A **'security officer'** is a person who, for reward, guards, patrols or watches another person's property.

7 Meaning of 'bodyguard'

A **'bodyguard'** is a person who, for reward, provides a close personal protection service to another person.

8 Meaning of 'crowd controller'

- (1) A **'crowd controller'** is a person who, for reward, performs any of the following functions at a place at which a public or private event is being held:
- (a) controlling or monitoring the behaviour of people at the place;
 - (b) screening people seeking entry to the place;
 - (c) removing people from the place because of their behaviour.

- (2) However, a person is not a crowd controller only because the person checks whether another person is authorised to enter the place under a ticket, pass or invitation.

9 Security firms

A person operates a '*security firm*' if the person, for reward, supplies the services of any of the following:

- (a) security officers;
- (b) bodyguards;
- (c) crowd controllers.

PART 3 – SECURITY LICENCES

10 Appointment of Licensing Authority

Cabinet may, by Gazette notice, appoint a person to be the Licensing Authority.

11 Application for security licence

- (1) A person may apply to the Licensing Authority for a security licence.
- (2) The application must be:
 - (a) in the form prescribed by regulation; and
 - (b) accompanied by:
 - (i) evidence of payment of the licence fee for the licence; and
 - (ii) any information prescribed by regulation.

12 Request for further information

- (1) The Licensing Authority may, by written notice to the applicant for the licence, request additional specified information or documents the Licensing Authority reasonably needs to decide the application.

- (2) If the applicant does not provide the information or documents, the Licensing Authority may refuse to decide the application.

13 Decision on application

- (1) Subject to section 12(2), on receiving the application, the Licensing Authority must:
 - (a) issue the licence; or
 - (b) refuse to issue the licence.
- (2) The Licensing Authority may only issue the licence if the Licensing Authority is satisfied that:
 - (a) the applicant is a suitable person to hold the licence; and
 - (b) the applicant meets any criteria prescribed by regulation for issuing the licence; and
 - (c) if the applicant is an individual – the applicant is an adult.
- (3) If the Licensing Authority decides to refuse to issue the licence, the Licensing Authority must give the applicant an information notice for the decision.

14 Suitability of applicant to hold security licence – individual

- (1) In deciding, for section 13(2)(a), whether an applicant who is an individual is a suitable person to hold the licence, the Licensing Authority may consider any relevant matter, including the following:
 - (a) the character of the applicant;
 - (b) the financial position of the applicant;
 - (c) any other matter prescribed by regulation.
- (2) The applicant is taken not to be a suitable person to hold the licence if:
 - (a) the applicant has had a licence cancelled within 12 months before the application is made; or

- (b) the applicant, or a person acting in the person's capacity as an agent or employee of the applicant, has contravened this Act within 5 years before the application is made.

15 Suitability of applicant to hold security licence – corporation

- (1) In deciding, for section 13(2)(a), whether an applicant that is a corporation is a suitable person to hold the licence, the Licensing Authority may consider any relevant matter, including the following:
 - (a) the character of each director or executive officer of the corporation;
 - (b) the financial position of the corporation;
 - (c) any other matter prescribed by regulation.
- (2) The corporation is taken not to be a suitable person to hold the licence if:
 - (a) the corporation has had a licence cancelled within 12 months before the application is made; or
 - (b) a person who is a director or executive officer of the corporation has had a licence cancelled within 12 months before the application is made; or
 - (c) any of the following persons has contravened this Act within 5 years before the application is made:
 - (i) the corporation;
 - (ii) a person who is a director or executive officer of the corporation, whether or not the person was a director or executive officer of the corporation at the time of the contravention;
 - (iii) a person acting in the person's capacity as an agent or employee of the corporation.

16 Suitability of applicant to hold security licence – other body

(1) In this section:

'relevant person', for a body, means a person who is responsible for the management of the body or has a financial interest in the body.

(2) In deciding, for section 13(2)(a), whether an applicant that is a body (other than a corporation) is a suitable person to hold the licence, the Licensing Authority may consider any relevant matter, including the following:

- (a) the character of each relevant person for the body;
- (b) the financial position of the body;
- (c) any other matter prescribed by regulation.

(3) The body is taken not to be a suitable person to hold the licence if:

- (a) the body has had a licence cancelled within 12 months before the application is made; or
- (b) a relevant person for the body has had a licence cancelled within 12 months before the application is made; or
- (c) any of the following persons has contravened this Act within 5 years before the application is made:
 - (i) the body;
 - (ii) a relevant person for the body, whether or not the person was a relevant person at the time of the contravention;
 - (iii) a person acting in the person's capacity as an agent or employee of the body.

17 Form of licence

A security licence must:

- (a) be in writing; and
- (b) state:
 - (i) the name of the licensee; and

- (ii) each security activity that is authorised under the licence; and
- (iii) the period of the licence; and
- (iv) the conditions of the licence.

18 Period of licence

A security licence must be issued for a period of 12 months.

19 Conditions of licence

A security licence is subject to the following conditions:

- (a) the licensee must comply with all written laws;
- (b) any other conditions that are specified in the licence or prescribed by regulation.

20 Renewal of licence

- (1) If a licensee who wishes to renew a security licence applies to the Licensing Authority for the renewal at least 1 month before the licence expires, the licence continues in force until the application is decided.
- (2) Subsection (1) applies even if the application is not decided before the licence expires.
- (3) Sections 11 to 16 apply to the application as if it were an application for a new licence.

21 Variation of licence conditions

- (1) The Licensing Authority may vary the conditions of a security licence:
 - (a) on the application of the licensee; or
 - (b) on the Licensing Authority's motion.
- (2) Before deciding to vary the conditions of a licence under subsection (1)(b), the Licensing Authority must:
 - (a) give the licensee a proposed decision notice for the decision; and

- (b) consider any submissions received in response to the notice.
- (3) If the Licensing Authority varies the conditions of a licence, the Licensing Authority must issue a new licence to the licensee showing the new conditions.
- (4) Also, if the Licensing Authority decides to vary the conditions of the licence under subsection (1)(b), the Licensing Authority must give the licensee an information notice for the decision.

22 Suspension or cancellation of licence

- (1) The Licensing Authority may suspend a security licence if:
 - (a) the Licensing Authority suspects on reasonable grounds that the licensee:
 - (i) has failed to comply with a condition of the licence; or
 - (ii) is no longer a suitable person to hold the licence; and
 - (b) the suspension is necessary while the Licensing Authority determines whether the licence should be cancelled.
- (2) If the Licensing Authority suspends the licence, the Licensing Authority must give the licensee a notice specifying:
 - (a) the reason for the suspension; and
 - (b) the circumstances in which the suspension will be lifted.
- (3) The Licensing Authority must cancel a security licence if:
 - (a) the licensee is convicted of an offence against section 26 (failure to comply with a licence condition); or
 - (b) the Licensing Authority believes on reasonable grounds that the licensee is no longer a suitable person to hold the licence.
- (4) The Licensing Authority may cancel a security licence if the Licensing Authority believes on reasonable grounds that the licensee has failed to comply with a licence condition, even if the licensee has not been charged with or convicted of an offence against section 26.

- (5) Before deciding to cancel a security licence, the Licensing Authority must:
 - (a) give the licensee a proposed decision notice for the decision; and
 - (b) consider any submissions received in response to the notice.
- (6) If the Licensing Authority decides to cancel the licence, the Licensing Authority must give the licensee an information notice for the decision.

23 Complaint about person conducting security activity

A person may complain to the Licensing Authority about:

- (a) the conduct of a person who is a licensee in the person's capacity as a licensee; or
- (b) a person who is conducting a security activity without a licence to do so.

PART 4 – OFFENCES

24 Conducting security activity without licence

A person commits an offence if the person:

- (a) conducts a security activity; and
- (b) does not hold a security licence authorising the person to conduct the activity.

Maximum penalty: \$50,000 and 2 years imprisonment

25 Employing unlicensed person

A person commits an offence if:

- (a) the person operates a security firm; and
- (b) the person employs a person to conduct a security activity; and

- (c) the person employed does not hold a security licence to conduct the activity.

Maximum penalty: \$50,000 and 2 years imprisonment

26 Failure to comply with licence condition

A licensee commits an offence if the licensee fails to comply with a condition of the licensee's security licence.

Maximum penalty: \$20,000 and 12 months imprisonment

27 Advertising unauthorised security activity

A person commits an offence if the person:

- (a) advertises that the person conducts, or is willing to conduct, a security activity; and
- (b) the person does not hold a security licence that authorises the person to conduct the activity.

Maximum penalty: \$10,000 and 6 months imprisonment

28 Failure to produce licence

A licensee commits an offence if:

- (a) the licensee is asked to produce the licensee's security licence for inspection by:
 - (i) a police officer; or
 - (ii) a person with whom the licensee has dealings when conducting a security activity; and
- (b) the licensee does not produce the licence for inspection.

Maximum penalty: \$1,000

29 Failure to inform Licensing Authority of change

A licensee commits an offence if:

- (a) a detail included in the licensee's security licence, or in the application for the licence, changes; and

- (b) the licensee does not tell the Licensing Authority about the change as soon as practicable after the licensee becomes aware of the change.

Maximum penalty: \$1,000

PART 5 – REVIEWABLE DECISIONS

30 Review of decision

- (1) A person who is entitled to be given an information notice for a decision may apply to the Minister for review of the decision.
- (2) The application for review must be made within 28 days after:
 - (a) if the person receives the information notice – the day the person receives the notice; or
 - (b) if the person does not receive the information notice – the day the person becomes aware of the decision.
- (3) The application must be in writing and must set out the reasons for the application.
- (4) To decide the review, the Minister must:
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute a new decision.

PART 6 – ADMINISTRATIVE MATTERS

31 Register of security licences

The Licensing Authority must keep a register of security licences.

32 Refund of licence fee – refusal to issue licence

- (1) This section applies if:
 - (a) a person applies for a security licence; and

- (b) the person pays the licence fee for the licence; and
 - (c) the Licensing Authority refuses to issue the licence.
- (2) The Licensing Authority must refund the licence fee to the person.

33 Refund of licence fee – return of licence

- (1) This section applies if:
- (a) a person applies for a security licence; and
 - (b) the person pays the licence fee for the licence; and
 - (c) the person does not conduct a security activity under the licence at any time.
- (2) The person may return the licence to the Licensing Authority within 28 days after it is issued.
- (3) If the person returns the licence under subsection (2), the Licensing Authority must refund the licence fee to the person.

34 Certificates as evidence

- (1) This section applies to a certificate signed by the Licensing Authority certifying any of the following:
- (a) that a stated person was or was not, on a stated day or during a stated period, the holder of a security licence;
 - (b) that a licence was or was not, on a stated day or during a stated period, subject to stated conditions.
- (2) The certificate is admissible in any proceeding under this Act and is evidence of the matters stated in it.

35 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act as the Licensing Authority.
- (2) Subsection (1) does not affect any liability the Republic would, apart from that subsection, have for the act or omission.

(3) In this section:

'exercise', of a power, includes the purported exercise of the power;

'performance', of a function, includes the purported performance of the function.

36 Regulations

(1) Cabinet may make regulations under this Act.

(2) Without limiting subsection (1), the regulations may:

(a) prescribe requirements for the issue of a security licence, including requirements about the qualifications and experience that must be held by the applicant for the licence; and

(b) provide for the accreditation of trainers and instructors to provide training required to meet a requirement mentioned in paragraph (a); and

(c) prescribe codes of practice and required procedures for the conduct of security activities; and

(d) prescribe conditions that apply to security licences; and

(e) prescribe fees payable under this Act; and

(f) give a person discretion to decide a matter; and

(g) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time.

PART 7 – TRANSITIONAL MATTERS

37 Definitions

In this Part:

'commencement date' means the date this Act commences.

38 Person conducting security activity before commencement

- (1) This section applies to a person who conducted a security activity immediately before the commencement date.
- (2) The person may continue to conduct the activity without a security licence until 3 months after the commencement date.

39 Transitional regulations

- (1) The regulations may make provision (a ***‘transitional regulation’***) about a matter for which:
 - (a) it is necessary to make provision for the transition to the operation of this Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a date not earlier than the commencement date.
- (3) However, to the extent to which a transitional regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Republic) by adversely affecting the person’s rights or imposing liabilities on the person.
- (4) This section expires 12 months after the commencement date.