

**Private Security Bill 2012**

**EXPLANATORY MEMORANDUM**

The *Private Security Bill 2012* is a Bill for an Act to regulate the provision of private security services and for related purposes.

**Explanation of clauses**

**PART 1 – PRELIMINARY MATTERS**

**Clauses 1 and 2** provide for the short title and commencement of the Act.

**Clause 3** provides that, apart from provisions that specify otherwise, the Act binds the Republic.

**PART 2 – INTERPRETATION**

**Clause 4** defines terms used in the Act. The key definition is *'security activity'*. A person conducts a security activity if the person acts as a security officer, bodyguard or crowd controller or operates a security firm (these terms are also defined). However, the definition of *'security activity'* does not apply to the Republic or a public officer who conducts the activity as part of the person's employment as a public officer. This means the Act regulates only private security services, not security provided by the Republic, such as government-operated guarding units.

**PART 3 – SECURITY LICENCES**

**Clause 10** provides for the appointment of a person to be the Licensing Authority.

**Clause 11** contains the procedure for applying for a security licence. The application must be made to the Licensing Authority in the form prescribed by the regulations, and must be accompanied by evidence of payment of the licence fee and any documents prescribed by the regulations.

**Clause 12** allows the Licensing Authority to request additional information from the applicant. If the applicant does not provide the information, the Licensing Authority may refuse to decide the application.

**Clause 13** requires the Licensing Authority to decide the application one way or another, unless the applicant has failed to give requested information under clause 19. The Licensing Authority is only allowed to issue the licence if satisfied that the applicant is a suitable person to hold the licence (determined in accordance with clause 21, 22 or 23). In addition, if Cabinet prescribes (by regulation) any other criteria for grant of a licence, the Licensing Authority must be satisfied that the prescribed criteria have been met.

**Clauses 14 to 16** outline the matters the Licensing Authority may consider in determining whether an applicant is a suitable person to hold a licence. If the applicant is an individual, the Licensing Authority may consider the character of the individual. However, if the applicant is a corporation, the Licensing Authority may consider the character of each director and executive officer of the

corporation. If the applicant is another type of body, such as a partnership or unincorporated association, the Licensing Authority may consider the character of each person who is responsible for the management of the body or has a financial interest in the body. In addition to matters of character, the Licensing Authority may consider any relevant matter, including the financial position of the applicant and any other matter prescribed by Cabinet by regulation. The matters listed are matters the Licensing Authority may consider if they are relevant – the Licensing Authority is not required to consider a listed matter if it is not relevant. For example, if an individual applies for a licence to be a security officer and the individual will be employed by a security firm, the financial position of the individual is not likely to be relevant for the purposes of the suitable person test. Conversely, the financial position of an applicant for a licence to operate a security firm is likely to be relevant. Clauses 21 to 23 also specify the circumstances in which the applicant is taken not to be a suitable person to hold a licence.

**Clause 17** provides for the form of a security licence and the matters that must be stated in the licence, such as the security activity (or activities) authorised under the licence.

**Clause 18** specifies the term of a security licence – 12 months.

**Clause 19** specifies the conditions of a licence. A licence is subject to the conditions specified in clause 19 and any other conditions that the Licensing Authority specifies in the licence itself, or that Cabinet prescribes by regulation. This enables the Licensing Authority to use its discretion to apply specific conditions to a specific licence, and enables Cabinet to prescribe additional conditions for all licences or for a specified class of licence.

**Clause 20** provides for the renewal of a security licence. The requirements for an application for renewal are the same as the requirements for a fresh application, but if the licensee makes the application at least 1 month before the licence expires, the licence continues in force until a decision is made on the application, even if that occurs after the expiry date.

**Clause 21** allows the Licensing Authority to vary the conditions of a licence on the application of the licensee or on the Licensing Authority's own motion. Before deciding to vary the conditions on the Licensing Authority's motion, the Licensing Authority must give the licensee notice of the proposed variation and allow the licensee to make submissions to the Licensing Authority in response. If licence conditions are varied for any reason, a new copy of the licence must be issued showing the new conditions.

**Clause 22** allows the Licensing Authority to suspend a licence if the Licensing Authority has a reasonable suspicion that the licensee has breached a condition of the licence or is no longer a suitable person to hold the licence and that the suspension is necessary while the Licensing Authority determines whether the licence should be cancelled. The purpose of suspension is not punishment – it is to prevent continuing breach of conditions or continuing conduct of security activities by a person who is not suitable to do so while a decision is made about whether the licence should be cancelled. The Licensing Authority is required to cancel a licence if the licensee is convicted of failing to comply with a licence condition, or if the Licensing Authority has a reasonable belief that the licensee is no longer a suitable person to hold the licence. Also, the Licensing Authority may exercise discretion to cancel a licence if the Licensing Authority has a reasonable belief that the licensee has failed to comply with a licence condition, whether or not they have been

charge with or convicted of the relevant offence. There is no requirement that the Licensing Authority first suspend a licence before cancelling it. However, the Licensing Authority must give the licensee notice of the proposed cancellation and allow the licensee to make submissions to the Licensing Authority in response before cancelling the licence. If the Licensing Authority considers that it is necessary to suspend the licence while waiting for submissions from the licensee, the Licensing Authority may do so as long as the requirements of subclause (1) are complied with (reasonable suspicion etc.)

**Clause 23** provides a mechanism for complaints to be made to the Licensing Authority about the conduct of a licensee or about a person who is conducting a security activity without a licence.

#### **PART 4 – OFFENCES**

**Clause 24** makes it an offence to conduct a security activity without a licence. The penalty for the offence is \$50,000 and 2 years imprisonment.

**Clause 25** makes it an offence for an operator of a security firm to employ someone to conduct a security activity if the person does not have a licence to do so. The maximum penalty for the offence is \$50,000 and 2 years imprisonment.

**Clause 26** makes it an offence for a licensee to fail to comply with a licence condition. The maximum penalty for the offence is \$20,000 and 12 months imprisonment.

**Clause 27** makes it an offence for a person to advertise that the person conducts a security activity if the person is not licensed to do so. The maximum penalty for the offence is \$10,000 and 6 months imprisonment.

**Clause 28** makes it an offence for a licensee to fail to produce their licence on request. The maximum penalty for the offence is \$1,000.

**Clause 29** makes it an offence for a licensee to fail to notify the Licensing Authority of a change in a detail that is included in the licensee's licence or in their application for a licence (for example, a change in the licensee's business address). The maximum penalty for the offence is \$1,000.

#### **PART 5 – REVIEWABLE DECISIONS**

**Clause 30** gives a person who has received an information notice for a decision made by the Licensing Authority an entitlement to apply to the Minister for review of the decision. A person who is refused a licence, whose licence conditions are varied on the Licensing Authority's initiative or whose licence is cancelled is entitled to be given an information notice about the decision. The information notice informs the person of the reasons for the decision and the right to apply for review. The person may apply for the review within 28 days after receiving the information notice. However, if the person does not receive the notice (for example, because the Licensing Authority failed to give it to the person) the person is not prevented from applying for the review and may do so within 28 days after becoming aware of the decision. The Minister may affirm or vary the decision or set it aside and substitute a new decision.

## **PART 6 – ADMINISTRATIVE MATTERS**

**Clause 31** requires the Licensing Authority to keep a register of security licences.

**Clause 32** requires the Licensing Authority to refund a licence fee paid by an applicant for a licence if the licence is refused. This is necessary because the licence fee is required to be paid in advance of a decision on the application being made.

**Clause 33** requires the Licensing Authority to refund a licence fee paid by a licensee who does not conduct a security activity at any time. This might occur, for example, if the licence is issued subject to conditions the licensee is not willing to accept. The fee will only be refunded if the licence is returned to the Licensing Authority within 28 days after it is issued.

**Clause 34** gives evidentiary weight to certificates issued by the Licensing Authority about licences issued by the Licensing Authority.

**Clause 35** protects a person who is or was the Licensing Authority from civil or criminal liability for anything done in the exercise of a power or the performance of a function as the Licensing Authority, so long the thing was done in good faith.

**Clause 36** gives Cabinet power to make regulations under the Act.

## **PART 7 – TRANSITIONAL MATTERS**

**Clause 37** defines terms used in the Part.

**Clause 38** allows a person conducting a security activity immediately before the Act commences to continue to do so without a licence for a period of 3 months after commencement

**Clause 39** allows regulations of a transitional nature to be made for the first 12 months of operation of the new Act.