

## CLAUSE NOTES

### *Court Security Bill 2017*

**Clause 1: Short Title**

Provides that the short title of the Bill is the *Court Security Act 2017*.

**Clause 2: Commencement**

Provides that the Act will commence on a day to be proclaimed.

**Clause 3: Interpretation**

Provides a range of definitions for terms used in the Bill.

**Clause 4: Appointment of security officers**

Enables the appointment of security officers and makes it clear that any appointments made may be subject to conditions limiting the powers exercisable by a security officer.

The clause also provides a power to vary or revoke appointment as a security officer.

In order to avoid any doubt, the clause provides that a police officer may perform the functions and exercise the powers of a security officer. This is a reflection of the fact that police officers are very often present on court premises and may, from time to time, need to intervene if a problem arises on court premises.

**Clause 5: Temporary provision of security guards as security officers**

Provides that a security guard (as licensed under the *Security and Investigations Agents Act 2002*) may temporarily perform the functions and exercise the powers of a security officer. This recognises that from time to time a court may need to appoint a temporary security officer when regular staffing levels are inadequate.

**Clause 6: Appointment of security managers**

Provides for the appointment of a person or persons as security managers. Security Managers are empowered to give directions to Security Officers.

**Clause 7: Identification of security officers and security managers**

Requires security officers and security managers to carry identification while performing functions or exercising powers under the Act. The card must state any limitations that have been placed on the powers or functions of the security officer or security manager. If a person to whom an identity card has been issued ceases to be a security officer or security manager, they must, as soon as possible, return the identity card.

**Clause 8: Right to enter and remain in open areas of a court premises**

Provides that a person has the right to enter and remain in a part of court premises that is open to the public if the person has complied with all relevant directions and requirements made by a judicial officer, security officer or security manager in respect of the person, and all relevant security signs or notices.

The clause also provides that a journalist has a right to enter and remain in an area of court premises open to the public that is located outside a building in which the court is housed or is

sitting for the purpose of making a media report, providing that the journalist is not obstructing or otherwise impeding access to the building.

The clause makes it clear that the rights conferred by the section have effect subject to the provisions of the proposed Act and any other Act or law and to the inherent or implied jurisdiction of a court to regulate its proceedings.

**Clause 9: Closure of court premises for security reasons**

Enables a judicial officer, or, subject to the directions of a judicial officer, a security officer, to order members of the public generally, or specified members of the public, to leave, or not be admitted to, the court premises or a part of the court premises if it is considered necessary for securing order and safety in court premises.

The clause makes it an offence for a person to contravene such an order without reasonable excuse. The maximum penalty for the offence will be 50 penalty units.

**Clause 10: Possession of a prohibited object**

The proposed clause makes it an offence for a person to be in possession of a prohibited thing on court premises without reasonable excuse and includes penalty provisions.

This prohibition does not apply in relation to: (a) an item that is to be or may be used as an exhibit in proceedings; (b) if a security officer or security manager has directed or authorised the object should be allowed on court premises; (c) the possession by a security officer or security manager of an item that has been confiscated under the Act; (d) an item possessed by a police officer, correctional officer within the meaning of the *Corrections Act 1997* or an authorised officer under the *Mental Health Act 2013* in the exercise of their functions or powers; or (e) any other circumstances as may be prescribed by regulation.

**Clause 11: Use of electronic and recording devices in principal court premises**

This clause makes it an offence for a person to use a recording device to record or transmit images or sounds (or both) on court premises.

The clause also provides a number of exemptions to the use of a recording device including where it has been expressly permitted by a judicial officer; the use is by an Australian legal practitioner or an officer of the court for the purpose of conducting his or her work, the use is by a journalist as allowed under the Bill or in other circumstances as may be prescribed by regulation.

The maximum penalty for this offence is 50 penalty units.

The publishing of a photograph or video image or a recording in principal court proceedings is also an offence. Having express judicial consent is the only defence to this provision.

**Clause 12: Powers of search**

A security officer may direct a person entering or on court premises to stop any vehicle in the person's possession or control, allow such a vehicle to be searched, or submit to a search, including a search of their personal effects.

Empowers a security officer or security manager to use such force and assistance as is reasonably necessary to exercise their powers under the Act. This recognises that some people may

become violent towards security staff and security staff must be able to adequately deal with this situation.

The clause also provides that it is a defence to the offence if a person leaves the premises or removes the vehicle if they do not wish to submit to a search of themselves or a vehicle they are in control of.

**Clause 13: Conduct of search**

The proposed clause provides for how a search may be conducted and contains a number of safeguards concerning the conduct of searches.

The wording mirrors that used in the *Admission to Courts (Lower Courts) Regulations 2006* which this Act repeals.

**Clause 14: Power to require person to disclose identity**

Enables security officers to require a person entering or on court premises to disclose that person's name, residential address and reason for the person's visit to the court premises. Proof of identity may also be sought.

The clause provides that it is an offence to fail to comply with a requirement without reasonable excuse or to provide false information.

The clause exempts legal practitioners, police officers, or members of the state or Commonwealth public service acting in the course of their duty from being asked to disclose the abovementioned information if they can immediately provide satisfactory proof of their position. Such people regularly attend court premises and should not have to prove their identity every time they attend.

**Clause 15: Powers to request deposit of, or seize, objects**

Enables a security officer to request persons entering or on court premises to deposit any personal effects that may be reasonably capable of concealing a prohibited thing, a prohibited thing or any electronic or recording device with the security officer for safekeeping while the person remains on the premises.

If a person entering or on court premises declines to deposit an item with a security officer, a security officer may seize a prohibited object found on a person or in any personal effects or vehicle during a search carried out in accordance with section 12. A security officer may also seize an electronic device, or a recording device, that the security officer believes on reasonable grounds has been used in contravention of the Act.

If an electronic or recording device is seized, any images or sounds recorded in contravention of the Act may be copied for the purpose of evidence in any prosecution and may be deleted from the device. The device may be retained for such time as is necessary to delete the images or sounds. The device may also be retained as evidence of an offence, in which case it will be given to police.

**Clause 16: Dealings by a security officer with prohibited object**

Provides for how a security officer is to deal with deposited or seized objects including providing for the object to be returned if the person requests when leaving the court premises unless it may be required as evidence of the commission of an offence under the Act or the security

officer has reasonable cause to believe that the person is not legally entitled to possess the prohibited object or that the prohibited object, if returned, may be used imminently to commit an offence.

The clause also provides that in certain circumstances the security officer must advise a police officer that the prohibited object has been deposited with or seized by the security officer and give the prohibited object to a police officer.

**Clause 17: Powers of removal**

Provides security officers with the power to ask a person to leave or not enter a court or court premises, or to remove a person from a court or court premises in a variety of circumstances. The maximum penalty for failure to comply with such a requirement is 50 penalty units.

**Clause 18: Powers of arrest**

Enables a security officer or security manager to arrest a person without warrant on court premises if the person is committing or has just committed an offence under the Act, or if the security officer or security manager believes on reasonable grounds that the person has committed or is about to commit an offence under the proposed Act.

The clause also enables a security officer or security manager to effect an arrest outside of the court premises in cases where the security officer believes on reasonable grounds that the person left the court premises to avoid arrest. A security officer or security manager who arrests a person under the clause must as soon as practicable take the arrested person to a police officer to be dealt with according to law.

**Clause 19: Escorting, detaining &c., persons in custody**

Provides that a security officer may escort, detain or guard a person who is in custody whilst that person is on court premises.

**Clause 20: Power to give reasonable directions**

Enables security officers to give reasonable directions to persons entering or on court premises to ensure safety and good order on court premises.

Failure to comply without reasonable excuse is an offence. The maximum penalty for the offence is 50 penalty units.

**Clause 21: Use of reasonable force and assistance**

Enables a security officer to use reasonable force when exercising their functions or powers.

**Clause 22: Security officers to provide information in relation to exercise of power**

The clause outlines how security officers and security managers must exercise their powers.

When exercising a power under the Act, and where it is reasonably practicable to do so, a security officer must provide the person that is the subject of the exercise of the power with evidence that the person is a security officer, their name or identification code, the reason for the exercise of the power and a warning that failure to comply with a direction or requirement may constitute an offence.

This obligation mirrors that which is imposed on police officers.

**Clause 23: Powers only to be exercised in relation to the court in relation to which officer appointed**

Provides that a security manager or security officer who is not a police officer may only perform or exercise a function or power in relation to the court to which they are appointed.

**Clause 24: Confidentiality**

Prevents a security officer except to the extent necessary to perform or exercise his or her functions or powers, from recording, disclosing, communicating or making use of confidential information unless required to do so by law.

**Clause 25: Proceedings conducted at certain care facilities**

Provides that where proceedings of a court are conducted at a care or treatment facility, this Act does not apply unless the person responsible for the management of that facility has agreed.

**Clause 26: Obstruction and impersonation of security officer**

Makes it an offence for a person to wilfully delay, hinder or obstruct a security officer or security manager in the exercise of his or her functions or to impersonate a security officer.

The maximum penalty for such an offence will be 50 penalty units or imprisonment for 6 months, or both.

**Clause 27: Limitation of liability**

Limits the personal liability of a security officer or a security manager when acting in good faith for the purpose of performing or exercising, or purporting to perform or exercise a function or power under the Act.

**Clause 28: Effect of Act**

This clause clarifies that any powers conferred by the proposed Act are additional to various other powers already conferred on or possessed various parties.

**Clause 29: Offences punishable summarily**

This clause provides that an offence under the proposed Act may be dealt with summarily.

**Clause 30: Rules, guidelines and directions**

Provides for the issuing of rules, guidelines and directions in accordance with the Act.

**Clause 31: Regulations**

Enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 32: Administration of Act**

A standard clause outlining the administrative arrangements in relation to the proposed Act.

**Clause 33: Legislation repealed**

Repeals the *Admission to Courts Act 1916*.

**Clause 34: Legislation rescinded**

Rescinds the Admissions to Courts (Lower Courts) Regulations 2016 and the Admission to Courts (Supreme Court) Regulations 2016.