

**2000**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**COURT SECURITY BILL 2000**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of**

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## **Court Security Bill 2000**

### **Outline**

The measures in this Bill are designed to provide a legislative basis for the provision of security on court premises, particularly during the course of those trials where it is perceived that there may be a risk to the safety of witnesses, judges, accused and other persons who may wish to attend proceedings. There are perceived possible limitations of providing court security without legislation. In the absence of legislation, the legal powers of security officers (other than police officers) to require persons to submit to a search or to deny disruptive persons access to court premises is unclear.

The security measures which will apply to court premises are:

- powers to require a person to identify himself or herself, to provide proof of identity and to provide the reason for being on court premises;
- powers to require that a person permit a screening search of the person and anything that a person has in his or her possession;
- powers to require that a person permit a frisk search or "pat down" of outer clothing, which will enable security personnel to check whether a person has concealed firearms, explosives or offensive weapons;
- powers to require a person not to enter or leave court premises if that person behaves unlawfully, or refuses to identify himself or herself or submit to a search;
- powers to remove a person from court premises if that person fails to comply with a requirement to leave;
- powers to enable a judge or magistrate to direct that a person or persons not enter or leave court premises.

The Bill creates the following offences:

- failing to provide, or providing false, information to a security officer when requested;
- failing either to leave the court or comply with a request to search either person or property;

- possessing a firearm, explosive or offensive weapon on court premises, other than as evidence in court proceedings;
- failing to comply with a requirement of a security officer;
- obstructing a security officer;
- failing to comply with an order made by a judge to restrict access to a court or close a court.

The powers will be exercised by security officers which include police and the sheriff. Security officers will also include persons who are registered as security guards by the ACT Security Protection and Investigation Industry Council and who are appointed by the chief executive of the Department of Justice and Community Safety. The purpose of using persons other than the police and the sheriff is to ensure that there are sufficient security staff available for duty at court premises during those trials where there is perceived to be a risk to the safety of witnesses, judges, accused and other persons who may wish to see the proceedings.

The Bill acknowledges the rights of persons generally to enter and remain on court premises.

Finally, the Bill acknowledges that the provisions in relation to court security apply in addition to any other powers that may be held by a court to conduct its own affairs.

#### **Revenue/Cost Implications**

The Bill will impose no additional costs on the Territory in relation to its obligation to ensure that court premises are secure.

## Court Security Bill 2000

### Notes on Clauses

#### Clause 1 Name of Act

This clause explains that the title of the Act is the *Court Security Act 2000*.

#### Clause 2 Commencement

This clause provides that the commencement date of the Act is the date that it is notified in the Gazette.

#### Clause 3 Dictionary

This clause provides for the Dictionary appearing at the end of the Act to be part of the proposed Act.

#### Clause 4 Notes

This clause provides that a note included in the Act is explanatory and is not part of the proposed Act.

#### Clause 5 Right of entry to court premises

This clause explains that a person has a right to enter and remain on that part of court premises open to the public if there is available seating in court (if a person wishes to see court proceedings) and the person has complied with the requirements of a security officer or the court. The purpose of this clause is to acknowledge that persons generally have a right to view court proceedings, the majority of which are required by law to be held in public.

The clause does, however, explain that the right of a person to attend court is subject to any law which may restrict access to court proceedings. For example, section 61 of the *Children and Young People Act 1999* provides that proceedings under the Act are not open to the public. The clause is not intended to confer a right on a person to enter a court to observe proceedings under the *Children and Young People Act 1999*. Similarly, the clause is not intended to give a person a right to attend court contrary to subsection 85(2) of the *Consumer Credit (Administration) Act 1996* (Hearings), subsection 92(2) of the *Discrimination Act 1991* (Procedure), section 76D of the *Evidence Act 1971* (evidence in sexual offences proceedings), section 7 of the *Evidence (Miscellaneous Provisions) Act 1991* (relating to consequential orders where witnesses give evidence other than in a courtroom), subsection 21(3) of the *Inquiries Act* (Power to hold), sections

181 (Hearings to be in public except in special circumstances), 423 (Persons entitled to be present) and 435 (Public nature of inquiries) of the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 95 of the *Mental Health (Treatment and Care) Act 1994* (proceedings before the Mental Health Tribunal are to be in private), subsection 28(3) of the *Royal Commissions Act 1991* (Power to hold) or section 26 (Closed hearing) and subsection 38(2) (Public hearings) of the *Tenancy Tribunal Act 1994*.

The clause also acknowledges that the right of entry onto court premises is subject to the inherent power of the court to regulate its own proceedings.

#### **Clause 6 Powers under Act additional to other powers**

This clause provides that the powers under the proposed Act are additional to any powers that the court, a judge, a magistrate or the police have apart from the proposed Act. For example, a judge or magistrate has the power to give directions regarding the way in which proceedings are conducted in court. The judge or magistrate also has the power to punish for contempt a person who fails to comply with directions. It is not intended that the proposed Act will in any way limit the powers of a judge or magistrate to give directions in proceedings.

#### **Clause 7 Security officer to be identified before exercising powers**

This clause requires that security officers, who are not police officers or sheriff's officers, may only exercise powers under the proposed Act if the relevant officer first identifies himself or herself, and produces his or her identity card for inspection if requested.

The clause further requires police officers and sheriff's officers who are not in uniform to identify themselves before requiring a person to do something under the proposed Act, and to provide evidence of being a police officer or sheriff's officer if so requested. If a security officer fails to identify himself or herself and fails to provide evidence of his or her identity, a person is not obliged to comply with a requirement of the officer. The purpose of the clause is to ensure that persons entering court premises are not requested to identify themselves, or to submit to a search, by any person other than a person properly authorised under the proposed Act.

#### **Clause 8 Person may be required to state name and address etc**

This clause permits a security officer to require a person entering or on court premises to provide their name, address and reason for being on the court premises. A security officer is also permitted to request proof of a person's identity. It is an offence to refuse to comply with such a request or to state a false name or address, or to provide false identification.

Clause 8 is not intended to be used in relation to all persons who are on court premises, nor is it intended to be used for all proceedings that take place in court. For this reason, the clause is limited in such a way that a security officer will only be permitted to require a person to provide information if the officer believes on reasonable grounds that it is necessary to require the information in the interests of court security.

The majority of business conducted in court premises does not raise the issue of court security. It is intended that persons who conduct such business on court premises will be permitted to go about their business without being required by security officers to provide information. Occasionally information is received by law enforcers and court staff from time to time concerning possible disruption to court proceedings, and therefore the power to require information from persons attending court will assist in identifying any person who is likely to disrupt proceedings and pose a threat to court security.

#### **Clause 9     Searches**

This clause permits a security officer to require a person entering or on court premises to undergo a search. The search may comprise a screening search, a frisk search (running the hands over a person's outer garments), or a request to empty pockets or open a briefcase, bag or container.

The clause provides that a frisk search can only be conducted by a security officer of the same sex as the person being searched, unless there is no such security officer available. On those occasions a frisk search will be conducted by another person of the same sex in the presence of a security officer. In addition, a security officer must not use more force, or subject a person to greater indignity, while conducting a search than is necessary.

Clause 9 is not intended to be used in relation to all persons who are on court premises, nor is it intended to be used for all proceedings that take place in court. For this reason, the clause is limited in such a way that a security officer will only be permitted to require a person to be subjected to a search if the officer believes on reasonable grounds that it is necessary in the interests of court security.

Clause 9 further provides an option to the person who is required to undergo a search. If a person objects to being searched, that person can leave the court premises. It is an offence for a person to refuse either to comply with a request or leave the court.

Finally, a person who conducts a same sex frisk search at the request and in the presence of a security officer is not civilly liable for conducting the search, and any liability that would normally attach to such a person, attaches to the Territory.

#### **Clause 10 Firearms, explosives and offensive weapons on court premises**

This clause creates the offence of carrying or otherwise being in possession on court premises of a firearm, explosive or offensive weapon. The offence does not apply to a police officer or other security officer acting in the course of their duty. The offence does not apply to a custodial officer acting in the course of their duty. Finally, the offence does not apply to those circumstances where a person brings to court a firearm, explosive or offensive weapon for use as evidence in court proceedings. However, a person who brings a firearm, explosive or offensive weapon to court to be used as evidence must either have the permission of the court, or such firearm, explosive or offensive weapon must be under the control of a member of the court staff or a police officer.

#### **Clause 11 Seizure and forfeiture of firearms etc**

This clause authorises a security officer to seize any firearm, explosive or offensive weapon which is brought onto court premises in contravention of clause 10. In such cases any firearm, explosive or offensive weapon seized is to be forfeited to the Territory.

#### **Clause 12 Security officer may require thing that may hide firearms etc to be left**

This clause permits a security officer to require that a person leave certain items with the security officer while that person is on court premises. This ensures that items which are suspected of concealing a firearm, explosive or offensive weapon are removed from a person's possession before he or she enters a court.

Clause 12 is not intended to be used in relation to all persons who are on court premises, nor is it intended to be used for all proceedings that take place in court. For this reason, the clause is limited in such a way that the security officer can only require an item be deposited if there are reasonable grounds to believe that a firearm, explosive or offensive weapon is concealed in the item. A reasonable ground may arise during the course of a criminal trial whereby security officers have received information that threats of violence have been made against a witness, victim or defendant. Security officers might reasonably believe that an object is capable of concealing an item that could be used as an offensive weapon to carry out such a threat.

Further, clause 12 provides an option to a person who has been required to deposit an item with a security guard. A person can either deposit the item, or leave the court premises. A person commits an offence if they choose not to deposit an item when required, and refuse to leave the court premises.

### **Clause 13 Unlawful, disorderly conduct etc**

This clause permits a security officer to require a person to leave, or not to enter, court premises if a person is behaving unlawfully or in a disorderly or menacing manner. This requirement will cover those situations where persons are abusive or act in a threatening or intimidating manner towards court staff, defendants, witnesses or other court users. The purpose of the provision is to enable disruptive persons to leave court premises without being charged with an offence.

Clause 13 acknowledges that a person may attend court premises because he or she might be required to do so to answer a subpoena, bail or by reason of some other court process. If a person attending at court premises identifies himself or herself to a security officer as being required to attend court premises to answer a court process or order, a security officer may only require that person not to enter or to leave court premises with the leave of the court, unless the officer is satisfied on reasonable grounds that the person is not required to attend the court by a court process or order.

A person commits an offence if they refuse to leave when required.

### **Clause 14 Contravention of requirement of security officer**

This clause explains that a person can be required by a security officer not to enter or to leave court premises if he or she has contravened a requirement of a security officer. In practice, in those matters involving searches, the deposit of an item, or unlawful or disorderly conduct, a security officer would invite a person to leave the premises or comply with the officer's requirement.

Clause 14 empowers a security officer to remove a person who does not comply with the request to leave. It also empowers a security officer to prevent a person from entering court premises. The purpose of the clause is to allow security officers to remove a person after giving a warning without having to arrest and charge that person.

Clause 14 acknowledges that a person may attend court premises because he or she might be required to do so to answer a subpoena, bail or by reason of some other court process. If a person attending at court premises identifies himself or herself to a security officer as being required to attend court premises to answer a court process or order, a security officer may only require a person not to enter or to leave court premises with the leave of the court, unless the officer is satisfied on reasonable grounds that the person is not required to attend the court by a court process or order.

Police would, of course, also have their usual powers to arrest and charge persons who commit an offence under the proposed Act. Security officers, other



than police, would also have the power of effecting an arrest pursuant to section 349ZC of the *Crimes Act 1900*.

Clause 14 also creates an offence of failing to comply with the requirement of a security officer to leave or not to enter court premises.

#### **Clause 15 Obstruction etc of security officer**

This clause creates an offence of hindering or obstructing, without reasonable excuse, a security officer in the exercise of a function under the proposed Act.

#### **Clause 16 Judge or Magistrate may close court premises**

This clause provides the legislative power for a judge or magistrate to order that members of the public generally, or a particular person or group of persons, be removed from court premises, or not be permitted entry to court premises.

Clause 16 is not intended to formalise the right of a judge or magistrate to order that persons be removed or not admitted in all circumstances. It is intended to formalise the orders made where a judge or a magistrate considers that such orders are necessary for securing order and safety in court premises. For example, a judge or magistrate may receive information that a person or persons have indicated an intention to attend court for the express purpose of interfering with certain proceedings or with a party or witness to those proceedings.

The clause permits a judge or magistrate to make specific orders to exclude those persons who are considered to pose safety risks, while preserving the rights of others to go about their lawful business on court premises. It is an offence to refuse to comply with an order of the court. This provision is in addition to the power of a judge or magistrate at common law to punish for contempt.

A person who refuses to comply with an order of a judge or magistrate can be required to leave or be refused entry by a security officer. A person who refuses to leave court premises can be removed by a security officer.

#### **Clause 17 Security officers**

This clause relates to the appointment of security officers. Historically, court security in the Territory has been carried out by court staff, with the Australian Federal Police providing assistance when necessary. However, the court staff who have carried out security, such as the sheriff's officers, have other duties which may mean that, for some proceedings before the court, the demand for security officers may exceed supply. It may also be inappropriate in some cases, particularly where there are a number of police witnesses, for the Australian Federal Police to act as security officers with the power to deny persons entering

court premises. To ensure that there are sufficient security officers available for particular proceedings, the chief executive of the Department for Justice and Community Safety, or his or her delegate, may appoint non-court staff or non-police personnel to act as security officers under the proposed Act. Any such appointment must be in writing.

A person other than a sheriff's officer or a police officer may only be appointed as a security officer under the Act if the chief executive or his or her delegate is satisfied that the person is registered as a security guard with the ACT Security Protection and Investigation Industry Council, has not been convicted or found guilty of an offence involving fraud, dishonesty, violence, drugs or weapons, and is capable of competently exercising the functions of security officer under the Act.

Clause 17 provides that the appointment of a security officer may be revoked if the officer ceases to be registered as a security guard by the ACT Security Protection and Investigation Industry Council, commits an offence against the Act, is convicted or found guilty of an offence involving fraud, dishonesty, violence, drugs or weapons, or agrees with the chief executive or his or her delegate to revoke the appointment. Any revocation of appointment must be in writing.

#### **Clause 18 Identity cards for security officers**

This clause requires that an identification card must be issued to all persons who are not police officers, or sheriff's officers. The identification card must contain particulars of the security officer including the officer's name and the dates on which the card issued and expires. The card must also contain a recent photograph of the officer. The card must be returned to the chief executive when a person ceases to be a security officer. It is an offence not to return the card.

The identification card must be visible while the officer is on duty and must be produced for inspection if requested. It is an offence to fail to display the card, or to fail to produce the card when requested.

#### **Clause 19 Delegation of chief executive's functions**

This clause contains a general power for the chief executive to delegate all or any of his or her functions under the Act to a public servant. Any delegation of powers must be in writing.

#### **Clause 20 Regulation-making power**

This clause contains a general power for the Executive to make regulations under the proposed Act.

**Dictionary**

The Dictionary explains key words and phrases used in the proposed Act. The defined terms are: assistant sheriff, court, court premises, custodial escort, deputy sheriff, explosive, firearm, frisk search, function, judge, magistrate, offensive weapon, screening search, security officer, sheriff and sheriff's officer.