

**Public Benefit Test Report on
proposals to reform security
industry licensing in Queensland**
Supplementary compliance role for industry
May 2008



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1. Introduction

The *Security Providers Act 1993* (the Act) and the *Security Providers Amendment Act 2007* (the Amendment Act) have created a licensing regime for bodyguards, crowd controllers, security advisers, security equipment installers, security officers, private investigators and security firms. Bodyguards provide close protection services for others; crowd controllers are employed to keep order around public places including nightclubs and hotels. Security advisers provide advice about security equipment, security methods or principles after assessing specific risks relating to the protection of people or their property. Security equipment installers install, repair, service or maintain security equipment. Security officers provide services such as mobile patrols, act as armed and unarmed guards and respond to alarms. Private investigators are typically operators who investigate missing persons, conduct covert surveillance operations and factual investigations on behalf of their clients. Security firms are business licensees and provide the services of bodyguards, crowd controllers, security advisers, security equipment installers, security officers and private investigators.

The Act seeks to ensure:

- the community is protected from unacceptable behaviour of security providers;
- only persons of an 'acceptable character' enter the industry and operate as security providers;
- operators possess basic levels of competency in the delivery of their services to members of the public; and
- industry / market participants behave according to community expectations.

The *Security Providers Regulation 2008* (the Regulation) was made by the Governor in Council under section 54 of the Act and provides:

- details of the licensing scheme, including documents which must accompany applications and licence particulars;
- register requirements for security providers;
- crowd controllers' visible identification requirements; and
- fees payable under the Act.

In 2002, the Office of Fair Trading conducted a Public Benefit Test (2002 PBT) on the Act and *Security Providers Regulation 1995* as part of the Queensland Government's commitment to the Commonwealth, States and Territories Competition Principles Agreement.

In August 2004, the Minister for the former Department of Tourism, Fair Trading and Wine Industry Development (the former Minister) initiated a review of the Act as part of the Queensland Government's commitment to maintaining effective, contemporary and quality legislation.

In April 2005, the former Minister released a Consultation Paper outlining issues of concern in the security industry and sought public comment on the current application of the Act. Release of the Consultation Paper was part of the recommendations from the 2002 PBT.

Issues of concern outlined in the Consultation Paper included the current scope and coverage of the licence categories under the Act, training, probity checks, mandatory membership of industry associations and compliance and enforcement. A majority of responses to the Consultation Paper suggested that the application of the Act at that

time was not fully achieving its objective of providing a safe and reputable security industry in Queensland. Feedback on the Consultation Paper specifically in relation to mandatory membership offered overwhelming support for the need for change (77%) and support for mandatory membership by security firms of approved security industry associations (71% of respondents).

A proposal for mandatory membership was previously considered as part of a Public Benefit Test process conducted in 2006. However, it was considered at that time mandatory membership did not meet the policy objectives of the 2006 Public Benefit Test. Those objectives were to increase the probity requirements under the Act and to harmonise Queensland's licensing regime with interstate security provider licensing systems.

The proposal of mandatory membership of a security industry association approved by the Chief Executive does now meet the goal of ensuring industry standards are raised to improve service delivery, through industry education, training opportunities, and a cultural change stemming from the positive and professional influence of an approved industry association.

On 23 November 2006, the former Premier and the former Minister, publicly announced that one of the key reforms for the security industry would be to give industry associations, employee organisations and other representative groups a supplementary compliance role to ensure those working in the industry are meeting behavioural benchmarks. The preferred measure of mandatory membership will enhance the quality of the security industry by ensuring that industry associations can play an effective and supported role in promoting best business practices in the industry. The measure also reflects a co-regulatory approach aimed at ensuring increased professionalism in the security industry which will have flow-on benefits for consumers and members of the public that interact with security providers.

On 15 March 2007, the Legislative Assembly passed the Amendment Act, which, among other things, strengthened the probity criteria to assess a licensee's suitability to hold a licence, increased the security service activities which require a licence, and provided for Codes of Practice to regulate the behaviour of licensed security providers and security firms.

The Amendment Act has been commenced in three stages. Two stages of the Amendment Act have begun. Stage One, for a new penalty regime, commenced on 1 July 2007. Stage Two, for a modified probity assessment for licensees, including sharing of criminal history information with the Commissioner of Police, commenced on 1 October 2007. The commencement of all other remaining provisions of the Amendment Act that are not in force, including the extension of security activities requiring a licence, and a requirement for security providers to complete additional training as required by the Chief Executive, are due to commence on 1 July 2008.

On 14 February 2008, the Queensland Government released a Regulatory Impact Statement (RIS) of the draft *Security Providers Regulation 2008* for comment. As part of this consultation process, the Queensland Government also included two options for consideration to meet the Government commitment to provide the security industry with a supplementary compliance role. This role is to assist the Department of Justice and Attorney-General audit compliance with codes of conduct to raise standards across the industry to provide security consumers with a higher level of service. This benefit extends not only to security service consumers, but adds to the safety level of members of the public.

Consultation on the RIS closed on 13 March 2008. Approximately half the respondents to the RIS provided feedback on the issue of a supplementary compliance role for industry.

1.1 Public Benefit Test methodology

Under National Competition Policy, legislation should not restrict competition unless the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition. This Public Benefit Test has been carried out to examine whether or not the benefits of the proposed policy position, that is, to provide a supplementary compliance role for the security industry can only be achieved by restrictions on competition associated with the potential policy proposals. The policy aims to improve standards and the level of service delivery through better education and improved compliance levels with State and Federal laws, via mandatory membership of approved security industry associations. Queensland Treasury has agreed that a 'reduced review' is sufficient based on consultation having already been conducted through the release of the RIS.

Under the terms of National Competition Policy, possible legislative amendments should only be pursued if their net benefits outweigh any resulting restriction on competition or barriers to entry into the industry. The Queensland Government also ensures that any amendments have no significant adverse effect on communities.

The Terms of Reference for this exercise can be found in Attachment A.

This Report outlines potential policy proposals to provide a supplementary compliance role for industry associations. This is carried out by examining the costs and benefits of such proposals taking into account employment, regional development, social and consumer effects. Identification of the costs and benefits of the proposals will assist the Government in making an informed decision when considering reform of security firm business and service delivery standards. The reform will address business practices where the standards are low and therefore affect the quality of service provided to consumers. In the security industry, poor service delivery standards can have dire consequences for consumers and the Queensland community in general. An impact matrix is at Attachment B outlining some of the costs and benefits of the proposals.

1.2 Policy objective of the proposals

Recent, high profile incidents have highlighted that the services provided by some participants in the security provider industry have been less than optimal. This has been most significant in the crowd control sector attached to licensed premises. It has also been brought to the Department of Justice and Attorney-General's attention that some firms within the security providers industry are not complying with their obligations under State and Commonwealth legislation.

Poor business practices are particularly unacceptable in this sensitive industry where failure to attract and retain quality staff has a direct and severe impact on the safety and well-being of members of the public.

The proposal seeks to give security industry associations a supplementary compliance role over their members to encourage compliance with all relevant State and Commonwealth legislation to strengthen the overall regulation of the industry and improve performance. This will be carried out through requiring membership of a security industry association that has been approved by the Chief Executive, by applicants for a security firm licence. The individual security industry association must have its own code of conduct requiring compliance with State and Commonwealth legislation, operational standards, and other business practices. Membership of an approved security industry association will be based upon compliance with the association's code of conduct.

Termination of membership of an approved security industry association may place the security firm licence in jeopardy.

A further outcome of the policy objective will be to raise the standards of security providers employed in the industry through attracting a high calibre of staff through fair and equitable pay and conditions. Higher industry standards will serve to raise the standard of service provision, increase the safety of individuals and businesses utilising security providers and provide more security for property protected by security providers.

1.3 Current requirements under the Act

The Act does not currently require security firm licensees to belong to an approved security industry association.

Codes of Practice for crowd controllers, security officers working on liquor licensed premises and for security firms made under the Act are due to commence from 1 July 2008.

1.3.1 Requirements under other legislation

Codes of Practice under State laws cannot and do not purport to enforce compliance with Commonwealth laws. Consequently, the *Security Providers (Security Firm Code of Practice) Regulation 2008* cannot impose additional penalties for failure to comply with other pieces of general business legislation.

Security firms are required to adhere to both Commonwealth and State legislation.

An example of the positive outcomes that can be delivered through industry self-regulation is from a human resources aspect. Security officers whose employers are not adhering to awards and providing lawful working conditions can lack motivation in the performance of their duty. Another outcome of this situation is that higher calibre employees can drift away from the industry, replaced by inexperienced or problematic personnel. This leads to an industry-wide downturn in quality of service and safety.

1.3.2 The interstate experience

Other jurisdictions have recognised the problems occurring within the industry and have expressed concern for the welfare of their consumers and the general public. Some States have addressed the problems directly, with New South Wales having already introduced a very similar model to the preferred mandatory membership option.

NSW

The NSW *Security Industry Regulation 1998* requires applicants for a master licence (ie. security firm licence) to provide evidence of membership of an approved industry association. Currently, the following are approved security organisations:

- Australia and New Zealand Locksmiths Association Ltd;
- Building Service Contractors Association of Australia;
- Australian Hotels Association;
- Australian Retailers Association NSW;
- Australian Security Industry Association Ltd;
- Institute of Security Executives;
- Locksmiths Guild of Australia Inc. NSW;

- Master Locksmiths Association of Australasia Ltd;
- National Electrical Contractors Association NSW Chapter; and
- Motor Traders Association of New South Wales.

The role of approved security organisations in NSW is to provide education and guidance to members in complying with State and Federal legislation and also to raise professional and ethical standards within the industry.

In order to be approved by the NSW Commissioner of Police, industry organisations are required, in addition to satisfying structural and financial criteria, to demonstrate their capacity to fulfil their legislative and industry responsibilities on an on-going basis by:

- providing a clear Code of Practice to members (the ASIAL, for example, has introduced a Code of Practice specific to New South Wales for this purpose);
- demonstrating a capacity to audit all members on an on-going basis to ensure compliance with the Code of Practice;
- developing a program to identify general operational difficulties and practices of its members in relation to State and Federal legislation and provide information to the NSW Security Industry Registry so that it could review / rectify those difficulties; and
- developing a complaint management system to investigate and resolve complaints concerning members.

Victoria

For the purposes of competency requirements, the Victorian Act requires a person who applies for a private security business licence (ie. security firm licence) to be a member of an approved security industry organisation or to possess the relevant qualifications or experience approved by the Chief Commissioner of Police. At the time of writing this Report only one security industry organisations has been approved by the Chief Commissioner of Police, that being the Australian Security Industry Association Ltd.

1.4 Assessment of the problem

1.4.1 Requiring security providers to comply with business obligations

There is increasing concern among stakeholders in the security provider industry that the standard of operation of many security provider businesses is low. It has been indicated in Section 1.3 how these lesser standards are impacting on the professionalism and quality of service provided by some members of the industry. Some of these problems cannot be adequately or legally addressed through amendments to the legislation directly. Empowering the industry associations to play a stronger compliance role is a means to lift standards through the cooperation of industry.

Non-compliance with business operational requirements can lead to imperfect competition conditions, which, in turn, leads to lower standards. Firms attempting to cut costs by not operating their businesses in a manner which is compliant with all industry laws including codes of conduct, stand to gain a competitive advantage over firms which endeavour to be fully compliant. In contract tendering, particularly where the work is principally for the supply of 'manpower' services, this cost cutting may allow for significant undercutting in tender quotes. This can result in other firms being tempted to cut costs by following similar, non-compliant operational standards in order to remain competitive. This downward spiral may result in standards of security

service slipping further, with moves away from a desired outcome of the Act, that is, to ensure the community is provided with a quality security industry and ensure the community is protected from unacceptable behaviour of security providers.

1.4.2 Regulatory Impact Statement released for consultation

On 14 February 2008 the Department of Justice and Attorney-General released a Regulatory Impact Statement (RIS) inviting public comment on the draft *Security Providers Regulation 2008* and Codes of Practice for security providers. As part of this consultation process, the community was also provided with the opportunity to provide comment on two options for providing the security industry with a supplementary compliance role. These options are

- third party auditing of the Security Firm code of Practice; and
- mandatory membership of a security industry association approved by the Chief Executive required for security firm licensees.

There was most support from respondents for the proposal to introduce a mandatory membership requirement as a means of co-regulation. This includes a response in support by the Australian Security Industry Association Limited representing the largest security firm membership in Queensland. Where respondents expressed reservations about the mandatory membership model, it was in relation to the areas which would be subject to audit on members by the approved security industry association, the cost to industry, and ensuring the approved industry associations were able to conduct the frequency of auditing needed to an approved standard. All of these concerns have been addressed in the final model discussed at 2.3.1.

A detailed summary of responses to the RIS on supplementary compliance proposals for industry is at Attachment C.

An earlier Discussion Paper released in 2006 for public consultation received 73 responses on the question of mandatory membership. Of these, 71% were in favour of introducing mandatory membership of an approved industry association.

1.4.3 Supporting research and reported negative incidents

Leading researchers on the security industry, Tim Prenzler and Rick Sarre, are senior academics in the areas of justice and law, and have conducted extensive research on the standards of the industry. Together with Karen Earle, their recent article on developments in the industry reveals that despite the best regulatory efforts by governments across all State jurisdictions, standards within the industry are still poor, and continue to put at risk the lives and property of those the industry is charged with protecting.¹

The researchers cite an initial improvement in security industry standards throughout the 1990s and on to 2004. However, since then Australian States, including Queensland, have experienced a downturn in security provision standards. Failures within the industry Australia-wide include deaths on or near licensed premises, numerous firearms being stolen from security providers, alleged infiltration by outlaw motorcycle gangs into crowd control at licensed premises with related illicit drug sales, money laundering and gang fights, prisoners escaping from private security contractors, and private airport security providers and the airport security systems they provide being subject to a major review by the federal government.²

¹ Prenzler, T., R. Sarre, & K. Earle. 2007/08. Developments in the Australian Private Security Industry. *Flinders Journal of Law Reform* (10) pp 403-417.

² *ibid.* p 412.

Most noticeably in Queensland, for example, there is a reported increase in violence, particularly alcohol-related violence in and around licensed premises (where crowd controllers are required), often in entertainment precincts where thousands of patrons can be in attendance. Research has indicated one in five patrons reported having experienced alcohol-related violence.³ This experience emphasises the need for trained and experienced security providers who have the ability to diffuse volatile situations.

If parts of the industry continue to adopt low compliance standards, or retain or attract a lower standard of employee into the industry, this could potentially jeopardise the safety of the community. It also places employees at risk of being subjected to harm or injury.

There are several recent examples of situations in which the use of force by crowd controllers has allegedly contributed to injury or death of members of the community. This includes an incident in 2006 in Brisbane where three crowd controllers were charged with murder after placing a patron in a headlock,⁴ and an incident in 2007 in Logan where a crowd controller punched a patron who subsequently died from his injuries.⁵ In May 2008, crowd controllers have been implicated in the death of a man on the Gold Coast.⁶

These examples highlight the utmost seriousness of ensuring high standards and the importance of attracting and retaining experienced and well-trained security personnel. The consequences to the community of anything less can be dire.

The strengthening of the licensing system for security providers is acknowledged as going part of the way to improving industry standards and the quality of service offered. Queensland has also addressed previous shortcomings in the licensing and probity checks for security providers. The remaining issue raised by Prenzler, Sarre and Earle is that of a proactive auditing of conduct, once licenses are issued.⁷ This supports the proposed reform, in the sense that the mandatory membership of an industry association provides added assurance through ongoing audits of industry standards and compliance with codes of conduct.

2. Proposals for reform

2.1 Status quo

This proposal favours leaving the Act unchanged with no supplementary compliance role for industry to ensure security industry employers will comply with State and Commonwealth laws and lift the standard of their business operations and services. This proposal would be reliant upon the goodwill of security provider firms, and existing regulators from the State and the Commonwealth monitoring compliance with legislation with the required frequency to change a culture of non-compliance

In leaving the Act unamended and relying on compliance checks by State and Commonwealth departments (for example compliance with industrial relations legislation or industry-side tax audits) does not guarantee consistent compliance by security firm licensees. This in turn affects the objective of the Act of promoting public safety and security of property through resolving the problems within the industry.

³ The Australian. 15 April 2008. *One in five hit by alcohol violence*. This Morgan poll was released by the National Alliance Against Alcohol Related Violence the same day as the alliance was launched. The group comprises national drug and alcohol associations, charities and local government.

⁴ Sydney Morning Herald. 23 May, 2006. *Bouncer bailed on murder charge*.

⁵ Watt, A. Courier Mail. April 13, 2007. *Bail for bouncer on kill charge*.

⁶ Stoltz, G. Courier Mail. 19 May 2008. *Bouncers interviewed over pub death*.

⁷ Prenzler, T., R. Sarre & K. Earle. op cit, p. 412.

The industry is also not in a position to effectively resolve these problems by itself, devoid of assistance by an industry association.

In 2007 Parliament passed the *Security Providers Amendment Act 2007* which increased the penalties for operating without a licence, strengthened the criteria to assess a person's probity to hold a licence and expanded the types of security activities which require a licence. While the amendments will enhance the regulatory environment applying to security providers, they will not directly address the problem of low industry workplace standards.

Therefore, as the proposal of leaving the Act unchanged does not further the policy objective of ensuring security firm licensees meet their obligations to maintain industry standards, the costs and benefits of this proposal have not been considered.

2.2 Third party auditing

One option the Government examined to improve industry standards is through a third party auditing regime to determine compliance with the *Security Providers (Security Firm Code of Practice) Regulation 2008*.

This option proposes the Chief Executive of the Department of Justice and Attorney-General approve persons to provide a compliance audit service to licensed security firms on the *Security Providers (Security Firm Code of Practice) Regulation 2008* (Code of Practice). The Code of Practice will apply to security firms operating in both the manpower and technical sectors.

The Code of Practice would contain, as one provision, an obligation that security firm licensees comply with all State and Commonwealth legislation, including for example the *Workplace Relations Act 1996*.

As part of the approval process for third party auditors, the Chief Executive would form an advisory body comprising members from the security industry, employee associations and other persons to assist the Chief Executive with the development of the standards for appointment as an auditor. Particular attention would be taken to determine the level of experience, knowledge and appropriateness of an applicant auditor. An appropriateness test would ensure there is no conflict of interest, that is, that the person is not a licensed security provider or an employee of a security industry or employee association.

The Department would also offer an audit service for those firms which do not wish to use the services of an appointed auditor.

Security firms would be required to undertake an audit once every three years, and supply the Chief Executive with a copy of the audit report as part of their licence renewal application. The Act provides it is a ground for the Chief Executive to consider suspension of, cancellation of, or refusal to renew a Security Firm licence if a security firm licensee contravenes the Code of Practice. Such contraventions would be exposed in an audit report.

Issues

Such a model is inadequate to address the problems because not all the desired compliance areas can be stipulated in the Code. One of the key areas identified as reducing the standard of service provided by the industry has been poor industrial relations obligations compliance. In relation to including an obligation that a security firm licensee comply with Commonwealth workplace relations legislation in the Security firm Code of Practice, such an obligation is difficult to enforce on an industry-specific basis, given the requirement to comply with the law in any event.

The Department of Employment and Industrial Relations has also advised Queensland Government inspectors cannot enter workplaces governed by the Commonwealth *Workplace Relations Act 1996*. If the Security Firm Code of Practice contains a requirement security firm licensees comply with the Commonwealth *Workplace Relations Act 1996*, the Department of Justice and Attorney-General inspectors cannot enter workplaces to check compliance with industrial relations obligations proposed to be contained in the Security Firm Code of Practice, rendering it unenforceable by the Queensland Government.

There is a Constitutional limitation to extending the powers of inspection under the Act to cover Commonwealth legislation due to section 109 of the Constitution. If the Act and its regulations were amended to include an auditing and inspection system governing the workplace relations systems of Queensland security providers, it would be inconsistent with a Commonwealth law and as such automatically invalid to the extent of that inconsistency.

Therefore, as this proposal cannot meet the policy objective of ensuring security firm licensees meet their business obligations, such as compliance with workplace relations legislation, to maintain industry standards, the costs and benefits of this proposal have not been considered.

2.3 Mandatory membership of approved security associations

2.3.1 Mandatory membership of industry associations

This proposal involves amending the Act to require an applicant for a security firm licence to provide evidence of membership of a security industry association approved by the Chief Executive. Security industry associations require members to adhere to industry based codes of conduct.

An industry code of conduct is usually a common set of guidelines which requires all members of an association to comply with the responsibilities and expectations under that code. Industry based codes are usually developed with significant industry involvement and can be easily amended to suit changing environments.

To maintain membership of an approved security industry association, a security firm would have to adhere to its code of conduct. These codes would be separate from the *Security Providers (Security Firm Code of Practice) Regulation 2008*.

A security industry association's code of conduct may mirror parts of the Security Firm Code of Practice if the association chooses to do so.

Administrative criteria for security industry associations to be approved by the Chief Executive would require, at a minimum:

- the provision of an obligation within the security industry association's code of conduct that members comply with State and Commonwealth legislation;
- a demonstrated capacity to audit all association members on an on-going basis to ensure compliance with its code of conduct. It is envisaged the Chief Executive would require reports from approved security industry associations on a regular basis on their compliance responsibilities with member security firms; and
- the development of a complaint management system, (if not already in place), to investigate and resolve complaints concerning members.

These administrative approval criteria would assist the effectiveness of this proposal by providing an accountability mechanism for the obligations of approved security industry associations. These obligations would be central to the approval process by

the Chief Executive, non-compliance of which may lead to the Chief Executive removing an approval status. Compliance with these approval criteria would be carried out by Departmental officers and met within current appropriation.

Contraventions of an approved security industry association's code of conduct would be established by the security industry association through its own code of conduct compliance on member firms. Contraventions may result in revocation of membership for the security firm which, in turn, would be a legislative ground to consider suspension of the security firm's licence under the Act.

Approved security industry associations in other jurisdictions commonly adopt a consistent approach to good business practices and can ensure member compliance with relevant State and Commonwealth legislation. The recent review of the New South Wales *Security Industry Act 1997* (NSW Act) concluded the legislative requirement for approved security associations in the NSW Act contributes to regulation of the industry and greatly assists to ensure effective compliance with good business practices. The review also noted that partnership with these associations aims towards co-regulation with the NSW Act to ensure an industry with higher integrity.

The Australian Security Industry Association Limited is the peak industry association in Australia and is one approved association in New South Wales. It introduced a code of conduct for members of their association operating in that State.

The basis of requiring a potential licensee to become a member of an approved security industry association is to ensure all industry participants are captured by the compliance activities of approved industry associations. This assists with existing compliance activities for business practices by making it specific for the security industry. As noted earlier, compliance with all State and Commonwealth legislation is not high within the security industry.

In conjunction with codes of conduct, industry associations usually have a complaints resolution service for consumers. This is usually independent from State and Commonwealth regulators. These organisations may also provide for professional development and a forum in which members can discuss standards of business practice and issues of concern to their businesses. They can also play a role in ensuring the Act's obligations are met.

A report on regulating private security in Australia jointly authored by Prenzler and Sarre concurs with the mandatory membership proposal. The authors propose that compliance auditing should extend to ensuring compliance with industrial relations obligations. Their opinion is that a model incorporating this aspect would see the industry and the community as beneficiaries.⁸

This proposal has the potential to restrict competition through introducing a barrier to entry for new entrants to the industry through the introduction of a mandatory cost. However, it meets the policy objective of ensuring security firm licensees meet their obligations to maintain industry standards, such as compliance with workplace relations legislation, to bring about a higher quality of service for consumers. As such an analysis of the respective costs and benefits has been carried out.

2.3.2 Impacts on the industry

Positive impacts

Having a co-regulatory audit provision within the industry provides an assurance that the industry does not succumb to a reduction in standards as experienced industry-

⁸ Penzler, T. and R. Sarre. 1998. *Regulating private security in Australia*. Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice, No. 98.

wide in the past. This supports the direction the government is seeking for the industry in providing industry with a supplementary compliance role that assists in maintaining high standards with the assistance of industry, but with less black letter regulation and cost to government.

Approved security industry associations would receive more revenue from mandatory membership, which is expected to be returned to members in the form of stronger industry representation, improved and increased training and professional development, professional advice, and a compliance audit service. This is viewed as a medium positive impact on the entire industry, but will also deliver a higher standard of service.

Not having a mechanism in place to ensure security firms are meeting all their business obligations under State and Commonwealth legislation is leading some firms to minimise costs by not paying equitable award rates or providing award conditions to employees. This creates an unequal playing field for firms and is imperfect competition. It makes it difficult for firms meeting all their financial remuneration obligations to tender competitively for work. The temptation then exists to cut costs and provide a lower quality service. Introducing this model for ensuring compliance will create a more level playing field despite introducing a mandatory cost of membership. Security firms can vigorously compete, without adopting undesirable, destructive business practices. Providing equality in market competition within the industry is a high positive impact for the industry and for consumers.

Providing industry with input into the industry associations' codes of conduct also provides for greater ownership of the standards amongst members and encourages compliance. Greater professional development of security firm businesses leads to higher standards within the industry which in turn will lead to a better service provided by industry.

Mandatory membership of an approved security organisation would also have the added benefit of enabling industry associations to identify new entrants in the industry. These firms can be educated in their responsibilities, monitored and assisted with their professional development. This may be in the form of training specific to members on best business practices as part of an on-going educative function. With an industry association taking the lead in this area it is expected a higher standard of business culture will arise.

Membership of an approved security industry association also provides direct representation to Government for the security industry which affords formal recognition by Government on issues affecting security firm businesses. A strong formal security industry association can provide Government with a representative, industry-wide perspective on issues affecting the industry, more so than can be achieved by individual security businesses.

Security industry employees will benefit to a large extent through proper provision of their employment entitlements. This is seen as a high positive impact on security industry employees due to further compliance with industrial relations obligations in addition to current regulation. As noted earlier this current regulation is not meeting the required standard for the security industry.

Having approved security industry associations responsible for compliance auditing places this function with an organisation which understands the industry and where such facility to perform this service already exists.

With the backing of industry, outcomes and targets are easier to communicate to individual firm participants in the industry, and to their employees. An industry association is well equipped to provide a useful communication method to security firms, and also to their employees. Security employees may not be fully aware of the

award rates and conditions under which they work, nor aware of the 'sham' nature of some established contract employment practices. Associations have very informative websites and provide a commendable information service for their members and the community, and this could be extended to information for employees within the industry.

Where the industry is seen to be taking an active role in improving standards by encouraging and enforcing adherence to a code of conduct, this improves the public image of the industry and promotes public confidence.

New South Wales is the main jurisdiction from which there is some cross border movement by security firms licensed in Queensland and those licensed in New South Wales. As noted earlier, the security firm licensing regime in New South Wales currently requires security firm licensees to be members of an approved security industry association. This proposal provides consistency with this requirement in New South Wales.

The Australian Security Industry Association Limited is an approved association in New South Wales. If approved under this proposal, those New South Wales security firm licensees already members of the Australian Security Industry Association Limited would already meet the requirement under this proposal if they wished to operate in Queensland. The same would apply with those Queensland security firms wanting to operate in New South Wales. Therefore, membership of such an approved security industry association would only be required once to satisfy both licensing regimes.

Negative impacts

For those security industry businesses which are not currently members of a security industry association, this proposal would enforce membership costs. This would be the case even if the security firm licensee perceives membership provides no benefit to a business.

The fee level which could be expected may be sourced from the Australian Security Industry Association Limited which tiers the cost of corporate membership ranging from \$290 for businesses with less than \$100,000 turnover to \$15,318 for businesses with turnover of \$75 million or more. The Australian Security Industry Association Limited is the peak security industry representative body in Australia.

In relation to existing membership of security industry associations, there will be a minority of security firm business not already members of an association. For example, the Australian Security Industry Association Limited has advised there are 350 firms in Queensland which have voluntary membership in Queensland. This is compared with the current 621 security firms licensed under the Act.

The cost of membership for an approved security industry association is expected to be a low negative impact on the entire industry as a result of this.

Security industry associations, if approved, would also be subject to scrutiny by the Chief Executive to ensure that they play a 'co-regulatory' role within the industry. This would ensure that they provide professional development and complaint resolution and compliance activities. This is expected to be a low negative impact on the industry, offset by increased fee income.

With approved industry associations having to conduct compliance audits on a regular basis, there is a possibility for an increase in membership fees to offset the higher costs the associations may incur in conducting high-quality, thorough auditing. However, with all security firms holding membership under this model, the fee level may remain more constant due to benefiting from economies of scale for the provision of other services. This is a medium negative impact for the industry.

Participation in compliance audits will impose administrative burdens on security firms. These burdens are likely to include costs associated with locating, retrieving and presenting records to the relevant auditor. These impositions are considered to be a low negative impact on business. It is also considered that competent operators will already maintain and have ready access to records evidencing compliance with their legal obligations (such as workplace agreements, payroll records and contracts). Further, for complying firms, an audit will only occur once every three years.

2.3.3 Impacts on the community

Positive impacts

The expected increased professionalism of the industry also transfers a high positive impact to security industry end users and the community in general through a higher quality service. This translates directly into a greater degree of personal safety and property protection for consumers of the service and the general public.

Mandatory membership is a measure which levels the 'playing field' and introduces more even competition in the market thus benefiting consumers. This is a medium positive impact.

Negative impacts

Although some security providers may pass on the cost of industry association membership to consumers, it is expected that any impacts on the whole community with this proposal would be minimal. The cost of membership as a percentage of turnover is highest for small firms with turnover of \$100,000 or less. Even so, membership costs for this size of firm are only \$290. Small firms with very low turnover incur the highest cost as a ratio of turnover, with a firm turning over only \$10,000 in fees needing to recoup \$29 per \$1000 of fees charged, with this dropping markedly where a firm is turning over \$100,000 only needing to recoup \$2.90 per \$1000. As the size of turnover increases, the cost recovery figure per \$1000 in contract fees that would be needed to recoup membership costs reduces considerably and averages at approximately \$1 per \$1000, at \$500,000 turnover, and lowering by two thirds again for firms with very high turnover. The costs, if passed on to consumers, would be negligible.

It might be assumed that having businesses fully meet their workplace relations obligations where they had not previously, would increase costs for these businesses. This, in turn, may cause a slowing of employment, or result in the loss of jobs in the industry if businesses balk at the increase in employment costs. However, with increasing levels of threat to personal and property safety, and legislative requirements for some business types to employ the services of crowd controllers, there is a demand for security provider personnel which offsets the risk of increased employment costs contributing to job losses in the industry.

2.3.4 Impacts on the Government

Positive impacts

Mandatory membership of approved security industry associations would assist Government in compliance activities and complaint resolution. Linking membership with licensing requirements would place an onus on industry participants to ensure compliance with security industry association codes of conduct.

This would give these organisations a 'co-regulatory' position with Government and help ease the burden on Government resources. Mandatory membership is an effective method of 'outsourcing' compliance functions by Government due to the finite amount of resources it can deploy to assess whether industry is observing its

legislative obligations. An approved security industry association is able to assess compliance of its members with applicable business obligations under State and Commonwealth legislation. Where compliance is an issue, the approved association can work with that member security firm to help bring its business practices up to the level of compliance required by Government. Security firms that conduct their businesses with low operational standards may not be the quality of service provider that such a sensitive industry requires. Having this problem addressed is viewed as a medium positive impact.

This 'dual' approach to compliance with State and Commonwealth business legislation assists with achieving one of the Queensland Government's priorities in the area of improving Queensland jobs by ensuring a fair and efficient industrial relations system. It also contributes to another important Government priority of a safer community. Security providers play an important role in providing personal safety and property protection services to security consumers, as well as having a flow-on contribution to maintaining a safe environment around areas where the public may attend. This is viewed as a high positive impact.

Negative impacts

Under this proposal approved security associations are expected to carry out compliance activities on their members. However, if these are not done to the satisfaction of the Chief Executive, the burden of enforcing the requirements of the Act would lie entirely with the Government whilst approved associations received membership funding. This is viewed as a low negative impact on Government. Security industry associations are willing to adopt this measure and compliance and standards are therefore expected to be high.

There will be some additional administrative costs, therefore, for Government. These would have a low negative impact on Government and be met through existing appropriation.

Any Government resources applied to ensuring compliance with this measure would divert resources away from direct compliance activities and this is viewed as a low negative impact.

3. Conclusion

Stakeholders within and external to the security providers industry have highlighted problems associated with the business practices of some security firms, particularly in relation to meeting workplace relations obligations, and the effect this has on the standard of service provision by the industry. The former Premier and the former Minister announced a key reform for the security industry which proposed giving the industry a supplementary role assisting with compliance audits to ensure the industry is meeting behavioural benchmarks. A Regulatory Impact Statement was released on 14 February 2008 inviting comment on two alternative proposals, namely mandatory membership of an approved industry association, or third party auditing to determine compliance with a code of practice.

The policy objective of the proposals is to address the problem of sub-standard levels of security provision by ensuring security firm licensees meet their obligations to maintain industry standards. The proposals of leaving the Act unchanged, and third party auditing have been assessed as not contributing to the policy objective.

For Constitutional reasons, third party auditing may not be a viable solution for determining the compliance of security firms with Commonwealth legislation cannot meet the policy objective. Therefore costs and benefits for this proposal have not been examined.

Mandatory membership of a security industry association approved by the Chief Executive provides for a co-regulatory approach with industry contributing to the development of a suitable code of conduct, including compliance with State and Commonwealth legislation, and then having an ongoing role of compliance auditing. The Government would have an overarching role of monitoring the scheme, and approving the industry associations. This meets the policy objective of ensuring security firm licensees meet their obligations to maintain industry standards, delivering a higher standard of service.

This approach is efficient, in that it utilises the already established facilities and industry knowledge of industry associations, is cost effective for the same reasons, and provides a complimentary monitoring role for the Government. The benefits have been assessed as ranging from medium to high for all stakeholders, with the costs assessed as medium, but able to be spread so that that they are insignificant for individual consumers, and are outweighed by improvements to safety, services and competition. It is therefore understood there will not be any adverse effects on the community. The benefits to the community, including employees of security firms, to the industry, and to the Queensland Government, outweigh the overall costs.

Recommendation

- Amend the Act to make membership of an approved security industry association a requirement for holding a security firm licence.

TERMS OF REFERENCE

REFORM OPTIONS FOR THE *SECURITY PROVIDERS ACT 1993*

1. A review of the restriction on competition in a proposal to amend the *Security Providers Act 1993* (the Act) is required under National Competition Policy. The review will be undertaken in accordance with Queensland Treasury's *Public Benefit Test Guidelines* and will examine the restrictions on competition for a policy option to improve business practices, including compliance with State and Commonwealth legislation, within the security industry.
2. The guiding principle is that legislation (including acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
3. Without limiting the terms of reference of the review, the review should:
 - (a) clarify the objectives of the legislation;
 - (b) identify the nature of the restriction on competition;
 - (c) analyse the likely effect of the restriction on competition and on the economy generally;
 - (d) assess and balance the costs and benefits of the restriction; and
 - (e) consider alternative means for achieving the same result including non-legislative approaches.
4. Without limiting the matters that may be taken into account, the following matters shall, where relevant, be taken into account:
 - government legislation and policies relating to ecologically sustainable development;
 - social welfare and equity considerations, including community service obligations;
 - government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
 - economic and regional development, including employment and investment growth;
 - the interests of consumers generally or of a class of consumers;
 - the competitiveness of Australian businesses; and
 - the efficient allocation of resources.

The particular matter to be taken into account is improving business practices, including compliance with State and Commonwealth legislation, within the security industry.
5. The review will examine whether similar regulatory schemes exist in other jurisdictions and report on any similarities and differences.
6. Consultation has occurred with interested parties through the release of a regulatory impact statement on the policy options to achieve the objective of improving business practices, including compliance with industrial relations legislation, within the security industry. This approach was supported by Queensland Treasury during consultation prior to release of the Regulatory Impact Statement in February 2008.

7. A review report will be presented to the Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland in June 2008.

IMPACT MATRIX – Proposals for auditing of the security industry

PROPOSALS	POSITIVE IMPACTS	NEGATIVE IMPACTS
<p>1. Status Quo.</p>	<p>As this proposal does not meet the policy objective of ensuring security firm licensees meet their obligations to maintain industry standards, costs and benefits of this proposal have not been assessed.</p>	
<p>2. Third party auditing of security firms.</p>	<p>As this proposal does not meet the policy objective of ensuring security firm licensees meet their obligations to maintain industry standards, costs and benefits of this proposal have not been assessed.</p>	
<p>3. Mandatory membership of approved security associations.</p>	<p><u>Industry</u></p> <ul style="list-style-type: none"> • Supports the Queensland Government's policy direction for the industry in seeking to improve and then maintain high standards. • Approved security associations would receive more revenue which is expected to be returned to members through stronger industry representation, increased training and professional development and professional advice. This is viewed as a medium positive impact, with the added advantage of delivering a higher standard of service. • Current situation is creating imperfect competition. 	<p><u>Industry</u></p> <ul style="list-style-type: none"> • For those security industry businesses which are not currently members of an industry association, this proposal would enforce membership costs. The cost of membership for an approved security association is expected to be a low negative impact on the entire industry. • Approved security industry associations would be subject to scrutiny by the Chief Executive to ensure they are complying with the requirements of their co-regulatory role and upholding adequate standards across industry. This would be a low

	<p>This measure creates a more level playing field. This is a high positive impact for industry and consumers.</p> <ul style="list-style-type: none"> • Mandatory membership of an approved security association would enable those associations to identify new entrants in the industry. These firms can be educated in their business responsibilities, monitored and assisted with their professional development. A higher standard of business culture will arise. This is a medium positive impact. <p>Approved security associations in other jurisdictions commonly adopt a consistent approach to good business practices and can ensure member compliance with relevant State and Commonwealth legislation thus lifting industry standards which in turn will result in better products and services.</p> <ul style="list-style-type: none"> • Membership of an approved security industry association provides direct government representation for the security industry which affords formal recognition for issues affecting security firm businesses. This is viewed as a medium positive impact. • Industry input into association codes of conduct provides for greater ownership of the standards and encourages compliance. This is a medium positive impact. • Places the audit provision with an association that understands the industry and where such facility to perform this service already exists. • With the backing of industry, outcomes and targets 	<p>negative impact for the industry.</p> <ul style="list-style-type: none"> • The increased responsibility and work load on approved industry associations could result in the associations having to increase their membership fees to recoup costs. This is a medium negative impact for the industry. However, with all security firms holding membership under this model, the fee level may remain at a more constant level due to benefiting from economies of scale for the provision of other services. • Compliance audits will add an administrative burden on security firms, but this is considered to be a low, negative impact as many of the records required by an auditor would be easily accessed, and maintained and up-to-date for other purposes. Further, for complying firms, audits will only occur once every three years. • Use of a code of conduct can be anti-competitive. <p><u>Government</u></p> <ul style="list-style-type: none"> • Potential negative impacts for the Government will be additional administrative and compliance costs. • The Chief Executive would be responsible for ensuring that compliance audits are performed by associations on their members. Enforcing this falls to the Government. This is viewed as a low negative impact on Government. Security industry associations are willing to adopt this measure and compliance and standards are therefore expected to be high.
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	<p>are easier to communicate to individual firm participants in the industry, and to their employees.</p> <ul style="list-style-type: none"> • Having an industry association develop and enforce its own code of conduct provides for a useful communication method to security firms, and also to the employees who may not be fully aware of the award rates and conditions under which they work, nor aware of the 'sham' nature of some established contract employment practices. Associations have very informative websites and provide a commendable information service for their members and the community, and this could be extended to information for employees within the industry. • Where the industry is seen to be taking an active role in improving standards by encouraging and enforcing adherence to a code of conduct, this improves the public image of the industry and promotes public confidence. • Security industry employees will benefit to a large extent through proper provision of their employment entitlements. This is seen as a high positive impact on security industry employees due to further compliance with industrial relations obligations in addition to current regulation. As noted in the body of this Report this current regulation is not meeting the required standard for the security industry. <p><u>Government</u></p> <ul style="list-style-type: none"> • Mandatory membership of approved security organisations would assist Government in compliance activities and complaint resolution. This would give 	<ul style="list-style-type: none"> • Any Government resources applied to ensuring compliance with this measure would divert resources away from direct compliance activities and is viewed as a low negative impact. <p><u>Community</u></p> <ul style="list-style-type: none"> • It is expected that any impacts on the community with this proposal would be negligible. Security firms may pass on the cost of membership to their customers, but this would be a minimal figure for each customer. • It would be natural to assume that having businesses fully meet their workplace relations obligations where they had not previously, would increase costs for these businesses. This, in turn, may cause a slowing of employment, or result in the loss of jobs in the industry if businesses balk at the increase in employment costs. However, with increasing levels of threat to personal and property safety, and legislative requirements for some business types to employ the services of crowd controllers, there is a demand for security provider personnel which offsets the risk of increased employment costs contributing to job losses in the industry.
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	<p>these organisations a ‘co-regulatory’ position with Government and help ease the burden on Government resources. Mandatory membership is an effective method of ‘outsourcing’ This is expected to be a medium positive impact</p> <ul style="list-style-type: none"> • Using a code of conduct measure under these circumstances is likely to be more efficient than black letter regulation in addressing the problem. • Targeting workplace relations obligations compliance within the security industry assists with achieving one of the Queensland Government’s priorities in the area of improving Queensland jobs by ensuring a fair and efficient industrial relations system. This is viewed as a high positive impact. • It also contributes to another important Government priority of a safer community. Security providers play an important role in providing personal safety and property protection services to security consumers, as well as having a flow-on contribution to maintaining a safe environment around areas where the public may attend. This is viewed as a high positive impact. <p><u>Community</u></p> <ul style="list-style-type: none"> • The community will benefit from an expected increase in professionalism of the industry which transfers a high positive impact to security provider service users and the community in general through a higher quality service and increased personal safety and property protection. • Mandatory membership is a measure which levels the
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ATTACHMENT B

	<p>'playing field' and introduces more even competition in the market thus benefiting consumers. This is a medium positive impact.</p>	
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RESULTS OF CONSULTATION ON THE REGULATORY IMPACT STATEMENT

NAME OF RESPONDENT	DETAILS OF FEEDBACK	SUMMARY
DEIR - M. Hogg	No comment provided on the proposals.	No comment
R. Boersma	No comment provided on the proposals.	No comment
QRTSA	No comment provided on the proposals.	No comment
James Cook University - Ian Brooks	Reservations about whether mandatory membership (MM) will work.	DOES NOT SUPPORT
DEIR - Mark Hopgood	Supports MM. Recommends QWRO's recommendations No.s 6 & 7.	SUPPORTS MM
Kim Walcott - PIR Security	No comment provided on the proposals.	No comment
Clarence Schultz	No comment provided on the proposals.	No comment
National Security Association of Australia Inc.	Feels a third party audit can't be conducted for just \$300-\$400. Question what will be audited - i.e. the Code, accounts, compliance with awards, WH&S compliance? Asks if State auditors can audit federal awards. Business accounts subject to ATO compliance audits already. WH&S subject to separate legislation. If compliance with the Code of Conduct is all that's required, then audit by complaint is widely accepted in the commercial environment. Existing legislation is sufficient to ensure compliance with existing State and Federal awards. See little need to double up on existing compliance audits most companies undertake. Unnecessary expense. Unwilling to comment further until provided with more detail.	DOES NOT SUPPORT
Brisbane City Council	Although any proposal will not be relevant to it, concern about membership fees - queried whether turnover relates to total business turnover, or the part applicable to security provision only.	No comment
National Retail Association	Does not support any mandatory provision which forces a retailer to join an employer association (This proposal would not apply to retailers). NSW template is not best practice. Feel it is critical that retailers are not forced to join a security industry association. Note in NSW firms are able to choose from a list including the Australian Retailers Assoc. Request that the National Retailers Assoc. be the approved retail industry association.	DOES NOT SUPPORT

NAME OF RESPONDENT	DETAILS OF FEEDBACK	SUMMARY
Blue Steel Security P/L	MM does little to clean up the industry. Will just push up costs for security firms, force them to put up costs, and start to push them out of business. Whereas licensed premises employing in-house wouldn't have to join, be audited or have the associated costs. See security providers as the losers in this. Only financial gain for govt and relevant bodies. Feel that increased costs passed on to users of their service (particularly licensed premises) would instead employ in-house with little training or qualifications for these employee security providers. Would see standards slip.	DOES NOT SUPPORT
Australian Security Industry Association Limited	Cannot legislate for behaviour, only practices. Agree legislation should be supplemented with empowerment of industry associations like ASIAL. Feel that third party auditing is fraught with difficulty. MM with the industry association providing compliance auditing in a formal manner, developed in consultation with the licensing regulator is the preferred model. Co-regulation, with the industry taking some responsibility for its compliance, at its expense. Partnership between industry and regulatory authorities most effective way - greater understanding and confidence. Govt regulation alone will not suitable address current needs of industry, govt or community. NSW model is a good basis. Benefits include industry participation, uniformity of standards, identification of new entrants, stronger funding base, complaints management system for community, culture change, ensure rigorous compliance. Included a list of approved security association selection criteria.	SUPPORTS MM
Guardrite	N/C - but concerned about the lack of regulation and licensing for those employed in-house to act as security guards for licensed premises.	No comment
Warren Powers	Likes the idea of third party auditing. Wants govt audit system as a matter of priority. Thinks MM won't work due to delays now experienced in audits by security industry organisations.	DOES NOT SUPPORT
Pro-System Crowd Mgt P/L	No comment provided on the proposals.	No comment
Thermal Alarm Systems P/L	No comment provided on the proposals.	No comment
Paul Gamer CP Electric	No comment provided on the proposals.	No comment
Locksmiths Guild of Australia (Northern Chapter)	Support MM. They have a forum and chat room on web site. Help with questions, provide technical tips and offer support to new entrants to industry. Has a code of conduct firmly in place that members must agree to abide by.	SUPPORTS MM
Clubs Queensland	No preferred option in relation to supplementary compliance role options as not applicable to Clubs.	No comment

NAME OF RESPONDENT	DETAILS OF FEEDBACK	SUMMARY
<p>Liquor, Hospitality and Miscellaneous Union Queensland</p>	<p>Strongly support MM, but feel it is not enough alone. Would like to see third party auditing as well. See lacking a specific provision where licence can be cancelled, suspended or not reviewed for significant and repeated breaches of workplace relations obligations. Industry permeated with examples of below award pay levels. This results in disproportionately high number of persons working in industry who do not have higher communication skills necessary to prevent conflicts escalating to violence, or who resort to violence themselves as reaction to challenging situation. Worried that slack firms will join associations with lax codes. Suggest the Act should require compliance with IR laws. Agree industry associations could conduct the audits so long as the auditors were audited. Timing of audits as once every three years also too infrequent. Three years a long time to be allowed to underpay staff. Would like audits to be carried out on the request of industry or employee associations.</p>	<p>SUPPORTS MM</p>
<p>Master Locksmiths Association of Australasia Limited</p>	<p>Concerned about added costs for members. However, do support mandatory membership of an approved security industry association, and request that the locksmithing sector becomes subject to self regulation through this model, and the MLAA be appointed an approved membership association. A condition of membership of the MLAA is complying with their Code of Ethics and Code of Practice. Also have a complaints management system.</p>	<p>SUPPORTS MM</p>

Feedback in relation to Mandatory Membership provided in a Discussion Paper published for public consultation in 2006:

Mandatory membership:

Currently, security firms are not subject to mandatory membership of a security organisation. Should this remain unchanged?

This question had 94 responses. Of these, 77% did not agree that the situation should remain unchanged.

Should security firms be subject to mandatory membership of an approved security organisation?

This question received 73 responses. 71% agreed that security firms should be subject to mandatory membership of an approved security organisation.