



REGULATORY IMPACT STATEMENT

SECURITY INDUSTRY REGULATION 2016

A Regulation under the Security Industry Act 1997

March 2016

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Introduction

The *Security Industry Regulation 2007* supports the *Security Industry Act 1997* by providing for:

- a) Exemptions from legislative requirements;
- b) Penalty notice offences;
- c) General requirements covering application for, holding of and surrendering of security licences;
- d) The list of offences and civil penalties which comprise the probity requirements that applicants must meet and licence holders must adhere to;
- e) Special conditions for master licences;
- f) The Commissioner's powers to determine requirements for staff uniforms and vehicle markings;
- g) Current licence fees; and
- h) Other miscellaneous matters.

The Regulation is administered by the Deputy Premier, the Hon Troy Grant MP, in his capacity as Minister for Justice and Police.

The NSW Security Industry is regulated by the NSW Police Force, specifically, the Security Licensing and Enforcement Directorate ('SLED').

The Regulation provides a flexible pathway allowing SLED, as the Regulator, to quickly respond to changes in the industry, such as the need to provide for new exemptions, or vary licence requirements as required, to keep pace with changes across the security industry.

Subordinate Legislation Act 1989

The Subordinate Legislation Act 1989 ('SL Act') outlines the requirements to be adhered to when re-making a Regulation, including the content of regulatory impact statements and requirements for consultation. These requirements, which will govern the process for the re-making of the *Security Industry Regulation 2007*, include:

- a) The publication of notices inviting submissions on the proposed Regulation;
- b) Ensuring that at least 21 days from the date of publication of a notice is allowed for the making of comments and submissions on the proposed Regulation;
- c) Confirmation as to how the proposed Regulation can be obtained / inspected;
- d) Ensuring that consultation takes place with anyone likely to be affected by the proposed new Regulation; and
- e) That all comments and submissions received within the timeframe are appropriately considered.

Regulations are re-made under the authority of the Governor of NSW, on the advice of the Parliamentary Counsel and Executive Council and may be disallowed by Parliament.

Once re-made the proposed new Regulation will be published on the Legislation NSW website: www.legislation.nsw.gov.au

Consultation arrangements for the proposed new *Security Industry Regulation 2016*.

The Regulation and supporting Regulatory Impact Statement are available on the 'Have Your Say' website (www.haveyoursay.nsw.gov.au) and comments or submissions may be made via this site.

Alternatively, comments or submissions can be mailed to either:

Security Industry Regulation Re-make

C/- Office for Police

Department of Justice

GPO Box 5434

SYDNEY 2001

Or via e-mail to: submissions@mpes.nsw.gov.au with the header 'Security Industry Regulation'.

All submissions and comments will be treated as public, and may be published, unless the author indicates that it is to be treated as confidential.

Alternatives to Re-making Regulation

The two main alternatives to re-making the existing Regulation with amendments (i.e. the proposed Regulation) are:

- a) Do nothing and allow the Regulation to lapse on 1 September 2016; or
- b) Re-make the Regulation without amendments.

These are examined in more detail below.

a) Do nothing and allow the Regulation to lapse on 1 September 2016

The Regulation performs a range of functions in supporting the *Security Industry Act 1997*, including providing a list of exempt persons, penalty notice offences, penalties and licensing fees as well as a range of general provisions relating to the administration of licences.

The Regulation is heavily relied on by the Regulator and it would be difficult to regulate the security industry effectively without the provisions outlined above. If the Regulation were repealed, they would either need to be included in the *Security Industry Act 1997* or managed in another way. Depending on the outcome, this may make the Regulator less able to respond quickly when the need for change was identified or may mean that certain requirements sought of licensees were more difficult to enforce.

For these reasons, this option is not proposed.

b) Re-make the Regulation without amendments

It is recognised that re-making the Regulation without amendments would be quick and simple. And it is unlikely that re-making the Regulation without amendments would have a detrimental impact on any stakeholders.

However given it has been sometime since the Regulation underwent a major review, such an approach would waste an opportunity to reconsider the operation of each existing provision and ensure that the Regulation continued to operate efficiently and effectively. Re-making the Regulation without amendments would also remove the opportunity for industry participants to provide Government with feedback on the operation of the Regulation and suggest possible improvements.

For these reasons, this option is not proposed.

Preferred option: Re-make the Regulation with amendments

In the process of considering the remake of the Regulation, the Department of Justice identified a number of operational issues and out dated terminology in the existing Regulation that require rectification.

Accordingly, the following key amendments are proposed:

i. Clause 5 – Security activities: section (4)(1)(p) – licensable activities

This provision has been amended to better reflect the scope of activities that may be termed ‘locksmithing’.

The prescribed security activity of duplicating restricted keys, ie. security keys of an approved type, has also been deleted, as no security keys have ever been approved. Hence the existing terminology is redundant. Such activity will however be encapsulated within the new description of locksmithing as a licensable activity.

ii. Clause 6 – Exemptions: section 6(3)

The provision has been amended to ensure that anyone providing the services of an individual who is exempt from the need to hold a Class 1 or Class 2 licence is exempt from the need to hold a master licence, but only to the extent that they provide that person to carry on those activities. This serves to clarify the original intent of the provision.

iii. Clause 12 – Information and particulars supporting licence application: section 14(2)(b)

The provision has been amended to require that a licence application be supported by evidence of the applicant undertaking and completing the requisite training, assessment and instruction for the class of licence sought referred to in section 15(1)(d) of the Act. Failure to undertake and complete the requisite training, assessment and instruction for the class of licence sought remains a mandatory grounds of refusal of a licence application.

iv. Clause 13(3) – Grounds for refusal to grant licence: section 15(4)

The provision has been amended to ensure that the exception to the mandatory refusal ground relating to the voluntary winding up of corporations applies only to a member's voluntary winding up and not a creditor's voluntary winding up. This merely serves to clarify the intended effect of the provision.

The provision has also been amended to provide greater clarity as to the period when the steps a person has taken to avoid bankruptcy, liquidation or administration should be assessed.

Under discretionary grounds for refusal, references to obsolete legislative provisions have been deleted. And clarification has been provided that close associates of applicants for master licences are not required to comply with the citizenship and residency requirements placed on licence applicants and licence holders.

Provision has also been made to allow for voluntary surrender of a licence that is in force.

v. Clause 13(4) – Mandatory grounds for refusal – corporation

This provision has been re-drafted to provide for a discretionary ground for refusal that mirrors section 26(1)(b)(ii) of the *Security Industry Act 1997*, with a period of relevance of three years prior to the application for a licence being lodged. The provision will now also capture contraventions by an applicant's close associates.

Due to section 26(1A), there is potential for a single audit of a master licensee to result in a mandatory revocation of their licence. The newly-drafted provision will provide Police with discretion in relation to the revocation of master licences.

vi. Clause 15(2) – Prescribed civil penalties: section 16(1)(c)

This provision has been extended to capture penalties imposed on an applicant's close associates. Particularly where an applicant for a master licence is a corporation, it is the prior conduct of the company's directors and leadership that should determine whether the licence is granted.

vii. Clause 27(1) – Requirement to display licence number

This provision has been amended to clarify that wherever a business uses their branding on a vehicle, the master licence number should also be displayed. This is an extension of current advertising requirements (see section 32 of the *Security Industry Act 1997*).

The term 'vessel' has also been added in every instance where the word vehicle occurs. This will ensure that the legislation effectively covers security businesses offering marine security patrol services.

viii. Clause 33(1)(b) – Incident registers

This provision has been amended to clarify that 'ejects' includes a verbal direction to leave.

ix. Clause 36(b) – Fee to accompany permit application

The fee for corporate applicants for visitor permits has been increased to \$150 for each specified day, or each day within a specified period. This achieves parity with the current fee for the 'Temporary excess provision of security activities permit', thus providing greater equity for NSW residents, who are not eligible for visitor permits.

x. Clause 37 – Information and particulars to accompany permit application

This provision has been amended to require the applicant to specify the period for which a visitor permit is sought, as this may not match the dates of the special event to which the application relates.

This is a minor change, which will not cause disadvantage and will ensure greater clarity in the issuing and management of visitor permits.

xi. Clause 39 – Uniforms and vehicle markings

In clauses 39(5) and 39(6) the current penalties for failing to wear a required uniform or having a staff member failing to wear a required uniform have been increased, for the first time since 2007, to 10 penalty units for an individual and 20 penalty units for a corporation. These amounts better reflect the severity of such breaches.

xii. Clause 42(2) – Approval of organisations providing requisite training, assessment and instruction

The provision has been amended to ensure that the Commissioner is required to give notice only to the person or organisation removed from the list of approved training providers, who can then inform anyone else impacted by the change. It is otherwise not possible for the Commissioner to know the individuals or organisations who may be affected by such a change.

xiii. Schedule 1 – Item 24

This item, relating to retailers of security equipment who provide advice on the equipment relayed to them by the manufacturer, has been deleted as it is unnecessary. Relevant persons are already effectively exempted by section 4(1)(h) of the Security Industry Act.

Recommendation

The amendments outlined above, if made, will serve to improve the current operation of the Regulation with little impact to licensees. Accordingly, it is proposed to re-make the Security Industry Regulation with amendments.

Proposed consultation process

Written submissions are now sought from interested parties on the proposed Regulation and Regulatory Impact Statement. Information on ways to make a submission is provided at the beginning of this document.

Submissions will be received and considered until **cob. Friday, 20 May 2016**.

Information on the proposed Regulation will be published on the 'Have Your Say' website, as well as in the Sydney Morning Herald, the Daily Telegraph and on the Department of Justice website.

Copies of the proposed Regulation and the Regulatory Impact Statement will also be sent to the following key stakeholders:

- The Australian Security Industry Association Limited
- Security Providers Association of Australia Limited
- Australian Hotels Association (NSW)
- Master Locksmiths Association of Australasia
- Locksmiths Guild of Australia