

# **NATIONAL COMPETITION POLICY**



## **REVIEW OF THE *PRIVATE SECURITY ACT***

**FINAL REPORT**

**July 2002**

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## 1. INTRODUCTION TO THE REPORT

The National Competition Policy (NCP) review of the *Private Security Act* was conducted in accordance with the principles for legislation review set out in the Competition Principles Agreement.

This Review has found that the general approach of the Act in regulating the private security industry is sound and its benefits outweigh its costs. In particular the review's consultation found that public safety and community confidence concerns about the private security industry required a regulatory approach.

The review also identified a number of possible changes that might be made to the scheme of regulation to improve efficiency and effectiveness. These include

- achieving greater national consistency in the regulation of this industry by deleting "common assault" from the schedule of offences which disqualify an applicant from holding a licence. Assault as a crime will be retained as a disqualifying offence
- recommending introducing regulation in relation to the use of guard dogs
- adding serious drug offences to the list of disqualifying offences
- formalising current practice whereby the Director of Licensing is the chief decision maker for licence applications with the Licensing Commission the avenue for appeal
- providing for more flexible compliance mechanisms including the imposition of monetary penalties as an alternative to the suspension of a licence, and enabling the issue of on-the-spot infringement notices for minor breaches
- making procedural reforms to provide better accountability and transparency in the decision-making process, and
- removing references to "transitional licences" and to the Private Security Industry Fund, which are now obsolete.

## 2. EXECUTIVE SUMMARY

### 2.1 The Purpose of the Report

The report has been prepared in accordance with the Northern Territory's commitment to the National Competition Policy, and the obligation to review legislation for the purpose of identifying anti-competitive restrictions and assessing the merits of their retention.

The guiding principle is that legislation should not restrict competition unless it can be demonstrated that the

- benefits of the restriction to the community as a whole outweigh the costs;  
and

- objectives of the legislation can only be achieved by restricting competition.

This review examined the Northern Territory *Private Security Act*.

## 2.2 Conclusion

The *Private Security Act* has three primary objectives:

1. to ensure that only persons of integrity are able to enter the private security industry;
2. to ensure that persons in the industry are competent to perform particular tasks; and
3. to ensure that persons in the industry behave in a professional manner.

The Act contains provisions which restrict or have the potential to restrict competition. The licensing scheme acts as a barrier to entry and many of the Act's provisions affect market behaviour.

The Review Panel concluded that the benefits of the provisions outweigh the costs of the provisions, considered either singularly or together.

The Review Panel concluded that the objectives of the Act can only be achieved through legislation.

The review is required to consider whether any of the proposals might breach Part IV of the *Trade Practices Act 1974*. There would appear to be nothing in the Act authorising such a breach.

## 2.3 Recommendations

The Review Panel concluded that the legislative provisions should be retained.

### **Recommendation 1: Retention of the Legislation**

The benefits to the community of retaining the licensing system contained within the *Private Security Act* outweigh the costs and it should be retained.

However, in the interests of improving the transparency of the administrative process, it is recommended that the following amendments be considered.

### **Recommendation 2: Prime Work Role**

Amend the exemption given by Section 6(2), in respect of employees, to make it plain that employees undertaking the role of a security officer as their prime work duty are subject to the licensing requirements of the Act.

**Recommendation 3: Classes of Workers**

Amend Section 65, to provide a regulation-making power, empowering the granting of exemption in favour of a person, class of persons or a category of activities from the operation of the Act or Regulations eg locksmiths, subject to conditions specified in the Regulations, rather than such exemptions being made by way of a Notice in the Gazette.

**Recommendation 4: Common Assault**

Delete from Regulation 3 of the Crowd Controller Regulations and Regulation 2 of the Security Officer Regulations, Common Assault (Number 188) (1) as a disqualifying offence and replace it with Assault, Number 188 (2).

**Recommendation 5: Serious Drug Offences**

Add Sections 5, 6, 7 (except 7c), 8, 9, 16 and 17 of the Misuse of Drugs Act covering the supply, cultivation and possession of a dangerous drug, receiving or possession tainted property, and obtaining prescription and/or dangerous drugs by deception, as disqualifying offences to the Security Officers and Crowd Controllers Regulations.

**Recommendation 6: Regulations Pertaining to the Use of Guard Dogs**

Add provision for regulation, through specifying of competency standards, relating to the use of guard dogs.

**Recommendation 7: Non-compliance with licence requirements a regulatory offence**

Amend the Act so that offences under Section 13 are regulatory offences.

**Recommendation 8: Capacity for a Licensee to Seek a Variation of License Conditions**

Amend Section 20, so that a licensee, as well as the Licensing Commission, may seek a licence variation to accord with changing commercial circumstances.

**Recommendation 9: Director of Licensing to be the Chief Decision Maker for licence applications**

Amend the Act that so that the Director of Licensing replaces the Licensing Commission as the chief decision maker in relation to licence applications with the avenue of appeal to the Licensing Commission instead of the Local Court.

**Recommendation 10: On-the-spot fines**

Amend the Act so that in lieu of formal disciplinary proceedings, an Inspector be empowered to issue an infringement notice imposing an on-the-spot fine, for minor breaches of the Act, Regulations or Code of Practice.

**Recommendation 11: Provision for Complaint to be Made to the Director of Licensing**

Add formal complaint provisions into the Act, to enable a person to complain to the Director of Licensing about a breach of the Act, Regulations or the Code of Conduct by a licensee.

**Recommendation 12: Codes of Conduct, Competencies and Training**

Amend Section 53, so that before the Minister approves a competency or training required for the attainment of competency standards, the licensing authority, is required to consult with interested persons prior to advising the Minister.

**Recommendation 13: Appointment of Inspectors by the Director of Licensing**

Amend Section 35, so that the Director of Licensing, not the Licensing Commission, may appoint Inspectors.

**Recommendation 14: Consumer Affairs and Fair Trading Officers**

Delete from Section 35 (4) the inclusion of officers as defined in *the Consumer Affairs and Fair Trading Act* are also authorised officers for the purposes of the *Private Security Act*.

**Recommendation 15: Repeal Transitional Licences**

Repeal all references to transitional licences.

**Recommendation 16: Licence Renewal Timeframe**

Amend Section 24 so that the Director of Licensing may renew a licence, not earlier than 3 months before its expiry date or within a period of time as determined by the Director.

**Recommendation 17: Licence Renewal, Current First Aid Certificate**

Add to Section 24 that on licence renewal, applicants must produce documentation showing that a current first aid certificate is held.

**Recommendation 18: Licence Replacement Fee**

Add provision in Section 25 for a prescribed fee to be charged where a licensee has lost their licence and cannot produce a Police report or Police report number.

**Recommendation 19: Director of Licensing to prescribe format of Incident Register**

Add to Section 56 and Regulation 8 of the Crowd Controller Regulations so that Incident Registers must be kept in a form approved by the Director of Licensing.

**Recommendation 20: Private Security Industry Fund And Levy**

Delete Sections 62, 63 and 64 because the Private Security Industry Fund and Levy has never been used and is obsolete.

**Recommendation: 21 Fees**

Amend Regulation 9 of the Crowd Controller and Regulation 6 of the Security Officer Regulations so the fee charged for the renewal of a Crowd Controller or Security Officer licence shall be \$70, where the applicant also holds a current Crowd Controller or Security Officer licence for which a \$90 fee has been paid.

**Recommendation 22: Fees when licences are renewed for more than one year**

Amend Regulation 6 of the *Private Security (Security Officers) Regulations* and Regulation 5 of the *Private Security (Security Firms) Regulations* so that the fees paid to obtain or renew a licence are for each year for which the licence is sought.

**3. TERMS OF REFERENCE**

The terms of reference for the NCP review of the *Private Security Act* are

1. The review of the *Private Security Act* is to be conducted in accordance with the principles for legislative reviews set out in the Competition Principles Agreement. The underlying principle for such a review is that legislation should not restrict competition, unless it can be demonstrated that the
  - benefits of the restriction to the community as a whole outweigh the costs; and
  - objectives of the legislation can only be achieved by restricting competition.
2. Without limiting the scope of the review, the review is to
  - clarify the objectives of the legislation
  - identify the nature of the restrictions on competition
  - analyse the likely effect of the restriction on competition and on the economy generally
  - assess and balance the costs and benefits of the restrictions
  - consider alternative means for achieving the same result including non-legislative approaches.
3. The review should consider and take into account relevant regulatory schemes in other Australian jurisdictions and any recent reforms or reform proposals, including those related to competition or competition policy in those jurisdictions.



4. The review shall consult with and take submissions from those organisations and individuals with an interest in the NT private security industry, including
- licensed security providers, security industry associations and affected members of occupations associated with the private security industry
  - relevant Northern Territory Government departments and agencies, including the Attorney-General's Department, NT Police, NT Treasury, the Northern Territory Employment and Training Authority, and
  - consumers and members of the wider community.

It should be noted that the consultation process enabled comment on the Act in general. Through the public consultation meetings stakeholders took the opportunity to do so.

This review applies to the

- *Private Security Act 1995*
- *Private Security (Crowd Controllers) Regulations 1996*
- *Private Security (Security Officer) Regulations 1998*, and
- *Private Security (Security Firms) Regulations 1998*.

## **4. BACKGROUND TO THE REVIEW**

### **4.1 National Competition Policy**

The Competition Principles Agreement, signed by all Australian Governments at the Council of Australian Governments (COAG) meeting in April 1995, committed each jurisdiction to reviewing all legislation which might restrict competition.

The NCP review and reform process

*applies to all sectors of the economy. It...recognises that Australia is essentially one national market and focuses on creating, where possible, integrated national markets by breaking down barriers to trade among jurisdictions.*

Only those restrictions on competition that can be justified in the public interest should be retained. The aim of NCP is to remove unnecessary barriers to the national economy and to promote efficient markets. Competition in a market encourages efficiency as competitive markets to allocate the economy's productive resources to the activities most desired by consumers, produce goods and services at least cost, and are responsive to changes in technology and the demands of consumers.

However, competition is a means to an end, and that end is a community benefit. Government regulation may be justified where markets fail.

The guiding principle for the review is expressed in Clause 5(1) of the Competition Principles Agreement,

Legislation should not restrict competition unless it can be demonstrated that the:

- (a) benefit of the restriction to the community as a whole outweigh the costs; and
- (b) objective of the legislation can only be obtained by restricting competition.

It is important to note that both of the criteria listed above are required to be satisfied if the restrictions are to be retained.

This means that even if the restriction(s) passes the net public benefit test, it should not be retained if there are other less restrictive ways of achieving that outcome.

#### **4.2 Conduct of the Review**

A Steering Committee was established to approve the Terms of Reference for the review, the formation of the Review Panel and to oversee the review process to ensure compliance with NCP review principles.

An independent Review Panel was formed to conduct a competition review of the Act in accordance the general direction that all new legislation must be subjected to an independent and transparent competition review.

#### **4.3 Steering Committee**

Members of the Steering Committee are

Craig Graham (NT Treasury)  
Philomena Jewell (Department of the Chief Minister)  
Andreas Andreou (NT Treasury).

#### **4.4 Review Panel**

The Review Panel was appointed to undertake the review and to prepare a report. Members of the review team are

Donald Hudson (Department of Mines and Energy)  
Peter Jones (NT Treasury)  
Jim Laouris (Department of Justice).

## 4.5 Discussion Paper and Consultation

A key step in ensuring that the conclusions of the review were based on the best available information was to consult with industry, community and other stakeholders. Over the last two years there has been significant industry and community consultation in relation to the Northern Territory private security industry.

In November 1999, the Chair of the Licensing Commission wrote to a wide range of industry stakeholders advising that during 2000, a review of industry training standards for Crowd Controllers and Security Officers would be undertaken. Later that year, the National Competition Policy Review of the *Private Security Act* was commenced. Both these activities involved consultation with a wide range of industry stakeholders, the production of draft reports and the opportunity for industry and community comment.

On 23 August 2000, a public meeting to discuss the NCP Review of the *Private Security Act* was convened in Alice Springs. The meeting had been advertised in the *Centralian Advocate* with letters sent to people who had participated in an earlier public meeting on training and other private security issues, held in February 2000.

The meeting was attended by industry representatives, staff from the operational area of the Racing, Gaming and Licensing Division in Alice Springs whose work brief includes private security and a member of the Review Panel.

On 24 August 2000, a public meeting was convened in Darwin. The meeting had been advertised in the *NT News* with letters sent to people who had participated in a public meeting on training and other issues, held in January 2000. Prior to this meeting, eighteen copies of the NCP Consultation Paper were distributed following requests.

The meeting was attended by industry representatives and personnel including representatives from the training industry advisory board, the Northern Territory Employment and Training Authority, and Police officers from the Firearms, Policy and Records Unit. Two members of the Review Panel were present.

## 4.6 Further Consultation – Comment on the Final Draft Report

While there has been considerable industry consultation, it was recognised that there is close community interest in public safety and the private security industry. Accordingly, a final draft report was made available for further public comment. Only two responses were received. When the Review Panel checked with stakeholders, the response was that submissions had already been made

and that as the final draft report had addressed issues raised, there was no need for further input.

## **5. HISTORY OF THE LEGISLATION<sup>1</sup>**

Prior to the enactment of the *Private Security Act* in 1995, problems relating to violence and competency in the provision of security services had to be resolved, as best they could, by relying on general laws, such as the *Criminal Code* and the *Consumer Affairs and Fair Trading Act*.

There was consensus among the security industry, Northern Territory Police, the Liquor, Hospitality and Miscellaneous Workers Union and Government that these approaches were not effective and that the framework within which the industry operated could be significantly improved.

On 15 August 1995 the then Chief Minister released a discussion paper – *A Case for the Regulation of the Security Industry*. Drawing on the experience from interstate, this canvassed the need for regulation, possible regulatory options and possible criteria for preventing an inappropriate person from operating in this industry.

An industry specific solution was required to ensure that those providing security services met specified eligibility standards and complied with specified rules of behaviour.

The *Private Security Bill* was introduced to the October 1995 sittings of the Legislative Assembly. The Bill was based on the following propositions:

- The most appropriate regulatory option is a minimum set of statutory standards of probity, together with a mandatory code dealing with competency issues.
- All persons working in the industry will be required to undertake criminal history checks based on fingerprint checks on an Australia-wide basis.
- Certain offences will entirely disqualify a person from entering the industry, with spent convictions being a factor within the broader discretion of the licensing authority to conclude that a person is unfit to work in the industry.
- The competency requirements to be developed in consultation with the industry and unions. Different competency issues exist in respect of the different sectors of the security industry.

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<sup>1</sup> Northern Territory Private Security Licensing Authority Annual Reports and the Seventh Assembly First Section 17/10/95 Parliamentary Record No: 16.

- Government to bear the establishment costs of regulation with the industry contributing a percentage of required funding.

The *Private Security Act* commenced operation upon assent on 28 December 1995. At that time, the Act only applied to the regulation of Crowd Controllers.

The Act established an independent statutory licensing authority called the Private Security Licensing Authority of the Northern Territory. The responsibilities of the licensing authority were

- the processing of licence applications and making decisions relating to the granting and refusing of licence applications
- disciplinary action for industry operators who breach regulations
- the monitoring of compliance with the regulatory scheme, and
- in consultation with industry, the development of industry codes of practice<sup>2</sup> and giving policy advice concerning regulation issues.

An independent appeals process was available through the Local Court.

The regulations, as they applied to Crowd Controllers, were passed on 31 January 1996 and commenced operation on 1 March 1996.

Later, action was taken to extend the reach of the Act. On 19 November 1997, the Act was declared to apply to Security Officers and Security Firms. Accordingly, the *Private Security (Security Officers) Regulations* and the *Private Security (Security Firms) Regulations* came into operation on 4 August 1998.

On 9 November 1998, the Attorney General requested the licensing authority to conduct a review into the suitability of declaring the Act to apply to Locksmiths and Installers of Security Systems. However, in the resulting report<sup>3</sup>, the then Private Security Licensing Authority recommended that the Act not be declared to apply to these occupations.

The most recent changes have arisen out of the formation of the Northern Territory Licensing Commission. The functions of the Private Security Licensing Authority have been assumed by the Northern Territory Licensing Commission. The liquor, gaming and private security administrations have been merged and under the revised scheme all inspectors and officials report through a single structure.

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<sup>2</sup> Gazetted by the Minister in the Northern Territory Gazette on 26 April 1996.

<sup>3</sup> Private Security Licensing Authority 1998 Report on the review into the suitability of declaring the Private Security Act to apply to Locksmiths and Installers of Security Systems.

## 6. OVERVIEW OF THE NT PRIVATE SECURITY INDUSTRY

### 6.1 The NT Licensing Commission

The NT Licensing Commission's key functions in respect of the *Private Security Act* are to

- develop policy for the day to day administration of the Act and Officers of the licensing authority
- keep abreast of community attitudes relating to the provision of security services
- remain informed on contemporary research into security services
- monitor delegated functions of the licensing authority
- inform key community leaders of the functions, directions and policy of the licensing authority; and
- manage the licensing authority within the policy guidelines of the government of the day.

### 6.2 Licences Issued

#### Categories of Licence and Number of Licences Issued for the Period 1998/1999 to 2000/2001

Licence Category	1998/1999	1999/2000	2000/2001
Crowd Controller	439	390	483
Security Officer	570	360	477
Security Firm	24	19	17

Source: Racing, Gaming and Licensing Division, NT Treasury

The licensing authority applies strict rules in relation to the licensing of persons, or other entities, as a security provider.

Pursuant to section 19 of the Act, the licensing authority also has broad powers to impose conditions on licences where the circumstances call for them, either in respect of the industry or for particular licensees.

### 6.3 Licensing of Crowd Controllers

Section 12 of the Act requires Crowd Controllers to be licensed. There are currently 694 current and operative licences on the Crowd Controller's Register.

Since the commencement of the Act in 1995, a total of 885 Crowd Controller licences have been allowed to expire by licensees and a further 35 Crowd Controller licences were disqualified by the licensing authority.

The Act provides for three levels of Crowd Controller licence:

- *Transitional Crowd Controller's Licence*: Is valid for three (3) months and granted where the person wishes to commence duties as a Crowd Controller immediately. During this period, the applicant's criminal history is checked and information pertaining to the applicant's character obtained.
- *Provisional Crowd Controller's Licence*: Is granted subject to a criminal history check. The period of validity of a provisional licence is up to the conclusion of the next available training course and can be for a maximum of one year only.
- *Crowd Controller's Licence*: Is the full licence.

#### **Type and Number of Crowd Controller Licences Issued 1998/1999 to 2000/2001**

Type of Crowd Controller's Licence	Number Issued 1998/1999	Number Issued 1999/2000	Number Issued 2000/2001
Transitional	14	0	0
Provisional	27	25	72
Full	398	365	411
Total	439	390	483

Source: Racing, Gaming and Licensing Division, NT Treasury

#### **6.4 Licensing of Security Officers**

Section 13 of the Act requires security officers to be licensed. There are 623 current and operative licences on the Security Officer's Register.

The Act provides for two levels of Security Officer licence:

- *Security Officer's Provisional Licence*: Is granted subject to a criminal history check. The period of validity of a provisional licence is up to the conclusion of the next available training course and can be for a maximum of one year only.
- *Security Officer's Licence* - Is the full licence.

**Type and Number of Security Officer Licences Issued 1998/1999 to 2000/2001**

Type of Security Officer Licence	Number Issued 1998/1999	Number Issued 1999/2000	Number Issued 2000/2001
Provisional	52	40	71
Full	518	320	406
Total	570	360	477

Source: Racing, Gaming and Licensing Division, NT Treasury

**6.5 Licensing of Security Firms**

Unlike the other classes of licences, security firm licences do not have provisional or transitional classifications.

These licences can be obtained by a sole trader, by corporate entities or partnerships provided they comply with the application criteria, which includes criminal history checks of company directors or partners, production of a certificate of registration of business name and the provision of company details lodged with the Australian Securities and Investment Commission.

**Number of Security Firm Licences Issued 1998/1999 to 2000/2001**

Type of Licence	Number Issued 1998/1999	Number Issued 1999/2000	Number Issued 2000/2001
Security Firm	24	19	17
Total	24	19	17

Source: Racing, Gaming and Licensing Division, NT Treasury

**6.6 Licensing Pursuant to the Mutual Recognition Act**

Section 17 of the *Mutual Recognition Act* obliges the Commission to recognise the equivalent registration of a person in another Australian State or Territory or New Zealand as a security officer, or crowd controller, by issuing that person with a Northern Territory licence.



**Number of Crowd Controller and Security Officer Licences Issued Under the Mutual Recognition Act by Jurisdiction, 1998/1999 to 2000/2001**

Type of Licence	Number Issued 1998/1999	Number Issued 1999/2000	Number Issued 2000/2001
Crowd Controller Licence	7 – Western Australia 10 – New South Wales 27 – Queensland 9 – South Australia 12 – Victoria Total: 65	6 – WA 10 – NSW 24 – Qld 8 – SA 13 – Vic Total: 61	5 – WA 7 – NSW 25 – Qld 16 – SA 12 – Vic Total: 65
Security Officer Licence	10 – Western Australia 9 – New South Wales 25 – Queensland 14 – South Australia 11 – Victoria Total: 69	3 – WA 5 – NSW 21 – Qld 5 – SA 12 – Vic Total: 46	7 – WA 8 – NSW 30 – Qld 18 – SA 8 – Vic Total: 53
Total	134	107	118

Source: Racing, Gaming and Licensing Division, NT Treasury

### 6.7 Training Providers

Section 15(3)(b) of the Act requires prospective Crowd Controllers and security officers to complete a course of training approved by the Minister.<sup>4</sup> Currently there are five accredited<sup>5</sup> training providers<sup>6</sup>, who supply two approved training courses<sup>7</sup>, which cover a range of competency standards that must be met in order for a person to be eligible for a Crowd Controller/Security Officer licence. While the structure and governance of these training courses is largely within the province of the *Northern Territory Employment and Training Act 1991*, the market for training courses is largely generated by the existence of the Act. The competency standards and training required for the attainment of a Crowd

<sup>4</sup> The Minister for Racing, Gaming and Licensing.

<sup>5</sup> Accredited as a Registered Training Organisation (RTO) through the Northern Territory Employment Training Authority (NTETA) and the Australian National Training Authority (ANTA).

<sup>6</sup> Hospitality Industry Professionals, Chubb Security (Darwin & Alice Springs), Night Watch Security, Security Institute and National Security Training Academy.

<sup>7</sup> Approved by the Minister for Racing, Gaming and Licensing, pursuant to section 53(3) of the *Private Security Act*.

Controller/Security Officer licence have been reviewed and the recommendations of the review have been the subject of consultation.

The Northern Territory's security provider market shows robust competition. As can be seen below, there has been a large increase in the number of licences issued since the inception of the Act in 1995. This in itself indicates the high levels of demand for these licences. Inferences can also be drawn from the application of the *Mutual Recognition Act* that the market displays the mobile nature of people entering the industry and moving within the national market.

### **Total Number of Licences Issued and Percentage Variation From Previous Year**

Period:	Total Number of Licences Issued:*	Variation (%)
2000/2001	905	+ 28
1999/2000	744	- 35
1998/1999	1033	+ 85
1997/1998	559	+ 15
1996/1997	486	-

Source: Racing, Gaming and Licensing Division, NT Treasury

Note: \* Since the commencement of the Act in 1995, a total of 974 licences have been allowed to expire by the licensee and 39 licences cancelled.

## **7. SCOPE OF THE LEGISLATION AND KEY PROVISIONS**

The key provisions of the Act are:

### ***Part 1 – Preliminary***

This part:

- provides details for citation and describes the purpose of the Act as “An Act to provide for the regulation of the provision of security services and for related purposes”;
- provides a definition for the meaning of crowd controller; security officer and security firm; and
- permits the Minister to apply the Act to other declared persons who perform particular functions (including, but not limited to, the functions performed by a locksmith or installer of security systems) to be a category of security provider.

## ***Part 2 – Licensing Authority***

This part:

- establishes the Private Security Licensing Authority ('the licensing authority');
- provides for the appointment of persons to the licensing authority;
- provides for the maintenance of a Register of persons holding licences; and
- permits the delegation of powers from the licensing authority to a public sector employee.

## ***Part 3 – Licences***

This part:

- establishes the requirement to be licensed and the application process;
- describes the circumstances in which a person(s) is entitled to a licence;
- establishes the licensing authority's powers of inquiry and factors that must be considered in determining applications;
- provides for conditions to be applied to licences and the process in relation to amending these conditions;
- establishes the requirement to produce the licence for inspection upon request;
- establishes the period of validity of licences; and
- establishes the process for the renewal and replacement of licences.

## ***Part 4 – Cancellation, Suspension, & Refusal To Renew Licences***

This part:

- provides the grounds for the suspension or cancellation of a licence or the refusal to renew a licence;
- establishes the procedure to be followed for suspension, cancellation or refusal to renew a licence;
- provides for automatic cancellation of licence upon conviction of disqualifying offence;
- provides the process for the commencement of appeals, and empowers the Local Court to grant a stay of a decision appealed against;
- describes the hearing procedures and powers of the Local Court on appeals;
- provides for fees and penalties; and
- establishes a right of appeal to the Local Court against the licensing authority's decision to refuse to grant a licence, and against a decision -
  - to impose a condition on a licence;
  - to amend a condition on a licence;
  - to suspend or cancel a licence;
  - to refuse to renew a licence; or
  - to refuse to replace a licence.

### **Part 5 – Inspectors**

This part:

- provides for the appointment of inspectors, and the requirement that the licensing authority issue an identity card to each appointee (other than a member of the Police Force);
- establishes powers of search and seizure for inspectors and describes the nature of information that they are authorised to request from licence holders and other persons;
- establishes the penalties for providing false and misleading information to inspectors, and obstruction of the exercise in their power under the Act; and
- provides that members of the police force retain powers under other Acts for the purposes of the *Private Security Act*.

### **Part 6 – Codes Of Practice, Competency Standards And Training**

This part:

- establishes the licensing authority's power to implement a code of practice in respect of a category of licence, and the procedure to be followed in the drafting of any such codes;
- provides a penalty for contravention of a code of practice;
- provides a mechanism for the licensing authority or any other person to apply to the Local Court for relief where an undertaking is refused or breached. It further describes the powers of the Court in such applications;
- provides that the Minister approve competency standards and the training required for the attainment of competency standards in respect of a category of licence; and
- establishes the licensing authority's power to request persons who appear to have contravened a code of practice to give an undertaking as to -
  - discontinuance of the conduct;
  - future compliance with the code of practice;
  - the action the person will take to rectify the consequences of the contravention;
  - or any of the above matters.

### **Part 7 – General**

This part:

- requires a licensed crowd controller to wear identification that is clearly visible;
- describes the circumstances in which an employer and/or security firm is liable for a security provider's actions;

- requires the employer of a crowd controller to maintain an incident register- unless the employer uses the services of a crowd controller less than once every 6 months;
- provides that a person is not to hire a crowd controller with a disqualifying offence;
- protects the licensing authority, inspectors or a person acting under the direction of an inspector from civil proceedings;
- provides for matters which are assumed to be true in proceedings under the Act, unless the contrary is proven;
- allows the licensing authority to approve forms for the purposes of the Act;
- establishes the Private Security Industry Fund for the purpose of financing operations under the Act;
- provides for an Industry levy to fund the licensing scheme;
- provides for exemptions from the operation of the Act;
- authorizes the Administrator to make regulations; and
- makes it an offence to disclose, use or record information gained through involvement in the administration or enforcement of the Act, unless-
- it is an act done for the purposes of the Act;
- it involves disclosure of information to the Commissioner of Police, court, tribunal, or required under the regulations or another Act.

## 8. IDENTIFICATION OF ANTI-COMPETITIVE PROVISIONS

### 8.1 Anti-competitive provisions in the *Private Security Act*

In the following table, the severity of restriction is defined as

**High:** An action or requirement that may have a major impact on competition even if the actual impact is technical in nature or the actual impact appears minimal. Such restrictions are subject to a detailed assessment

**Medium:** An action or requirement that may have a moderate impact on competition. Such restrictions are subject to assessment

**Low:** An action or requirement that may look as if it could have some impact on competition but, for all practical purposes, appears to have no actual impact. Such restrictions are identified

**Nil:** An action or requirement that does not have any impact on competition.

Description of the Restriction	Competition Economic Effects	Severity of the Restriction	Comments
S.1 – Short title.	Nil.	Nil.	
S.2 – Commencement.	Nil.	Nil.	
S.3 – Defines the disqualifying offences in relation to a crowd controller's licence (full, transitional and provisional).	Governs the entry and exit of firms or individuals into or out of the market.	High.	Regulation 3 (Crowd Controllers) refers.
S.4 – Security providers	Nil.	Nil.	
S.5 – Crowd Controllers	Nil.	Nil.	
S.6 – Security Officers	Nil.	Nil.	
S.7 – Security Firms	Nil.	Nil.	
S.8 - Enables the Minister to declare a class of persons who perform particular functions to be a category of security provider for the purpose of this Act.	Declaration by Minister will incur a cost of compliance on previously unregulated businesses.	High, exercise of Ministerial discretion.	There are checks and balances on the exercise of Ministerial power.
S.9 – Application of Act.	Nil.	Nil.	
S.10 – Repealed.	Nil.	Nil.	
S.11 - Requires the Licensing Authority to keep a register of persons holding licences under this Act.	Nil impact on competition.	Low.	

Description of the Restriction	Competition Economic Effects	Severity of the Restriction	Comments
S.13 - Makes it an offence for a person to carry out the functions of a security provider or advertise such without a licence; and engage an unlicensed person to carry out the functions of a security provider.	Is likely to confer significant costs on business. Entry requirements and penalties applicable for non-compliance.	High.	There is a potential conflict with the NT Liquor Act, See Sections 123A, 124, 124AA for example.
S.14 - Stipulates that an applicant must submit an application form, pay the prescribed fee and provide a release for criminal history.	Confers costs on business.	High.	The requirement to submit to the Criminal History process is intrusive. Regulation 5 (Crowd Controllers) refers. The form is stipulated in Regulation 3 (Security Firms) and Regulation 3 (Security Officers).
S.15 – Stipulates the criteria by which the Commission may grant a licence to a natural person and the matters to be considered in deciding whether a person is appropriate to hold a licence.	Entry requirements and penalties applicable for non-compliance.	High.	
S. 16 – Stipulates the inquiries that may be undertaken to determine a person’s appropriateness to hold a licence or have a licence renewed.	Entry requirements and penalties applicable for non-compliance.	High	
S.17 – Deals with the entitlements of a licence for corporations or firms – appropriate person criteria apply for each director/partner.	Entry requirements and penalties applicable for non-compliance.	Medium	

S.18 – Enables the Commission to grant a transitional Crowd Controllers licence. Regulation 9 prescribes the fees to be paid.	Entry requirements and penalties applicable for non-compliance.	Medium.	Enables issue of a licence until the licence application is processed. Regulation 9 (Crowd Controllers) refers.
<b>Description of the Restriction</b>	<b>Competition Economic Effects</b>	<b>Severity of the Restriction</b>	<b>Comments</b>
S.19 – Enables the Commission to grant a licence with such conditions as it thinks fit. And makes it an offence for not complying with licence conditions.	May confer cost on business.	Medium.	The Commission is under no obligation that conditions be the same for all licences. This means that there is a potentiality that some licensees will be subjected to more stringent and costly restrictions than others.
S.20 – Enables the Commission to amend licence conditions.	May confer cost on business.	Low	Conditions can be varied which may affect the operation of a business.
S.21 – Notice to return licence for alteration.	Nil.	Nil.	
S.22 – Production of licence	Nil.	Nil.	
S.23 - Period of validity of licence	Nil.	Nil.	
S.24 –Renewal of a licence.	Confers costs on business.	Medium.	A Criminal History check is undertaken on each renewal. Regulation 9 (Crowd Controllers) refers.
S.25 – Replacement of licence.	Nil.	Nil.	No cost to licensee for replacement licence.
S.26 – Grounds for suspension, cancellation or refusal to renew	Confers a cost on business.	Medium.	
S.27 – Procedure for suspension, cancellation or refusal to renew	Confers a cost on business.	Medium	
S.28 – Return of suspended or cancelled licence.	Confers a cost on business.	Medium	
S.29 – Automatic cancellation on conviction.	Confers a cost on business.	Medium	
S.30 – Right to appeal to Local Court.	Nil.	Nil.	



S.31 – Commencement of appeal.	Nil.	Nil.	
S.32 – Stay of operation of proceedings.	Nil.	Nil.	
S.33 – Hearing procedures.	Nil.	Nil.	
S.34 – Powers of Court on appeal.	Nil.	Nil.	
S.35 – Inspectors.	Nil.	Nil.	
<b>Description of the Restriction</b>	<b>Competition Economic Effects</b>	<b>Severity of the Restriction</b>	<b>Comments</b>
S.37 – Production of inspector's identity card	Nil.	Nil.	
S.38 – Entry of place by inspector	Nil.	Nil.	
S.39 – Inspector's general powers in a place	Nil.	Nil.	
S.40 – Procedure after thing seized.	Nil.	Nil.	
S.41 – Power to require name and address.	Nil.	Nil.	
S.42 – Power to require information from certain persons.	Nil.	Nil.	
S.43 – False or misleading information.	Nil.	Nil.	
S.44 – Power to require production of documents.	Nil.	Nil.	
S.45 – False or misleading documents.	Nil.	Nil.	
S.46 – Obstruction of inspectors.	Nil.	Nil.	
S.47 – Police to retain powers under other Acts.	Nil.	Nil.	
S.48 – Code of practice.	Cost of compliance is minimal.	Low	Enables the Minister to approve the Code of Practice.
S.49 – Undertakings by persons contravening code.	Nil.	Nil.	
S.50 – Registers of undertakings.	Nil.	Nil.	Refer to regulation 6 (Crowd Controllers).
S.51 - Orders by Local Court where undertaking refused or breached.	Nil.	Nil.	
S.52 – Variation and discharge of orders.	Nil.	Nil.	
S.53 – Competency standards and training.	Entry requirements that confer a cost on business.	High.	
S.54 – Identification to be worn by Crowd	Marginal cost.	Low.	Regulation 7 (Crowd Controllers) refers.

Controllers.			
S.55 – Liability for security provider's actions.	Nil.	Nil.	
S.56 – Employers to keep register.	Information requirement.	Low.	Regulation 8 (Crowd Controllers) refers.
S.57 – Person not to hire a crowd controller with a disqualified licence.	Penalty for non-compliance.	Low.	
S.58 – Confidentiality of information.	Nil.	Nil.	
Description of the Restriction	Competition Economic Effects	Severity of the Restriction	Comments
S.59 – Protection from liability.	Nil.	Nil.	
S.60 – Evidentiary provisions.	Nil.	Nil.	
S.61 – Approved forms.	Nil.	Nil.	
S.62 – Private Industry Security Fund	Confers a cost on business.	High.	
S.63 – Private security levy.	Confers a cost on business.	High.	
S.64 – Private security provider to pay levy.	Confers a cost on business.	High	
S.65 – Exemptions.	Nil.	Nil.	
S.66 – Regulations.	Nil.	Nil.	

## 8.2 Anti-competitive Provisions of the Private Security, Crowd Controllers Regulations

Description of the Restriction	Competition Economic Effects	Severity of the Restriction	Comments
R.1 – Citation	Nil	Nil	
R.2 – Commencement	Nil	Nil	
R.3 – Prescribes the disqualifying offences.	Entry requirements and penalties applicable for non-compliance.	Moderate.	Refers to section 3 of the Act.
R.4 – Prescribed for to be used for application	Information disclosure.	Low	
R.5 – Prescribes the information to be provided by applicants.	Information disclosure.	Low.	Refers to section 14 of the Act.
R.6 – Undertaking details.	Potential cost	Low	Refers to section 50(2) of the Act.
R.7 – Prescribes the details of the identification to be worn.	Confers a cost on business.	Low	Refers to section 54 of the Act.
R.8 – Prescribes the information to be contained in incident registers.	Information disclosure.	Low.	Refers to section 56 of the Act.

R.9 (Crowd Controllers) – Prescribes the fees payable for the grant or renewal of a Crowd Controllers licence.	Confers costs on business.	Low.	Refers to section 18 and 24 of the Act. (The prescribed fees are minimal compared to interstate counterparts.)
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### 8.3 Anti-competitive Provisions of the Private Security, Security Officers Regulations

Description of the Restriction	Competition Economic Effects	Severity of the Restriction	Comments
R.1 – Citation	Nil	Nil	
R.2 – Prescribes the disqualifying offences.	Entry requirements and penalties applicable for non-compliance.	Medium.	Refers to section 3 of the Act.
R.3 – Specifies the appropriate form used for the purpose of s14(1)	Information disclosure.	Low	
R.4 – Prescribes the information to be provided by an applicant.	Information disclosure.	Low.	Refers to section 14 of the Act.
R.5 – Particulars of Security Officers' undertakings.	Information disclosure.	Low	
R.6 – Prescribes the fees payable for the grant or renewal of a security officers licence.	Confers costs on business.	Low.	Refers to section 18 and 24 of the Act. (The prescribed fees are minimal compared to interstate counterparts.)

### 8.4 Anti-competitive Provisions of the Private Security (Security Firms) Regulations

Description of the Restriction	Competition Economic Effects	Severity of the Restriction	Comments
R.1 – Citation	Nil	Nil	
R.2 – Prescribes the disqualifying offences.	Entry requirements and penalties applicable for non-compliance.	Medium.	Refers to section 3 of the Act.
R.3 – Prescribes the form to be used.	Information disclosure.	Low.	Refers to section 14(1) of the Act.
R.4 – Prescribes the information to be provided by an applicant.	Information disclosure.	Low.	Refers to section 14 of the Act.
R.5 – Prescribes the fees payable for the grant or renewal of a security	Confers costs on business.	Low.	Refers to section 18 and 24 of the Act. (The prescribed fees

officers licence.			are minimal compared to interstate counterparts.)
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## 9. OBJECTIVES OF THE ACT

It is necessary to identify why there is a need to regulate this industry and the objectives of the *Private Security Act*.

Street violence associated with the Northern Territory licensed venues had been a long standing problem for law enforcement and other civic authorities. There were concerns that inadequately trained Crowd Controllers were contributing to this problem.

Calls to regulate Crowd Controllers were made as early as 1987, however there had never been agreement between industry, the government and unions on the need for, or shape of any regulation. Even so, the activities of Crowd Controllers ("bouncers"), continued to be one of public concern. In the *NT News* editorial, dated 17 June 1993, it was asserted that many incidents of abuse by Crowd Controllers went unreported due to victims being "embarrassed" and humiliated at having received such treatment.

The Northern Territory Hospitality and Hotels Association advocated the regulation of Crowd Controllers. This industry body had been involved in attempts to regulate its security staff on an informal basis through police checks and training but felt that a system of compulsory licensing and training was the best way to enforce standards of competency and professional behaviour.

Other sectors of the security industry in Darwin had, from time to time, experienced problems with persons of unsuitable character either controlling businesses or being employed by security firms.

At the same time, other States that had faced similar problems had moved to regulate the industry after trying other approaches.

In Victoria, for example, anti-social behaviour associated with abuse of alcohol in entertainment precincts led to community concerns about personal safety and offensive behaviour. Part of the problem was the management practices of some licensed premises. The results were colourfully described by one Victorian Parliamentarian in the following terms.

There were often violent confrontations and violence related to Crowd Controllers, who were then called bouncers. ...[T]he Crowd Controllers, to say the least, were enthusiastic about crowd control. A number of people were treated very enthusiastically and ended up with considerable injuries." Victorian Hansard, August 1993, debate on Liquor Control (Licences and Permits) Bill.)

Victoria and other States moved to regulate the private security industry by adopting a licensing scheme to remove unsuitable persons from the industry.

With the regulation of the security industry in other jurisdictions, it was likely that those deemed unsuitable security licence applicants in those places would look to the Northern Territory for employment. Without compulsory probity and competency standards it was feared that the Northern Territory would continue to be a last resort for 'fly by night' operators pursuing a quick profit and leaving without being accountable for their actions. The potential for disruption to personal and public safety and threat to property was considerable.

There were also expressions of concern at the vulnerability of local businesses and homes if providers of other security services (e.g. security doors, alarm systems, etc.,) were incompetent, dishonest or unreliable.

In 1995, the Northern Territory Government decided to regulate the private security industry by way of a licensing system based on character and competency standards. This decision was taken in the light of interstate regulation, industry lobbying, extensive research by the NT Police, media focus on the violence in nightclubs and the concerns expressed by the community.

When the *Private Security Bill* was introduced into Parliament, the Attorney General said

The Government of the Northern Territory has decided that there is a need to regulate the private security industry. This decision has been made having regard to the general consensus of the members of the security industry, the Northern Territory Police Service, the unions and the government ...[about] problems relating to violence and competency in the provision of security services.....[T]here is general agreement that there is need of an industry specific solution that will ensure that people providing security services can do so only if they are bound in one way or another by law to meet specified eligibility standards and then comply with specified rules of behaviour in providing the security services.  
Northern Territory Parliament, Seventh Assembly, First Session, 17 November, 1995.

The Act regulates the behaviour of people who not only provide services to the public, but also enter private property and are able to obtain confidential information on individuals in the community. An aim of the Act is to ensure these persons are of good character and integrity.

### **9.1 Formulation of the Objective**

The Act contains no specific statement of its objectives.

The long title of the Act states that it is to provide for *the regulation of the provision of security services and for related purposes*.

This is a limited statement for the purposes of NCP analysis.

Having regard to the reasons for the regulation of the industry, it is suggested the Act has three primary objectives

- to ensure that only persons of integrity are able to enter the private security industry
- to ensure that persons in the industry are competent to perform the particular tasks, and
- to ensure that persons in the industry behave in a professional manner.

The licensing scheme is the method used to achieve this aim. The costs and benefits of this and other approaches, is to be assessed under NCP.

## **9.2 Writing Objectives in the Act**

The review has not been persuaded there is any significant benefit from inserting an objectives provision into the Act.

The long title of the Act sufficiently states what the Act is to achieve.

The objective of the Act is meet a current community need in respect of public safety and competency in relation to the private security industry.

However, there are grounds to insert such a provision to make the style of the Act consistent with other legislation. This is a matter for the Parliamentary Counsel.

## **10. ASSESSMENT OF THE COSTS AND BENEFITS OF THE RESTRICTIONS ON COMPETITION**

### **10.1 Definition of the Market**

Restrictive legislative provisions affect the level of competition. To accurately assess the impact of any restrictions, it is helpful to define the market and thereby better describe the level of competition in that market.

An often-cited definition of a 'market' is

...The area of close competition between firms or the field of rivalry between them.... Within the bounds of the market there is substitution - substitution between one product and another, and between one source of supply and another - in response to changes in prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given sufficient price incentive.

Hence, a 'market' is the area of trade or traffic in a commodity or service.

The competitiveness of a market will vary according to how different the offered products are from one another in character or use, and the degree of substitution of products that may occur if a sufficient price incentive is present. Substitution may occur on the supply side, where producers will switch to the production of different products in response to changing prices, and may occur on the demand side, where consumers may change to the consumption of different products as a result of a change in price.

It is also possible to define the boundaries of a market by reference to

- the nature of the product
- the geographical "reach" of supply
- where the product appears in the chain of production, and
- the levels of actual and potential competition - the latter requiring an estimation of what may occur in the future.

For the purposes of this NCP analysis, the market for the Northern Territory private security industry is predominantly the Territory geographical market, though the level of movement of licensees between jurisdictions suggests there is a strong case to argue there is national market for the supply of private security services.

This definition of the market underlines the need for Northern Territory laws to have close regard to prevailing national approaches. This proposition is reinforced when regard is had to the *Mutual Recognition Act* (discussed later) and its objective of supporting an open national market for the supply of certain services.

General factors affecting local market competition include geographic influences (location), demographic factors (urban vs. rural/remote) and cultural differences. Rural/remote localities are primarily affected by demographic, geographical and cultural influences. Large price variations between security providers and irregular price fluctuations can occur, e.g. through seasonal implications.

## **10.2 The Licensing Scheme**

The licensing scheme has significant anti-competitive effects as it imposes (1) a barrier to entry into the market and (2) affects market behaviour.

The licensing scheme imposes significant barriers to entry. The Act prevents a person from carrying on the functions of a security provider unless authorised by an appropriate licence.



The occupations regulated by the Act include "security provider", which is defined to mean

- a crowd controller
- a security officer
- a security firm
- or a person or partnership carrying out the functions of a member of a class of persons declared under the Act, to be a category of security providers.

Section 5 of the Act defines a "Crowd Controller" as a person who, in respect of licensed premises within the meaning of the *Liquor Act*, a place of entertainment, a place to which the public has access or a public or private event or function, as part of their duties, performs the function of

- controlling or monitoring the behaviour of persons
- screening persons seeking entry, or
- removing persons because of their behaviour.

Section 6 of the Act defines a "Security Officer" means a person who, for reward, patrols or guards another person's property. Section 7 of the Act says a "Security Firm" is a person who, or partnership that, engages in the business of supplying, for reward, the services of Crowd Controllers or Security Officers.

## **Costs**

Any licensing scheme imposes costs. It reserves an area of work to the holders of the licences. The Act defines what constitutes "work" in respect of each occupation. In general, these definitions are extremely broad. This is a barrier to entry and, the broader the scope of work reserved, the greater the affected market.

The need to meet the licensing standard may impose costs where the standard is set at too high a level. This cost may also occur where a licensee is required to hold irrelevant competencies. These costs would skew the otherwise ordered movement of people into and out of the market for supplying these services. The licensing process imposes costs. These include the direct costs of the fees associated with the preparation and submission of the licensing application, and indirect costs such as the delay in entering employment while the application is processed. These costs can fall on both the business as well as the applicant.

There are costs to business in having to employ only "licensed persons". The availability of a sufficient number of licensed Crowd Controllers for a large community concert, may well impact on the whether the concert can proceed.

There are costs that arise from the usual machinery provisions for a licensing system such as

- the requirement to be licensed to work in the industry (and the offence provisions applicable to both the employee and employer if an unlicensed person is used, or if a licence is misused);
- the need to apply for a licence (section 14);
- enabling corporations to hold certain types of licence (section 17);
- the power of the licensing authority to impose conditions on a licence (section 19) and to amend those conditions in accordance with set procedures (section 20);
- to allow the suspension or cancellation of a licence in accordance with set procedures to provide due fairness (sections 22 – 28)
- allowing inquiries to be made before the grant or renewal of a licence; and
- a licence being valid for only a limited period.

The above requirements bring their own costs and are clearly anti-competitive provisions.

These direct and indirect costs impact on the “cost” of the delivery of the service to the consumer.

### **Benefits**

The private security industry was regulated in order to promote public confidence and community safety, to reduce the risk of property theft and to ensure professional practices and behaviour on the part of security licensees.

The prevailing view is that this remains a valid objective and an ongoing concern.

In submissions to the Vocational Education, Employment and Training Committee (VEETAC) by the Australian Security Association, the industry argued that registration, enshrining training requirements and a code of practice, were critical to maintaining competency within the occupation.

If not adequately trained, a crowd controller may abuse their position and use excessive force or other inappropriate means to control patrons, thereby endangering the health and safety of others. Appropriate training, the industry argued, would result in better handling of difficult persons and in defusing potentially violent situations.<sup>8</sup>

VEETAC reviewed “partially regulated” occupations, that is, those occupations for which not all Australian jurisdictions require licensing. It adopted the approach that licensing could only be justified on public health and safety grounds, and if a particular occupation was not licensed in one jurisdiction, then

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<sup>8</sup> The Vocational Education, Employment and Training Committee (VEETAC) Working Party On Mutual Recognition May, 1993, p 256

there would be a presumption that it should not be licensed in any jurisdiction. Two of the occupations it examined were Security Agent and Security Guard. Reporting in 1994, it concluded there was evidence of a need for well-trained and competent personnel. It also found benefit in the screening of unsuitable persons. It recommended registration/licensing should be retained for these occupations.

Doctor P. d'Abbs and J. Forner in their 1995 report, *An Evaluation of Measures Designed to Reduce Nightclub Violence and Disorder in Darwin*, listed three reasons why the licensing and training of Crowd Controllers is considered necessary

- to bring professionalism and accountability into the occupation
- because unlicensed security staff and certain patrons alike embody a culture of 'drinking and violence' which initiates many incidents, and
- because evidence from other jurisdictions that licensing and training has led to reduced levels of violence.<sup>9</sup>

These reasons are still regarded as current. The submissions received and the comments made during the public meetings, supported the need for a scheme to prevent inappropriate persons from entering the industry. This reflects

- the nature of the work of the industry, i.e. it requires a level of honesty and integrity
- the culture of the industry, i.e. ensuring the day of the bouncer is past, as there is still a concern about unacceptable levels of violence involving Crowd Controllers, and
- community expectations about public safety and public behaviour.

Finally, NCP assessments of the merits of interstate schemes have, in so far as they have been completed and made publicly available, also concluded there is a need for regulation and, in particular, the continuation of the licensing scheme. See Section 13 for a summary of interstate reviews.

### **Assessment of the Costs and Benefits**

The objective of the private security licensing scheme is to preclude inappropriate persons from entering the private security industry. The licensing scheme is intended to be a barrier to entry.

The merits of retaining the scheme and the costs it imposes on individuals, business and the wider community, depend on how importantly the objective is viewed.

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<sup>9</sup> d'Abbs Dr P., Forner J. *An Evaluation of Measures Designed to Reduce Nightclub Violence and Disorder in Darwin*, July 1995 Unpublished paper, p 8

Submissions made to this review suggest there remains a need to protect the community through the regulation of the industry. There was overwhelming support for the continuation of a licensing scheme.

While some of these submissions may reflect a particular commercial position, the Review Panel concluded that the policy objectives of the Act

- to ensure that only persons of integrity are able to enter the private security industry
- to ensure that persons in the industry are competent to perform the particular tasks, and
- to ensure that persons in the industry behave in a professional manner

remain valid and there is a continuing justification for the licensing of persons involved in this type of work. This justification is based on the over-riding public interest concerns regarding the need to reduce the risk of property theft and enhanced public safety, especially in licensed premises and other entertainment venues.

In the light of the above factors, (and subject to the later discussion on possible alternative methods of attaining the objectives) the Review Panel concluded:

***Recommendation 1: Retention of legislation***

*The benefits to the community of retaining the licensing system contained within the Private Security Act outweigh the costs and it should be retained.*

The Review Panel also concluded that it is necessary to examine particular aspects of the licensing system with a view to commenting on its efficiency and effectiveness of operation.

### **10.3 Requirement to Hold a Licence : The Scope of the Act and Exemptions**

The Review Panel had invited comment on whether the scope of the Act was appropriate and accurate having regard to the way the industry is structured. Comment was also sought on whether the scope of work defined by the Act was too broad or too narrow, in respect of each category of security provider.

Comments supported the present scope of the Act and delineation between categories but concern was raised at the application of the exemption power where staff were employed primarily to undertake security duties.

It is arguable the Act provides an possibly unintended exemption from the need to hold a licence as a security officer, if a person “as an employee patrols or guards the employer’s property.”

Section 6(2) says that “..a person is not a security officer merely because the person –  
(a) is an employee of a person who does not for reward, patrol or guard another person’s property; and  
(b) as an employee, patrols or guards the employer’s property.”

During the course of consultation concern was expressed about security staff in larger shopping centres having the benefit of this exemption. By not being subject to the Act, there is no certainty that these staff have the competencies expected of these officers.

The Review Panel noted that this provision expresses only a presumption against licensing that may be overturned given the facts of the case; that a person is not a security officer “merely because” the two conditions are met does not preclude a requirement to be licensed where other factors are at play.

However, the Review Panel noted the scope for argument and suggests that this provision may be ambiguous in its day-to-day application. Furthermore, on its face, it seems too wide and has the potential to favour certain market participants over others, with larger employers able to avoid having to employ licensed staff to undertake the duties of a security officer, despite this being their prime work function.

As well, the terms of the exemption do not show how the objectives of the Act are necessarily achieved in respect of these persons.

The Review Panel agreed that exemptions should be provided for, but on a case by case basis. In this case, employers of security staff at shopping centres must show grounds why an exemption should be granted for those staff and how the expected competencies are to be delivered.

Such a process is available under Section 65. That section allows the licensing authority, by notice in the Gazette, to exempt a person, a class of persons or category of activities from the operation of all or any of the provisions of the Act and Regulations, subject to any conditions specified in the notice.

The Act has been declared not to apply to persons who, at sporting events, cinemas and theatres

- screen entry by selling or collecting tickets
- escort patrons to or from seating and/or the venue
- assist with car parking, or
- assist with the orderly movement of persons.

During the course of consultation it was agreed that cinema staff, for example, do not need to be included within the scope of the Act.

This process delivers an improved, though still limited, level of accountability in granting an exemption by comparison to that provided under section 6(2). The Panel noted that there is an absence of checks and balances on the exercise of this power, with no formal review or appeal mechanism provided.

In contrast, the Panel noted the detailed process to be followed in the opposite situation, where it is proposed the Act be declared to apply to a new area of activity. In this case, a report has to be prepared and consultation has to occur. In view of the significance of *declaring the Act to apply to a new area* of activity compared to exempting a class of persons from its reach, the Panel did not see any need for such an elaborate process to be followed when an *exemption* is being considered.

The Panel felt that the process given by Section 65 could be seen as adequate, though only informal methods of review appear available. This power has been used conservatively and no instances of inappropriate exemptions have been suggested.

However, one means of improving accountability is to replace the Gazette Notice mechanism with an exemption made by way of Regulation. In this case, there is the opportunity for Parliament to disallow an improper exemption, and the relevant Regulation would serve as a register of exemptions.

***Recommendation 2: Prime work role***

*Amend the exemption given by section 6(2), in respect of employees, to make it plain that employees undertaking the role of a security officer as their prime work duty are subject to the licensing requirements of the Act.*

***Recommendation 3: Classes of workers***

*Amend Section 65, to provide a regulation-making power, empowering the granting of exemption in favour of a person, class of persons or a category of activities from the operation of the Act or Regulations, e.g. locksmiths, subject to conditions specified in the Regulations, rather than such exemptions being made by way of a Notice in the Gazette.*

**10.4 Requirement to Hold a Licence : The Criteria for Licensing**

Particular features of the licensing scheme require close assessment because of their potential to generate unnecessary costs if inappropriately applied. One of these is the provision which specifies the criteria for licensing. This defines the height of the barrier to entry.

Under Section 15, the Licensing Commission is to be satisfied that an applicant for a licence is an “appropriate person” to hold a licence, and meets the specified competency and training standards. Whether an applicant is an “appropriate person” is a character assessment.

In making this assessment, the Licensing Commission may have regard to such factors as

- that in dealings in which the person has been involved, the person has shown dishonesty, lack of integrity or used harassing tactics
- the person has taken advantage, as a debtor, of the laws of bankruptcy
- the person is suffering from an illness that makes them unfit to work
- the person has been found guilty of an offence against this Act.

These and other factors are stated in section 15(6). Section 15(7), however, deals with “disqualifying offences” and removes the Licensing Commission’s discretion. A person “is not” an appropriate person to hold a licence if, within 10 years of applying, the person has been convicted a disqualifying offence.

“Disqualifying offences” are spelt out in Regulation 3 of the *Private Security (Crowd Controllers) Regulations*, Regulation 2 of the *Private Security (Security Officers) Regulations* and Regulation 2 of the *Private Security (Security Firms) Regulations*.

Disqualifying offences include: unlawful homicide, manslaughter, threats to kill, grievous harm, unlawful stalking, sexual intercourse and gross indecency without consent, kidnapping, and criminal deception.

In general, the list of disqualifying offences does not appear to have been too widely drawn. However, there are two areas where the Northern Territory is possibly at odds with interstate practice – the treatment of “common assault” and of drug offences.

***Recommendation 4: Common Assault***

*Delete from Regulation 3 of the Crowd Controller Regulations and Regulation 2 of the Security Officer Regulations, Common Assault (Number 188) (1) as a disqualifying offence and replace it with Assault, Number 188 (2).*

Note: Section 188 of the NT Criminal Code draws a distinction between unlawful assaults which are offences under the Act, ie section 188 (1) and assaults whereby the offender is guilty of a crime, ie section 188 (2).

Section 188 (1) refers to assaults that are offences and this relates to spitting, pushing and shoving type behaviour. Section 188 (2) refers to assaults that are crimes and this relates to actual bodily harm, males assaulting females, adults assaulting those under 16, assaults on those who are infirmed, aged or disabled and are unable to defend themselves, assaults on Parliamentarians, Police, court officers and public servants on duty, indecent assaults and threats with a firearm or other dangerous weapon.

The issue for the Northern Territory is that pursuant to principles of the *Mutual Recognition Act*, if a person is licensed to carry out an occupation in any Australian jurisdiction, that person is entitled (for Northern Territory regulated occupations) to be issued with an equivalent licence.

The occupational licences issued for the private security industry are subject to this principle, with a person licensed as a “crowd controller” in NSW being eligible to be licensed by an interstate authority without the need to undergo further assessment.

A difficulty arises where the disqualifying offences are different between the relevant jurisdictions. The situation has arisen where an applicant has been convicted of an offence elsewhere in Australia (which is not a disqualifying offence<sup>10</sup> in that State or Territory) and later seeks registration in the Northern Territory where conviction of the same offence would be deemed a ‘disqualifying offence’. For example, a person found guilty of ‘common assault’ (first offence) in South Australia would be entitled to be registered for the equivalent occupation in the Northern Territory. If the offence had been committed in the Northern Territory, the result would be automatic disqualification from holding a licence. This appears harsh.

Common assault is not a disqualifying offence in New South Wales, South Australia, Tasmania or Queensland.

It is noted that the licensing authority may still have regard to the assault conviction and may decide not to licence in view of the inferences that may be drawn from it about the applicant’s character, but this is on the facts of each case. Disqualification is not automatic and mandatory.

In the light of the effect of the *Mutual Recognition Act*, the broad national market for these services, the movement of security licensees between jurisdictions and the capacity for the licensing authority to take account of such convictions in any event, the recommended option is to delete the offence (but not the crime) of common assault as a disqualifying offence for the purposes of the Act.

***Recommendation 5: Serious Drug Offences***

*Add Sections 5, 6, 7 (except 7c), 8, 9, 16 and 17 of the Misuse of Drugs Act covering the supply, cultivation and possession of a dangerous drug, receiving or possession tainted property, and obtaining prescription and/or dangerous drugs by deception, as disqualifying offences to the Security Officers and Crowd Controllers Regulations.*

Conversely, there are concerns where an offence, such as a serious drug offence, is a disqualifying offence interstate but is not scheduled as such in the

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<sup>10</sup> A conviction of such an offence results in automatic cancellation of a licence.



Northern Territory. In this case, the Northern Territory may be used to obtain a licence in another jurisdiction, to which the person would not be entitled but for the application of the *Mutual Recognition Act*.

In other States, offences such as possession of trafficable quantity of dangerous drugs, the possession of amphetamines, and sell, dispose and manufacture or sale of dangerous drugs are disqualifying offences (see, for example, section 11 *Security Industry Regulation Act* 1998 (Victoria), section 11 of the *Security Providers Act* 1993 (Queensland) “an offence under the *Drugs Misuse Act* 1986 that is punishable by imprisonment for 1 year or more, even if a fine may be imposed in addition or as an alternative”, and section 80 of the *Security and Related Activities (Control) Act* (Western Australia).

This interstate approach coincides with growing concerns in relation to the Northern Territory industry. For example, recent drug-related investigations indicated that the offenders were holders of crowd controller licences. Consequently, the offenders were charged with being in possession of illegal drugs, including animal and human growth hormones, stimulants, steroids, amphetamine tablets and marijuana.

As controllers of persons who enter premises, Crowd Controllers are in a very powerful position to be able to dispose of, sell or supply drugs (particularly to underage patrons). Consequently, it is felt it would be in the public interest to extend the list of disqualifying offences to include drug offences.<sup>11</sup>

The Review Panel concluded that the serious nature of the offences scheduled as disqualifying offences do not represent an onerous or unfair barrier to entry. The benefits to the community in ensuring such persons are excluded from the private security industry outweigh the costs to those persons.

It also concluded that the proposed changes to amend the list of disqualifying offences to remove “common assault” (the offence) and to include serious drug offences, serve to make the schedule better conform with the objective of the Act.

In NCP terms, these changes would improve the balance of costs and benefits of the disqualifying offence provisions. They would reduce an arguably unfair high cost in the exclusion of persons convicted of common assault from entry to the industry, and they would maximise the community benefit in excluding persons convicted of serious drug offences from entry to the industry.

The provisions defining the disqualifying offences, being sections 3 and 29 of the Act, Regulation 3 of the *Private Security (Crowd Controllers) Regulations*,

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<sup>11</sup> Offences committed under provisions of the *Misuse of Drugs Act* in respect of the drugs listed in Schedules 1 and 2 of that Act.

Regulation 2 of the *Private Security (Security Officers) Regulations* and Regulation 2 of the *Private Security (Security Firms) Regulations* are justifiable and should be retained.

The proposals to add sections 5, 6, 7 (except 7c), 8, 9, 16 and 17 of the *Misuse of Drugs Act* as disqualifying offences to the security officer and crowd controller regulations, and to delete "common assault" as a disqualifying offence, are justifiable on a cost benefit analysis.

***Recommendation 6: Regulations pertaining to the use of guard dogs***  
*Add provision for regulation, through specifying of competency standards, relating to the use of guard dogs.*

The use of guard dogs by security licensees is not covered by the *Private Security Act*. As some security providers in Darwin have commenced the use of guard dogs as part of regular patrols, the issue of controls, including which competency standards should apply, has arisen. The reason for this is that while guard dog use has only recently commenced, there have already been instances where members of the public have been bitten and other reports where shoppers have been harassed through the way in which guard dogs have been used by security officers on patrols.

It should be noted that the nationally accredited private security training package contains competency units relating to the training of guard dogs and the competencies of their handlers. The inclusion of this material in a nationally developed training package indicates that this is a national issue and therefore it is not surprising that this matter has surfaced in the Northern Territory.

While guard dog standards could be approached using self-regulatory mechanisms, the lack of a professional body able to undertake self-regulation activities requires that a formal regulatory approach is required. Accordingly the Review Panel recommends that provision of standards in the form of training competencies for dogs and their handlers is in the public interest. It is recommended that the Minister, who is able to specify which training competencies are required for certain types of security work, makes it a requirement that those security patrols who choose to use guard dogs do so in accordance with Australian nationally accredited standards.

## **10.5 Administrative and Procedural Reforms**

The *Private Security Act* contains the framework for a licensing scheme which includes the administrative provisions to enable the Act to function. However, administrative discretions may, when improperly exercised, generate costs to business. In NCP terms, the licensing scheme can minimise such costs by providing adequate transparency and accountability in decision-making, and

procedural fairness in matters affecting the licence and the livelihood of the licensee.

With this in mind, the Review Panel recommends the following administrative and procedural amendments to improve the operation of the licensing scheme.

***Recommendation 7: Non-compliance with licence requirements a regulatory offence***

*Amend the Act so that offences under Section 13 are regulatory offences.*

Under Section 13 it is an offence to employ unlicensed security persons for the purposes of undertaking security work. However, the penalties contained within this Section do not specify whether offences committed are regulatory or criminal offences. Given the lack of specificity and that criminal intent is most unlikely to occur, it is appropriate to clarify that offences under this Section are regulatory offences.

***Recommendation 8: Capacity For Licensee To Seek A Variation Of License Conditions***

*Amend Section 20, so that a licensee, as well as the Licensing Commission, may seek a licence variation to accord with changing commercial circumstances.*

Under section 20, only the licensing authority can seek a variation to any licensing conditions. From time to time, a licensee may wish to seek a variation to accord with changing commercial circumstances. It seems appropriate that provisions be made enabling a licensee to do so.

***Recommendation 9: Director of Licensing to be the chief decision maker for licence applications***

*Amend the Act that so that the Director of Licensing replaces the Licensing Commission as the chief decision maker in relation to licence applications with the avenue of appeal to the Licensing Commission instead of the Local Court.*

Currently the Licensing Commission has delegated its power to decide licence applications to the Director of Licensing and deputy Director of Licensing.

The review found that the current situation whereby the Director of Licensing and Deputy Directors of Licensing make decisions on licence applications was recognised by industry and stakeholders as quicker, less formal and less costly than the Licensing Commission's usual decision making process.

The Darwin public consultation meeting undertaken as part of the NCP Private Security Act review gave resounding agreement to the proposal that the Director of Licensing replace the Licensing Commission as the chief decision maker in relation to licence applications.

The review considered that amending the Act so the Director of Licensing is the chief decision maker under the Act would recognise existing practice (albeit under delegated power) and ensure the most efficient possible licensing process.

The Review also found that by making the Licensing Commission a board of appeal for licence applications would increase access to justice at a much lower cost to applicants.

Overall the review concluded that it is in the public benefit for the decision making structure for licence applications to be altered so that the Director of Licensing replaces the Licensing Commission as the chief decision maker with an avenue of appeal being to the Licensing Commission instead of the Local Court.

***Recommendation 10: On-the-spot-fines***

*Amend the Act so that in lieu of formal disciplinary proceedings, an Inspector be empowered to issue an infringement notice imposing an on-the-spot fine, for minor breaches of the Act, Regulations or Code of Practice.*

Pursuant to Section 26, the Licensing Commission may take action against a licensee or fine a licensee for disciplinary breach. It is proposed that in lieu of formal disciplinary proceedings, an Inspector be empowered to issue an infringement notice imposing an on-the-spot fine for minor breaches of the Act Regulations or Code of Practice. (The licensee may still opt to have the matter heard by the Licensing Commission.) This provides flexibility and was supported by industry during consultation. Use of this approach is supportive of industry as those issued with fines may continue to work, thus not losing their capacity to operate in the market.

***Recommendation 11: Provision for Complaint to be Made to the Director of Licensing***

*Add formal complaint provisions into the Act, to enable a person to complain to the Director of Licensing about a breach of the Act, Regulations or the Code of Conduct by a licensee.*

It is recommended the formal complaint provisions be incorporated into the Act, to enable a person to complain about a breach of the Act, Regulations or the Code of Conduct by a licensee. This is not an unusual provision. During the consultation period industry supported the concept, expressing surprise it was not already allowed for.

The Director of Licensing has maintained an administrative practice which is guided by the rules of natural justice and laws of evidence that allows members of the public or other persons to lodge a complaint in writing with the Director. The Director in turn investigates the complaint, which may result in disciplinary action being taken. The nature of the Director's inquiry is often dictated by the

seriousness of the complaint and may vary, according to the circumstances of each case.

To ensure the efficient operation of the system, it is proposed that the Act be amended to prescribe a complaint mechanism which allows a person to complain to the Director of Licensing about any matter arising out of the conduct of the security provider or the security provider's business.

***Recommendation 12: Codes of Conduct, Competencies and Training***  
*Amend Section 53, so that before the Minister approves a competency or training required for the attainment of competency standards, the licensing authority, is required to consult with interested persons prior to advising the Minister.*

Part 6 of the Act permits Code of Conduct to be developed, and the approval of competency standards and the training required for the private security industry. Competency standards are a barrier to entry to the private security market, and the Code affects market behaviour. Where these are set at too high a level, these can have an inappropriate effect on competition.

The Review Panel accepted that such provisions are a required feature of the licensing scheme. However, it had regard to the processes set out for the development of competencies and the Code, to ensure that the views of industry were fully considered as a means of ensuring the standards were appropriate.

Section 48 provides for the making of the Code of Conduct. It requires the Licensing Commission to consult with, and invite submissions from, interested persons as well as advertising development of the Code and inviting comments from members of public.

By contrast Section 53, which deals with the approval of competencies and training, permits the Minister on the advice of the Licensing Commission, to declare these standards by way of a Notice in the Gazette. This Notice may specify required training units of competency and allow for training options, such as traineeships or other flexible forms of training delivery.

However, competencies and training delivery may act as significant barriers to entry to the various sub-markets involved. To minimise the risk of inappropriate competencies or training delivery approaches being set, it is proposed that current practice is formalised by requiring the licensing authority to consult with interested persons prior to advising the Minister.

***Recommendation 13: Appointment of Inspectors by the Director of Licensing***  
*Amend Section 35, so that the Director of Licensing, not the Licensing Commission, may appoint Inspectors.*

Presently, Inspectors are appointed by the Licensing Commission. To improve administrative efficiency, it is proposed this function be devolved to the Director Licensing, reflecting his responsibility for staff undertaking this function.

***Recommendation 14: Consumer Affairs and Fair Trading officers***

Delete from Section 35 (4) the inclusion of officers as defined in the *Consumer Affairs and Fair Trading Act* as they are also authorised officers for the purposes of the *Private Security Act*.

When the private security legislation was introduced, the Office of Consumer Affairs and Fair Trading was responsible for the *Private Security Act*. Accordingly, reference to staff from this agency having the role of Inspectors was included. Due to changes in responsible agency for the private security legislation, it is no longer appropriate for reference to officers from the Office of Consumer Affairs and Fair Trading in the *Private Security Act*.

***Recommendation 15: Repeal Transitional Licences***

*Repeal all references to Transitional licences.*

Three types of licence are available under the Act

- Crowd Controller - transitional, provisional and full
- Security Officer - provisional and full, and
- Security Firm.

Submissions to this review supported the maintenance of the licence categories.

Support was also given to the proposal to remove the provisions dealing with Transitional Crowd Controller's licences, as they are no longer necessary.

Transitional licences were introduced when the *Private Security Act* was introduced to ensure that the Northern Territory would have access to “licensed” Crowd Controllers and Security Officers, because on the day when the Act came into force there were no qualified licensees.

As the change from the old system unlicensed system to the new has passed and there are sufficient licensed Crowd Controllers in the industry, this provision is now obsolete and should be removed. It should be noted that no transitional licences have been issued since 1999/2000. See section 6.3.

Provisional licences were introduced and are still used to allow persons who wish to enter the industry the opportunity to work until the necessary character checks and criminal history could be completed, and to enable time for licensees to complete the required training competencies as specified in the Regulations.

**Recommendation 16: Licence Renewal Period**

*Amend Section 24 so that the Director of Licensing may renew a licence, not earlier than 3 months before its expiry date or within a period of time as determined by the Director.*

There were different views on whether licences should be issued for more than one year. The industry noted that annual checks are needed to ensure that licensees have a clean record. In the event, the Review Panel notes this is a matter of licensing policy adopted by the Licensing Commission, as the legislation allows licences to be issued for one, two or three years.

The Review Panel felt the existing provision was adequate, but required amendment to give the Director of Licensing greater flexibility where a renewal had not been completed by its expiry date.

**Recommendation 17: Licence Renewal, Current First Aid Certificate**

*Add to Section 24 that on licence renewal, applicants must produce documentation showing that a current first aid certificate is held.*

During the consultation with industry, the issue was raised that some licensees were seeking licence renewal without production of a current first aid certificate. As licensees are required to be the holder of a current first aid certificate, the requirement that this be produced when seeking licence renewal does not add any cost to licensees and ensures that licensees do have up to date licence requirements. The Review Panel is of the view that this addition is an administrative clarification that should be supported.

**Recommendation 18: Licence replacement fee**

*Add provision in Section 25 so the Director of Licensing can replace a lost, stolen or destroyed licence on the payment of a prescribed fee. Also that the Director of Licensing shall have the power to waive this fee at his or her discretion or in cases of hardship.*

Racing, Gaming and Licensing Division staff have noticed that a small of security licensees regularly “misplace” their licence and accordingly seek to be provided with a replacement. Where “lost” licences have not incurred significant damage such as going through a washing machine, there is the concern that they may be used as part of an illegal licence provision process. Advice from other jurisdictions was that charging a replacement fee of \$20-00, an amount which equates to the average licence replacement fee in other Australian jurisdictions, would limit this behaviour.

While a licence replacement fee is a cost to the licensee, it only has detriment to a very small number of licensees, who appear to be repeat offenders. When considering the small fee involved against the concern of licence re-cycling, the public interest is served by addition of this recommendation.

While this recommendation will only impact on a small number of licensees, it is important to ensure that it does not unfairly disadvantage licensees who have “lost” their licence through no fault of their own, eg where a licence has been stolen. Accordingly the Director of Licensing should have the power to waive the replacement fee where a Police stolen property number can be produced or where other discretionary powers should be used.

***Recommendation 19: Director to prescribe format of Incident Register***

*Add to Section 56 and Regulation 8 of the Crowd Controller Regulations so that Incident Registers must be kept in a form approved by the Director of Licensing.*

Section 56 of the Act requires that employers of Crowd Controllers are required to keep a register of Crowd Controllers containing accurate records of prescribed information. Regulation 8 of the Crowd Controllers Regulations specifies what information is to be kept and includes a Crowd Controller’s name, address, licence number, allocated daily work number and details of force used by or against a Crowd Controller.

However, there is no specification as to the format of this Register. Currently licensees use loose sheets of paper, exercise books, or a range of notepads. These means of recording are not satisfactory as pages may be removed, thus not being a reliable means of documentation. Given recent instances where incidents involving public violence have been poorly recorded and possibly amended after the initial record was made, the use of a register in a form approved by the Director of Licensing is warranted.

It is also intended that licensees will be given the option to record actions taken in relation to Patron Care in the Incident Register. Harm minimisation actions such as taking a patron off tap, asking a patron to leave the premises, escorting a patron from a premises, contacting a friend or family member to come and collect a patron, may be recorded in the Incident Register.

The requirement for Incident Registers to be kept in a format approved by the Director of Licensing does not effect competition as it will apply to all licensees and is a minor restriction on trade. The option of recording Patron Care activities in the Incident Register should help licensees in that it provides protection to employers in the event of an incident where the employers licence may be called in question. It also highlights the importance of Patron are activities and assists Police and Licensing Inspectors in the conduct of their duties in relation to public safety. The view of the Review Panel is that this addition should be included in the public interest.

***Recommendation 20: Private Security Industry Fund and Levy***

*Delete Sections 62, 63 and 64 because the Private Security Industry Fund and Levy has never been used and is obsolete.*



Sections 62 provides for the establishment of a Private Security Industry Fund “for the purposes of financing operations under this Act”. It is to consist of fees fines and any levies imposed under Section 63. Section 63 allows the Minister, by Notice in the Gazette, to impose a levy on the grant or renewal of a licence or to impose a levy on a class of providers. It is an offence under Section 64 not to pay the levy.

In the event, no separate Fund is maintained, and no levy has been gazetted under Section 63.

There are advantages in the administration of the scheme of regulation being funded by a transparent budget allocation from consolidated revenue, rather than the hypothecation of taxes and charges towards parts of a Department’s administrative costs. It has been noted that the hypothecation of state revenues can be criticised on the grounds it affords a privileged budgetary position to specified functions as these functions are not subject to the scrutiny of the annual budget process. Revenue hypothecation can reduce budgetary flexibility and may, over time, result in a distortion of priorities and allocation of resources.

It is recommended these provisions be repealed as they have never been used and appear obsolete.

**Recommendation: 21 Fees**

*Amend Regulation 9 of the Crowd Controller Regulations and Regulation 6 of the Security Officer Regulations so the fee charged for the renewal of a Crowd Controller or Security Officer licence shall be \$70, where the applicant also holds a current Crowd Controller or Security Officer licence for which a \$90 fee has been paid.*

Fees are charged for the grant or renewal of licences in accordance with the Regulations.

The fees for the grant or annual renewal of a licence are

Transitional Crowd Controllers licence	\$90.00
Provisional Crowd Controllers licence	\$90.00
Crowd Controllers licence	\$90.00
Provisional security officer licence	\$90.00
Provisional security officer licence, where the applicant holds another licence under the Act	\$70.00
Security officer licence	\$90.00
Security officer licence, where the applicant holds another licence under the Act.	\$70.00

The fees for the grant or annual renewal of a Security firm licence are

where the applicant is a natural person	\$400.00
where the applicant is a partnership	\$400.00
where the applicant is a corporation	\$800.00

Fees are, *prima facie*, a restriction on competition and an impact on business, however, they are but a minor restriction on competition.

However, misinterpretation of the provisions of the Regulations and inconsistency in the amount of fees being charged may occur. For example

- a person holds a crowd controller and security officer licence with different expiry dates. When this person applies to renew either licence, they are only required to pay \$70 to renew each licence, as they already hold a licence.
- a person, who holds a crowd controller and security officer licence with the common expiry date, pays \$90 for the renewal of the first licence and \$70 for the renewal of the second licence.

The Issues Paper proposed that the fees for the grant or renewal of a licence for Crowd Controllers and Security Officers should be the same (\$90), regardless of whether the applicant holds another licence under the Act.

Comments received during the consultation process argued that provision could be made for a combined licence with a reduced fee. However, others argued that the licences covered disparate areas of activity and should continue to be regarded as separate licences. In the event, the Panel was not persuaded that there should be a combined licence.

The Review Panel concluded that the level of fees was appropriate having regard to the fees charged for similar licences interstate. To overcome the anomaly, it recommends that the fee charged for the renewal of a Crowd Controller or Security Officer licence shall be \$70, where the applicant also holds a current Crowd Controller or Security Officer licence for which a \$90 fee has been paid.

***Recommendation 22: Fees when licences are renewed for more than one year***

*Amend Regulation 6 of the Private Security (Security Officers) Regulations and Regulation 5 of the Private Security (Security Firms) Regulations so that the fees paid to obtain or renew a licence are for each year for which the licence is sought.*

Section 23 of the *Private Security Act* enables the issue of a security licence for either one, two or three years from date of issue. While the *Private Security (Crowd Controllers) Regulations* state that Crowd Controller licence fees are to

be paid each year, this provision is not contained in the Security Officer or Security Firm Regulations. Accordingly an application could be made for a Security Officer or Security Firm licence for a three year period by paying the fee that was intended to be an annual fee. Addition of the words to the effect of 'for each year for which the licence/renewal is sought' to the Security Officer or Security Firm Regulations closes this loophole.

## **11. ALTERNATIVES AND OPTIONS**

Having established a need for regulation, the Review Panel considered alternatives to legislation to achieve the objectives of the licensing regime.

### **11.1 Reliance on Market Forces – No Regulation/ Self-Regulation**

Under this option, the licensing system is removed. The industry, through voluntary codes of conduct, market forces and the general law are relied to remove incompetent or unsuitable service providers from the industry and remedy damage.

Generally, voluntary codes of practice or industry self regulation describe the types of actions or procedures, as determined by the particular industry or profession, that are believed to be acceptable within the industry and the wider community.

Voluntary codes or self-regulation maximise flexibility and the involvement of the profession or industry. They also harness the expertise, market and social power of the industry in formulating the code or agreement. This approach allows for easy adjustment by industry participants to changes in the nature of the industry or occupation. It also reduces the need for and the cost of government resources spent administering a regulatory framework.

However, for self-regulation to be successful there must be sufficient market power and commonality of interest within an industry to deter non-compliance. This is because industry self-regulation or voluntary codes have no legal authority to ensure compliance. Compliance is achieved through the individuals desire to uphold the reputation of the profession, rather than through threat of legal redress.

The Review Panel concluded that the self-regulatory option was not feasible as a means of achieving the Act's intended objectives. There is insufficient power and commonality of interest within an industry to deter non-compliance, and the cost of non-compliance is great. The public consultation meetings also supported this view and voiced the concern that reliance on market forces would not deal with the issue of criminal activity.

The Australian Institute of Criminology noted the response of the NSW ICAC to the proposition that market deregulation would improve service quality as “naïve in the extreme” (see *Regulating Private Security in Australia, Trends and Issues In Crime and Criminal Justice*, Nov, 1998).

The Review Panel concluded that the option of returning to the pre-licensing scheme approach to address kava issues is not feasible.

## 11.2 Industry Co-Regulation

Under Co-regulation, the regulatory role is shared between government and an industry body or occupational representative. It is usually effected through legislative endorsement of an industry body responsible for the competency assessment of an occupation.

Typically, co-regulation involves an industry organisation or a representative of a large proportion of the industry participants formulating a code of practice in consultation with government. The code is designed to ensure that breaches are enforceable via effective sanctions by the industry or professional organisation. This may be achieved by: (i) incorporating a code of practice by reference into regulations and creating associated offences and penalties for breaches; or (ii) providing broad performance-based regulations with the industry code of practice having a *deemed to comply* status, i.e. where adherence to the code is deemed compliance with the regulations.

Co-regulation enables the industry to take the lead in the regulation of its members by setting industry standards and encouraging greater responsibility for the performance of its own members. Co-regulation also recognises (and utilises) the expertise and knowledge held within the industry/professional association.

Advantages of co-regulation are

- the expertise of the industry or professional associations can be more fully and directly utilised
- it encourages the industry or professional association to take greater responsibility for the behaviour of its members
- it reduces the requirements for government resources to be dedicated to regulation
- industry sanctions can be given legislative backing
- it promotes independence and accountability of the professions or industry, and
- it allows industry participants to rule on matters best determined by peer groups.

Disadvantages of co-regulation are

- unintended monopoly power gained by market participants could restrict competition
- it may reduce the diversity of services or products provided by the industry or profession
- it could raise barriers to entry, such as standards or education requirements
- agencies may become captured by industry interests, promoting the interests of that group at the expense of the community at large, and
- it could reduce competition within the industry.

Co-regulation may be used when

- strong industry associations with broad coverage are present
- industry assessment is able to be easily conducted
- there is a large commonality of skills within the industry
- incentives or interests are aligned, i.e. they are self-enforcing
- self-enforcement is possible, or
- professional independence is a major consideration.

The Review Panel noted the existing strong foundation for co-regulation provided for in the *Private Security Act*, especially in relation to the development of an enforceable Code of Conduct. The Act allows for the development of industry standards and greater use of codes of practice developed with, and by the private security industry.

However, the Panel also noted that this approach requires the existence of strong industry associations and a culture of self-enforcement. While one submission did call for a co-regulation licensing approach, the view of the Panel is that Northern Territory industry associations are not in a position to be effective in the application of co-regulation because the Northern Territory does not have a strong culture of self-enforcement and therefore a co-regulatory approach is not recommended at this stage.

### **11.3 Negative Licensing**

Negative licensing is designed to ensure that individuals or manufacturers who have demonstrated by their prior action that they are incompetent or irresponsible are precluded from operating in a particular industry. As a result, the most serious offenders against the set standards are removed from the industry or profession without, at the same time, placing an undue burden of registration on the entire industry or profession.

Negative licensing may be preferred where there is an intention to exclude individuals and firms with certain characteristics (e.g. serious criminal

convictions) rather than to specify via regulations any positive requirements for licensing, such as educational requirements. They also have the advantage that they do not require administrative registration or certification requirements of industry participants and therefore present no barriers to occupational mobility or entry.

Advantages of negative licensing are

- it does not require administrative registration or personal certification
- negative licensing imposes fewer costs on participants which should result in lower prices for consumers
- costs of entry are lower, and
- dominant industry bodies can not seek to restrict competition by setting too stringent conditions of entry.

Disadvantages of negative licensing are

- as no screening occurs the number of inappropriate participants initially entering an industry may be higher than under a registration process
- some agents may be able to operate undetected or act inappropriately before they are detected. That is, licence removal will only occur after the detection of a breach
- the screening process relies on objective evidence of qualification, experience or judgement of character which may not be reliable indicators of future inappropriate behaviour, particularly dishonesty, and
- enforcement activities may need to be increased, thereby increasing monitoring costs.

Negative licensing should be used when

- when there are tiers of regulation for any particular sector
- when monitoring requirements are low, or
- when screening processes are already carried out by some other organisation or law.

The Review Panel concluded that negative licensing was not a feasible alternative to positive licensing in achieving the Act's objectives. The community interest dictates that unsuitable persons should be excluded from the outset.

#### **11.4 Alternatives and Options Summary**

Alternative methods of regulation do not appear to achieve the objectives of the Act to ensure that

- only persons of integrity are able to enter the private security industry

- persons in the industry are competent to perform the particular tasks, and
- persons in the industry behave in a professional manner.

The rationale for the Act is that market failure exists. The private security industry has significant responsibilities for the protection of life and property and there is a serious risk that without government intervention, the outcomes will fall far short of community expectations. Regulation helps reduce the costs that otherwise would have to be borne by individuals, the finance and insurance industry and the general community.

The Review Panel felt that private security meets the description that

Occupational regulation in the form of licensing requirements is premised on an assessment that it is better at the outset to exclude from the market incompetent or dishonest practitioners rather than deal with the consequences of their actions later.

(Guidelines for the Review of Legislative Restrictions on Competition, Victorian Department of Premier and Cabinet, p 71)

The positive licensing approach is seen as the only method of achieving the required objectives of the Act.

## **12. TRADE PRACTICES ACT 1974 AND THE NT COMPETITION CODE**

### **Relevance of the Trade Practices Act 1974**

The review is required to consider whether any of the proposals might breach the *Trade Practices Act 1974* (Commonwealth).

Part IV of the *Trade Practices Act* prohibits a corporation and, in the Northern Territory, individuals, from engaging in certain anti-competitive practices. The Competition Code is in substantially the same terms as Part IV of the *Trade Practices Act*.

Part IV of the *Trade Practices Act* includes the following provisions: Section 45 prohibits the enforcement of exclusionary provisions, whether or not they are anti-competitive, and arrangements that have the effect of substantially lessening competition. Section 45A deems horizontal price fixing to be anti-competitive, subject to some exemptions. Section 45B prescribes covenants that have the effect of substantially lessening competition.

### **Potential Breaches of the Trade Practices Act 1974**

There is nothing in the *Private Security Act* or in the proposed legislative reform contained in this review authorising a breach of the *Trade Practices Act 1974*.

### 13. INTERSTATE REVIEWS

State/ Territory	Legislation	Description of the Provisions	Review Position
Western Australia	Security and Related Activities Control Act	Providers of security and inquiry activities.  Licensing, registration, entry requirements (training, character, possible medical examination), the reservation of practice, business conduct, business licensing)	Review completed. (October 2000)
Tasmania	Commercial and Inquiry Agents Act, 1974	Review being undertaken within the Department of Justice and Industrial Relations	A discussion paper was released in July 1999 and a draft report in early 2000. The final report is currently being drafted.
NSW	Security (Protection) Industry Act, 1985  Security Industry Act 1997	Licensing and registration of Providers of security or protection for persons or property  Licensing, registration, entry requirements (qualifications, experience, competency, fit and proper person, aged at least 18 years, not convicted of relevant offence within past 10 years), the reservation of practice, disciplinary processes, business conduct (advertising must contain licence number)	New legislation examined under gate-keeping requirements.
Victoria	Private Agents Act	Security guards, Crowd Controllers, security forms, inquiry agents, commercial agents and sub-agents  Licensing, registration, entry requirements (all good character, others vary), the	Draft Report to be released for public comment.



		reservation of practice, disciplinary processes, business conduct.	
Qld	Security Providers Act	Security officers, private investigators, Crowd Controllers (not in-house security officers)  Licensing, entry requirements, the reservation of practice.	Review yet to begin
South Australia	Security and Investigation Agents Act 1995	Private security agents, security providers  Barrier to market entry, market conduct	Review commenced
ACT	Fair Trading Act	Security guards, crowd marshals and guard and patrol services  Registration and mandatory codes of practice, entry requirements (competency, character – criminal record check) the reservation of practice, disciplinary processes, business licensing	Review commenced

From: NCC 2001 NCP Assessment, June 2001, Table 18.9, page 18.24

It may be noted from the above table that other Australian jurisdictions have formal licensing schemes, despite containing anti-competitive provisions, as the appropriate regulatory approach required in relation to the private security industry.

**List of Written Submissions received**

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