



## Summary of Key Changes

Proposed changes to regulation of security and investigation agents, and process servers.

## **Summary of key changes proposed to the *Security and Investigation Agents Act 1995* and *Security and Investigation Agents Regulations 1996***

Apart from some renumbering and reorganisation of existing provisions, and updating of names and references to other legislation, the key changes proposed include:

### **Draft section 3(2)—*fit and proper person criteria***

Brings together existing tests for eligibility to hold a licence under the Act. An expanded fit and proper person concept is set out, to cover matters relating to previous offences and disqualifications currently dealt with in section 9. The relevant offences will still be spelt out in the regulations but the regulations may now provide that a person is ineligible for a licence if found guilty of an offence without conviction. The new approach also brings together matters currently set out in other sections of the Act relating to reputation, honesty and integrity and the public interest for security agents, as well as psychological assessment of crowd controllers.

The approach to prescribed offences (that can affect eligibility to hold or obtain a licence) is clearly set out for security agents and trainers, as well as investigation agents and process servers. Please refer to the excerpt from the draft regulations for details of prescribed offences for the purposes of section 3(2).

### **Draft section 6—*security industry trainers license***

A person must not personally provide security industry training (as defined in section 3 – excluding technical sector training), without holding a licence authorising them to do so. Provisions that presently apply to security agents licence applicants and holders are extended to people who apply for or hold a security industry trainers licences, including:

- Draft section 5B(2)—Criminal intelligence
- Draft section 8A—Applications for security agents licence or security industry trainers licence to be furnished to Commissioner of Police
- Draft sections 11 and 11A—Appeals and Power of Commissioner to require photograph and information
- Draft section 23A—Power of Commissioner to suspend a security agents or trainers licence
- Draft section 23E—Right of appeal against decision under section 23A
- Draft section 23G—Power of Commissioner to cancel a security agents or trainers licence
- Draft section 25—Commencement of disciplinary action.

### **Draft sections 8 and 8A—*Application for licence***

Sections 8 and 8A set out existing requirements for licence applicants but allow the Commissioner to rely on recent fingerprinting and/or police checks conducted here or interstate, where appropriate.

**Draft section 11B—Licence endorsements**

A new provision designed to assist in the transition to nationally consistent categories of security agents in the guarding sector. Allows for the making of regulations that explain the various descriptions and codes used on a licence to represent particular conditions. See excerpt from the draft Regulations for more detail.

Also allows the Commissioner to require presentation of a licence for updating of the descriptions.

**Draft section 23—Entitlement to be process server**

Allows for a finding of guilt without conviction to be prescribed by the regulations in relation to a person who acts as a process server.

**Draft section 23AAA—Entitlement to provide security industry training**

Providers of security industry training i.e. Registered Training Organisations (RTOs) (excluding technical sector training providers) must be approved by the Commissioner.

Probity checks such as fingerprinting and police checks will be required for these training providers (including directors of RTOs), equivalent to those for licensees. Automatic approval is intended for those who hold existing licenses and meet the probity requirements under the Act.

**Draft section 23J(2)(a)—Drug testing clarification re- venue**

Allows for an agreement to be reached by a police officer and a licensee about a time or place for a drug test other than that stated in the notice requiring the licensee to undergo drug testing. Drug testing may still only be required of agents authorised to perform Crowd Control duties, as per the existing Act.

**Draft section 25—Commencement of disciplinary action**

Includes references to fit and proper, and expands grounds for discipline to include acting contrary to an undertaking accepted under the Australian Consumer Law (consequent upon recent amendments to the *Fair Trading Act 1987*), or circumstances coming to light indicating non-eligibility for a licence.

**Draft provisions for initial consultation only – subject to change/omission and/or deferred commencement**

- **Draft section 7(2)—Temporary (special events/visitors’) licence**  
Introduces temporary licenses for a term of up to 12 months The draft provision is not intended for introduction until 2011-12, subject to feedback including from industry.
- **Draft section 7A(1)(f) and (3)—Training (provisional) licence**  
Allow for imposition of a condition requiring training to be undertaken within a specified period after the grant of a licence, and for cancellation of the licence if the training is not satisfactorily completed. Not intended for introduction until 2011-12.

### **Key changes to Regulations**

The *Security and Investigation Agents Regulations 1996* are due to be remade during 2011. This will result in some renumbering and reorganisation as a matter of course.

The key changes proposed to the regulations as a result of the COAG agreed reforms are in draft regulations 6 and 9. Please see the excerpt for details.

The Regulations will still set out offences to be considered in determining whether or not under the Act:

- an applicant or licensee is a fit and proper person to hold a licence or approval or be the director of a body corporate that holds a licence or approval (section 3)
- an applicant is eligible to be granted a licence under the Act (section 9)
- a person is entitled to carry on business as a process server (section 23)
- the Commissioner may suspend a security agents or trainers licence (section 23A)
- the Commissioner must suspend a security agents licence authorising Crowd Control work (section 23B)
- the Commissioner must cancel a security agents or trainers licence (section 23G)
- there is cause for disciplinary action against a licensed agent or trainer (section 25).

### **Draft regulation 6**

Prescribes the relevant offences for the above purposes, retaining existing SA disqualifying offences, with two additional COAG agreed offences being:

- Terrorism offences — see category A (d)
- Offences of dishonesty — see category B (b) (expanded from currently prescribed dishonesty offences under Part 5 of the *Criminal Law Consolidation Act 1935*).

The Commissioner is required to refuse to issue a licence, and is still required to cancel an existing licence, and in some cases suspend a licence, if an applicant or licensee is found guilty of a specified offence or offences. The regulations continue to provide for 'life bans' for persons imprisoned for 30 months or more as a result of certain offences. A person will now be ineligible for a licence for a period of five years, if they are found guilty *without conviction*, or 10 years if they were found guilty and *convicted*, of a prescribed offence. There is no longer provision for lesser disqualifying periods for minors aged under 18 years at the time of the offence.

Offences are newly split into categories A and B, with those in the category B subject to a COAG agreed 'threshold'. Consequences for an applicant or licensee under the Act are less serious if the penalty imposed for their category B offence is below that threshold – i.e. if the Court imposed a penalty of less than \$500 and no imprisonment.

An offence that falls outside either category A or B, or a category B offence with penalties imposed that are *below* the threshold, may still result in refusal to issue a licence, suspension of an existing licence (prescribed offences only), or commencement of disciplinary action.

Existing rights of appeal still apply, and in the case of disciplinary action against a licensee a disciplinary complaint must still be heard and determined by the Court.

Regulation 6(5) clarifies that a spent conviction under the *Spent Convictions Act 2009* is to be disregarded for the purposes of the Act.

**Draft regulation 9**

Explains various endorsements to be used on a security agents licence to represent particular conditions. It sets out endorsements currently used to denote existing licence conditions, and maps their transition into nationally consistent descriptions of those conditions. While the descriptions are set to change, it is not intended to affect the scope of work licensees are currently authorised to perform