

# Review of the Private Security Industry

December 2021



Justice  
and Community  
Safety





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# 1. INTRODUCTION

A well-trained and regulated private security workforce is critical to protecting and promoting community safety across a wide range of activities. The following quote from a security industry group aptly illustrates this point:

*“Private security industry performs an important frontline role in safeguarding the interests of Victorian businesses, government and the broader community. There is a growing reliance by the Victorian community on the services provided by the security industry, whether protecting crowded places, providing security at sporting events and concerts, hospitals, critical infrastructure, utilities, military bases, licensed premises, shopping centres, ports, airports, courts, cash management and transportation, installing alarms, access control and video surveillance systems, monitoring alarms in accordance with Australian Standards or physical security measures.”<sup>1</sup>*

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<sup>1</sup> ASIAL submission to the Private Security Industry Issues Paper, 2020, page 4.



## 2. BACKGROUND TO THE REVIEW

On 23 October 2018 at a meeting of the (then named) United Voice Delegates and Leaders Conference, the Premier, the Honourable Daniel Andrews MP, announced a commitment to review the Private Security Industry (the Industry) during his next term. The commitment was made with a view to raising industry standards, improving safety of employees and the community and ensuring workers are paid properly and employed under fair terms and conditions.

The Private Security Industry Review (the Review) began in January 2020 and undertook a full and frank examination of the current licencing and regulatory framework to determine whether any legislative or practice reforms are appropriate to improve the safety and security of all Victorians. This included consultation with key stakeholders and analysis of more than 50 submissions received during public consultation on an Issues Paper.

The Terms of Reference were:

- a) the current operation of the *Private Security Act 2004* and the Private Security Regulations 2016 (the Regulations)
- b) whether probity and professional development requirements meet expectations
- c) whether training and competency requirements meet expectations and best practice
- d) the enforcement and compliance arrangements under the Private Security Act, including the interface with Victoria Police (the Regulator) operations
- e) employment frameworks and practices, and the application of workplace laws and instruments to the industry
- f) whether any other Australian jurisdictions offer positive examples for reforming the industry.

The Terms of Reference contemplated options to meet these aims may include: legislative amendment, education and organisational change, exploration of partnerships with other agencies to boost compliance and measures to improve compliance with workplace laws.

Some issues, as anticipated by the Terms of Reference, fall outside the scope of the Review, including information sharing agreements with Commonwealth agencies. These issues are addressed throughout the course of the report.

By way of context, the number of licence and registration holders in Victoria is significant. As of 31 December 2020, there were a total of 32,799 private security



individual licences and 815 private security business licences. There were also 3,745 applications for private security, and the Licensing and Regulation Division of Victoria Police (LRD) cancelled 72 licences and suspended 67. There were 15 active cases before the Victorian Civil and Administrative Tribunal (VCAT) where applicants lodged challenges to LRD decisions to suspend or cancel a licence.

The Industry can be broadly divided into two main sectors: the Protective Security Sector, and the Technical Sector. The Protective Security Sector encompasses personnel engaging in a range of work, including crowd controllers, investigators, cash in transit guards, security guards, or workers in a monitoring centre. The Technical Sector encompasses security personnel who provide professional advice on the installation and maintenance of security systems.

This report encompasses various types of private security work and refers to some terms that may not be familiar to all readers. These terms are defined below. Except as otherwise indicated, they are the same as the definitions in the Private Security Act.

- a) Clients and host agencies: these terms are not defined in the Private Security Act, but in practice refers to businesses, organisations or individuals who hire a company or individual to fulfil a private security role of any kind
- b) Technical Sector: while not explicitly defined in the Private Security Act, this is the general term used to describe security professionals who are defined in paragraph (b) of the definition of security guard, or someone carrying out a Class B security activity under the Private Security Act. In brief, it covers the protecting, guarding or watching of any property by directly or remotely monitoring that property by utilising closed circuit television, a closed monitoring system, radio or other similar device. It also covers security professionals who advise on the scope and installation of security equipment (and its maintenance). (It is noted that a Control Room Operator is classified as a sub-activity of a Security Guard for licensing purposes)
- c) Induction: for the purposes of this paper, induction to a site is the introduction of newly hired protective security personnel to the premises and/or people they are tasked with protecting. It includes introduction to entries and exits, security risk points, communication and escalation procedures, and the client's expectations and oversight of the protective security personnel
- d) Private Security Licence: either a private security business licence or a private security individual operator licence issued by the Chief Commissioner of Police
- e) Protective Security Sector: a term not defined in the Private Security Act, but which includes all the activities listed under the umbrella term 'private security' in the Private Security Act. That is: investigators, bodyguards, crowd controllers, security guards and private security trainers



- f) Security risk assessments: this term is not defined in the Private Security Act, but it refers to an analysis of the risks posed to businesses or individuals. Clients may perform their own risk assessments or may employ a professional for the Private Security Sector to assess risk and suggest ways to manage identified risks.

## 2.1 Consultation

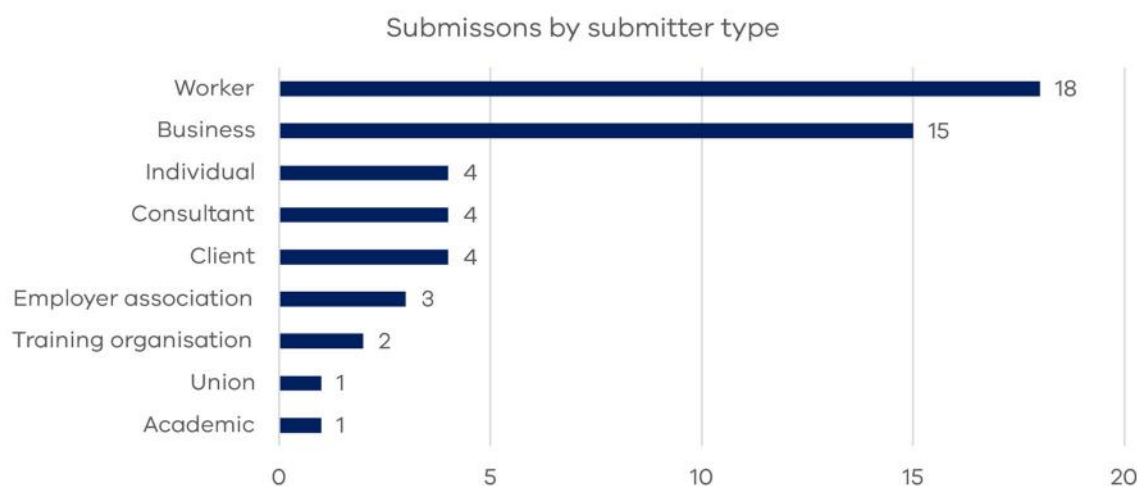
The Minister for Police and Emergency Services (the Minister) has a well-established advisory committee, called the Victorian Security Industry Advisory Council (VSIAC), which is made up of representatives of key organisations who have extensive experience in and knowledge of private security in Victoria and other jurisdictions. The membership of the Committee is in Appendix B. Input from VSIAC members has been critical in drawing out the key areas causing industry concern.

Throughout the project, Government has consulted with a working group consisting of self-nominated VSIAC members, who held out of session meetings, as well as the wider committee on clarifying issues, options for change and barriers that need to be overcome to effect that change.

## 2.2 Issues Paper and Stakeholder Submissions

On 17 June 2020, Government released an Issues Paper on the Review for consultation. The Paper was published on the Government consultation platform Engage Victoria. In order to seek the widest possible distribution, the paper was provided electronically to members of VSIAC with encouragement to share it with their networks as widely as possible, emphasising the importance of hearing from a wide range of people with experience in and with the industry.

The closing date for submissions was 27 July 2020 and 52 submissions were received from a wide range of stakeholders, from peak industry bodies to individuals working within the industry. The breakdown of submissions by type of author was:





## 3. THE IMPETUS FOR INDUSTRY CHANGE

### 3.1 Public Safety

One of the key purposes of the Private Security Act is to “regulate the private security industry for the purposes of ensuring public safety and peace”. This purpose carries a weighty responsibility and envisages high standards of professionalism across the sector. This vision is reflected in the probity requirements for all businesses and individuals working in the industry, requiring not only the person not have a relevant criminal record, but they are assessed as “fit and proper” to hold a licence or registration. This test includes personal characteristics such as honesty and integrity, as well as competency in the licensed sector.

This Review emphasises that there are many private security employers and employees who are well-trained, experienced and contribute to positive public safety outcomes by conducting themselves with professionalism, integrity and skill. However, there are also those who do not fully understand their role, the importance of their role, or the risks that the role entails. It is this sector to whom the recommendations in this paper primarily relate.

### 3.2 The commitment to change

It is clear from industry representatives and stakeholders that there is a desire and willingness to promote change to raise standards and respect across all sectors of the industry. Doing so will require removal of existing barriers, including those needing legislative change, cultural change and an overhaul of training and initiatives to improve compliance with workplace laws.

More detail about the history of the Private Security Act, and subsequent reviews and amendments, including the Council of Australian Governments’ (COAG) decisions, was set out in detail in the Issues Paper, and that information is included in Appendix C for reference.

Despite these changes, key stakeholders agree that further change is both needed and timely. Stakeholders have welcomed the review and participated fully.

While the introduction of strict probity requirements as a result of a COAG decision in 2008 was effective in improving the industry, and in particular, excluding those involved in organised crime, the manpower industry in particular continues to be plagued by reports of questionable practices and suggested misconduct, raising questions about competence and continuing probity, as well as the effectiveness of training and on-site supervision.





Misconduct damages the reputation of the industry and public confidence in the provision of services, which in turn weakens the ability of the sector to uphold public safety. The industry's professional standing will be improved by strengthening standards and improving best practice in the delivery of services.

Some examples of continuing issues are set out below:

- In 2011 a man died after having a heart attack while he was being held and restrained by security guards in a prone position on the floor (positional asphyxia) at Crown Casino.
- Some industry workers have suffered detrimental impacts to their health and wellbeing as a result of workplace incidents (such as physical or verbal abuse). In some cases, these workers have not been able to return to work due to ongoing mental health issues such as post-traumatic stress disorder.
- Workers are reportedly afraid to speak up about unsafe working environments, for example, where alcohol is served without regard for Responsible Service of Alcohol (RSA) laws and crowd controllers are left to deal with the consequences of the aggressive behaviour of patrons. One crowd controller wrote: "We have to start somewhere. And at the bar would be a good start."
- Observations that a control centre operator at a Victorian university used security cameras for improper purposes, such as seeking out views of female students in university residences.
- Crowd controllers observed to take no action to try to verbally de-escalate a potentially violent situation and stepping in only when physical violence erupts, despite clearly being aware of the building risk.
- Unsafe working environments and/or insufficient training and support (including inadequate equipment) have also been identified as concerns for workers. One experienced worker (including in Crowd Control and as an armed guard) noted concerns about the lack of safety equipment available, particularly given the prevalence of people carrying knives.
- More than one submission raised the lack of oversight of Registered Training Organisations (RTOs) and a perceived lack of robustness in their examination processes.
- One writer submitted that their company's Enterprise Bargaining Agreement (EBA) effectively prohibited paid overtime, by paying workers at the same rate and limiting the hours they can work, with the overflow being allocated to sub-contractors (paid cash in hand at a lower rate). This writer also raised the training issue and noted that working with untrained sub-contractors on student visas with poor English-speaking skills put trained workers at risk in the workplace.



- The COVID-19 Hotel Quarantine Inquiry Final Report noted the casualised nature of the industry and the associated lack of job security, lack of appropriate training and knowledge in safety and workplace rights, and susceptibility to an imbalance of power resulting from the need of subcontractors to source and maintain work. While the Inquiry concluded that the overwhelming majority of security guards who worked in the Hotel Quarantine Program did so honestly and with goodwill, the Inquiry heard of a number of complaints about the behaviour of guards including them being 'overly friendly', bullying and consuming alcohol while working.



## 4. OPTIONS FOR REFORM

### 4.1 Regulation responsibilities

As set out in the Issues Paper, Victoria Police – through their Licensing and Regulation Division (LRD) – is responsible for regulating the Victorian Security Industry. All applications for licences and registrations, including approval of RTOs, are managed by LRD.

The issues set out in this Report rely heavily on compliance with the Private Security Act, and if accepted, the Code of Conduct. Compliance can be promoted by education and non-compliance can be deterred by penalties for offences, however submissions, and indeed, examples from other jurisdictions, such as NSW, indicate that increased ‘presence’ and enforcement activity are key to improving the performance of the industry.

The Issues Paper noted that while some jurisdictions, like Victoria and New South Wales, have police as the regulators of their schemes, others are run by consumer affairs or fair-trade agencies (such as Western Australia). The Issues Paper sought comment on whether the continuation of the current model in Victoria is supported. While many submissions made complaints about LRD and some said (non-specifically) that “Government” should oversee the licensing scheme, the complaints were related to matters such as reportedly slow responses to general correspondence and the lack of LRD officers available to conduct field work rather than anything that would suggest LRD is not a suitable agency to regulate the industry. Many other submissions expressed satisfaction with LRD, noting that they were not appropriately resourced to be as responsive as desired, and during VSIAC meetings, members noted that their agencies had good working relationships with LRD.

While noting the concerns raised above, stakeholders expressed support for having a law enforcement agency managing the licensing scheme rather than adopting a consumer affairs model. The latter approach is perceived as focusing on customer satisfaction with a service, seeks to address complaints, and focuses on a business model. This approach differs vastly from the probity and compliance-based model in Victoria and other Australian jurisdictions, including NSW and WA.

The focus of licensing schemes run by law enforcement agencies is the role private security plays in community safety and managing the risks of not identifying those who are not suitable to work in the industry. For example, the focus on criminal intelligence in probity checks is what keeps people with ties to organised crime, or people engaged in other criminal activity, such as illicit drug distribution, out of the industry.

Further discussion regarding additional support and resourcing for the regulator is outlined below.



### Recommendation 1

That Victoria Police retain responsibility for regulatory activities under the *Private Security Act 2004*.

## 4.2 Licensing

This scheme managed by LRD is at the centre of promoting a competent, professional and respected private security workforce in Victoria. LRD assesses applications for licences and registrations and their renewal. LRD is empowered to suspend, cancel or vary registrations and licences. It conducts disciplinary inquiries where it is suspected a licensee or registrant has contravened licence or registration conditions or engaged in unfair, dishonest or discreditable conduct.

The Private Security Act also gives Victoria Police inspection and enforcement powers when it suspects a breach has occurred. As such, the framework is set up to allow the Regulator to maintain minimum levels of quality for participants entering the industry, monitor the size and characteristics of the industry over time, and to improve standards by detecting wrongdoing and either enforcing prescribed requirements or excluding persons from continuing to operate in the industry. The Private Security Act makes provision for review of licensing and registration decisions by VCAT.

### 4.2.1 The two-tiered system of licensing and registration

The Private Security Act prescribes a two-pillar system of licensing and registration for both individuals and business.

- **Licensing**

Licensing is a requirement for Crowd Controllers, security guards (armed or unarmed), investigators, Cash in Transit personnel, and bodyguards. Licence holders must meet probity and competency requirements. These measures seek to ensure industry workers are of suitable character and properly trained. All security trainers are required to hold a corresponding licence and must be approved by LRD prior to delivering training or assessments.

- **Registration**

Registration is a requirement for the Technical Sector (security equipment installers and advisers). The registration arrangements acknowledge that these professions hold a position of trust, to the extent that those providing security related services have access to private property and to privileged personal and security information.



Registration holders must meet probity requirements, but there are no competency standards required under the Private Security Act. However, it is typical for Technical Security personnel to undergo on-the-job training and/or complete courses with security equipment manufacturers.

A two-pillar system (requiring licences or registrations) arguably creates ambiguity and could potentially drive down compliance if individuals perceive registrations as being a 'lesser' category of the regulated framework. The Issues Paper asked whether Victoria should move away from the two-pillar system of licensing and registration and whether the Private Security Act should be streamlined, requiring those in the technical sector to obtain a licence.

Submissions overwhelmingly advocated for a single licensing system, removing registration and replacing it with licensing for all sectors, including the technical sector.

Stakeholders have reported that some security advisers and security equipment installers operate without a registration. Exact numbers are hard to quantify without knowing the true size of the technical sector but data from a PricewaterhouseCoopers industry survey confirmed the perception of non-compliance, with 53 percent of registered respondents considering the sector non-complaint. Replacing registration with licensing for this sector would significantly improve oversight by requiring operators to carry proof of licensing and allowing potential clients to check that businesses and individuals are appropriately licensed.

Submissions also highlighted the ambiguity of splitting licensing and regulation, noting it could be confusing for people moving from other jurisdictions which regulate private security activities through licensing only and do not have 'registration' requirements. Better aligning Victoria's licensing regime by having licensing for all sectors would reduce ambiguity and double handling of applications from businesses or individuals who carry out both licensed and regulated activities.

Removing the requirements for registration and regulating those activities through licensing is also expected to reduce administrative burden and create an opportunity to streamline probity requirements under the Private Security Act. For example, there are currently four sections in the Private Security Act which outline when the Chief Commissioner of Police must refuse to grant a licence or registration, including for individual licences, business licences, individual registrations and business registrations. These sections could be consolidated under a general section dealing with 'restrictions on granting licences' which would apply to both individuals and businesses (similar to how NSW addresses probity and restrictions in the *Security Industry Act 1997* (NSW)). The substance of these provisions would remain the same – they would simply be in one place for all licensees. An example of a similar scheme is included in Appendix D. It is based on the NSW model which divides all types of private security work into classes (for example, crowd control, security installers and businesses). Individuals may apply for multiple licence subclasses (Class 1 or 2) in the single application form.



## Recommendation 2

That the Victorian Government streamline the *Private Security Act 2004* by regulating all private security activities through licensing (specifically by creating different sub-classes of licences for individuals and business) and removing the requirement for a 'registration' for both individuals and businesses.

### 4.2.2 Licences to install / maintain "security equipment"

A clear distinction is established under the Private Security Act between security advisers, sellers and those who install, maintain and advise on security equipment. To perform a licensed security activity, an individual must be employed or provided by a business licence holder. If Recommendation 2 is accepted, then all people dealing with security equipment will need to be appropriately licensed.

However, section four of the Private Security Act exempts certain individuals on the basis on their employment (for example, with a local Council), or role (for example, an apprentice or a person selling security equipment at a non-specialist store such as Bunnings Warehouse).

Submissions noted there are a variety of people carrying out services related to security equipment where it is not their main role and they are not licensed or registered under the Private Security Act. For example, an electrician who assists a homeowner to install an off-the-shelf home security system.

The task and type of security equipment that would fall under the licensing regime is sometimes hard to separate from the person's main role, such as a general electrician. While there were some submissions to the contrary, there is consensus that such a person is not providing a security system, ongoing monitoring or security advice and does not need to be registered/licensed.

Other submissions queried whether the definition of "security equipment" should be amended but were not specific. The definition of security equipment in the Private Security Act, taken together with the Regulations is already comprehensive, and the definition in the Private Security Act, which refers to "any mechanical, electronic, acoustic or other equipment:

*(a) designed, adapted or purporting to provide or to enhance security; or (b) for the protection or watching of property" requires such equipment to be prescribed in the Regulations.*



The Private Security Regulations 2016 prescribe the following equipment:

- a) security camera systems
- b) security audio systems
- c) security audio or visual recording systems
- d) security alarms
- e) security alarm monitoring systems
- f) safes
- g) vaults
- h) security intrusion detectors including motion, infrared, microwave or contact detectors
- i) electric, electro-mechanical, magnetic or biometric access control devices, but not including stock, inventory or product loss prevention monitoring devices.

Accordingly, given any emerging technology can easily be prescribed as it arises, there does not appear to be any merit in expanding the definition of “security equipment”.

### 4.2.3 Locksmiths

In general, locksmiths do not have to register, however, they do require a registration if the activities they are carrying out fall under the Private Security Act’s definition of security equipment installer (for example, installing security cameras or installing vaults).

There are already sufficient competency standards in the locksmith sector (locksmiths are required to complete a Certificate III in locksmithing). There is no evidence of harm to public safety as a result of current arrangements. A minority of submissions noted that further equipment used by locksmiths (deadbolts, keys, etc.) should be regulated under the Private Security Act.

However, on balance, the locksmith industry effectively self-regulates and in the context of no reported concerns about locksmiths and security issues, the Review concluded that maintaining the status quo is appropriate, unless they are installing electric locking systems and other security features as defined in the regulations.



### Recommendation 3

- a) That the current definition in section 6 of the Private Security Regulations 2016 of “security equipment” be maintained.
- b) That any electrician or locksmith handling “security equipment” will need to be licensed under the *Private Security Act 2004* to do so, unless their work wholly entails usual business, such as lighting, wiring, electrical repairs, and new locks.

#### 4.2.4 Advertising an application

Currently, an applicant for a business licence or registration must advertise in a daily newspaper a notice setting out the fact the applicant has made the application and the period within any objections can be made (14 days), among other things (refer sections 18 and 74 of the Private Security Act) within seven days of lodging an application with the Chief Commissioner of Police.

Submissions made by industry participants support the removal of this requirement on the basis it is costly, outdated and in practice does not adequately bar undesirable businesses or persons from entering the private security industry. The Review supports removing this requirement.

However, stakeholder feedback raised several concerns about businesses being licensed when they (the writer) believed they had information which would render the person unfit to hold a licence (such as having gone into liquidation recently and setting itself up as another company).

LRD does not support a shift to placing the obligation on them to publish applications on their website and considers the responsibility for publication should rest with the applicant.

### Recommendation 4

That the requirement to advertise an application in a daily newspaper be removed and an alternative such as requiring publication on a suitable website be developed.





#### 4.2.5 International students on working or holiday visas

The licensing of international students on working visas arose as a strongly litigated issue in submissions and stakeholder meetings, with some members advocating strongly to ban international students from applying for security licences.

There is little reliable data about the kind of work or hours undertaken by these students because many submissions state they are working beyond the hours allowed by their working visas for cash-in-hand (often at significantly lower pay rates than others). The issues raised are outlined below:

- **Probity**

Stakeholders have suggested all international students on study visas should have to be residents in Australia for at least three years prior to making an application to LRD. This would mitigate the risk associated with lack of information for background checking purposes.

For example, a student could have affiliations with organised crime groups both in their home country and in Victoria and could be either coerced into or willingly assist those organisations to infiltrate private security for the purposes of engaging in illegal activity (for example, selling drugs in licensed premises).

While LRD has information-sharing agreements with many countries regarding criminal record information and to a lesser extent criminal intelligence, the information they can access is less reliable and potentially more incomplete than those regarding Victorian citizens or long-term residents, particularly relating to character. This may be because a country has different laws, records different or less information, or does not disclose certain information (for example politically sensitive information).

This issue can, to some extent, be mitigated by law enforcement cooperation and information sharing with other countries. However, the concern about not being able to properly scrutinise international student licence applications is an ongoing issue.

- **Working Visas, exploitation and undercutting**

International student visas are managed by the Commonwealth Department of Home Affairs and allow up to 40 hours of work a fortnight. For some students, the need for more work to obtain a basic income means they work more than the visa allowance for cash-in-hand. This makes these students vulnerable to exploitation including being paid less than the award and having fewer protections in relation to workplace safety and entitlements.



- **Capability**

The Issues Paper sets out an example of a 2018 case where VCAT de-registered an RTO provider for essentially charging international students for a qualification without providing training to them (Majid v Chief Commissioner of Police [2018] VCAT 1126). The provider charged students a 'cash only' price more than \$400 over the usual price and delivered training that should have been conducted over approximately three weeks in two days. Students gave evidence that those days were spent copying answers from a provided book into their workbooks, and a very short first aid training component.

While this outlines an example of where new security staff have gone into the field completely unaware of the importance or seriousness of their role in protecting the community, and with no professional skills to do so, this does not apply to all students on working or holiday visas. The Review also heard other examples of students who are skilled private security staff, appropriately trained and capable in the field.

Several stakeholders have raised the issue of guards with poor English language proficiency, including the ability to manage complex conversations. This does not just apply to international students with English as a second language; it could equally apply to any candidate for a private security licence who struggles with verbal communication for a range of reasons, including speech impediment or language issues associated with neurological conditions.

Some suggested a greater role for RTOs in testing prospective students for proficiency in verbal communication, including their ability to manage complex conversations, before accepting them into a course. One VSIAC member suggested if a student was not able to be licensed because of poor language skills, cultural awareness, etc., the RTO should have to refund the cost of the course. While this option merits further consideration, some stakeholders expressed concerns that many RTOs are not currently sufficiently compliant, or transparent enough, for this to be done.

- **Commitment**

In the context of raising the professional standards and respect for the industry, as well as reducing the potential for wage undercutting by some employers, a significant number of submissions queried whether international students should be prohibited from obtaining a private security licence at all. These stakeholders argued that to improve the industry, it must attract and retain people who are committed to a career in promoting and protecting public safety.

The issue of people on working or holiday visas and their eligibility to apply for a private security licence are of deep concern to stakeholders. However, the decision of how to address the issues in a fair and transparent way is not straightforward.



While English language proficiency was a concern, it is up to industry to choose to employ people who can do the job. RTOs should be encouraged to assess the ability of each attendee and advise them if they will need to work on their verbal communication skills to undertake training and gain employment. However, this is not something that can be mandated at this time.

As noted above, the concern at the heart of stakeholder feedback on this issue is the ability to conduct comprehensive and reliable probity checks. Probity checks are a legislative requirement, and the Private Security Act gives the Chief Commissioner of Police broad discretion to assess whether a candidate is a fit and proper person to hold a licence. One option to address probity concerns is to require that all applicants be a resident in Australia for a minimum of three years prior to applying for a licence. This would lead to greater availability of intelligence, references and any criminal history over that period that could be drawn on for the assessment.

However, doing this directly cuts out an employment opportunity for international students and could be considered unlawful discrimination under the *Equal Opportunity Act 2010*. The Equal Opportunity Act prohibits discrimination in a range of domains, including employment, education and access to services. Discrimination is prohibited on several grounds, including personal attributes such as race, ethnicity, religion, gender and disability.

A legislative amendment could theoretically be made to override certain provisions of the Equal Opportunity Act. However, any amendment would have to be carefully drafted to address the issues raised in an appropriate way.

Simply excluding anyone on a student visa who has not been resident in Australia for the last three years is a blunt tool that captures a broad group of international students without getting to the heart of the concerns. It would also potentially exclude people whose history does allow for a full probity check despite not having lived continuously in Australia for the last three years.

Given the importance of probity and ability to meet the inherent requirements of the job, and the relationship between these issues and international students who seek private security licences, further investigation of this issue is required.

### Recommendation 5

That DJCS consult across Government, including with the Victorian Human Rights and Equal Opportunity Commission regarding implications arising from the *Equal Opportunity Act 2010*. This is to consider potential legislative amendments that will require a person wishing to apply for a private security licence to have built up enough time and reputation in Australia for a reliable probity check to be undertaken.



## 4.3 Training and qualification

Issues with training are a consistent and enduring theme of feedback on the security industry. Not only did many submissions to the Issues Paper raise concerns about both the quality and integrity of the current training regime, numerous reports have highlighted the consequences of poor training. These include previous coroners' findings that poor quality of training failed to equip workers with the right skills to safely defuse violent situations, particularly in venues serving alcohol. In some circumstances, this led to inappropriate use of restraint or other physical intervention resulting in death. It is noted that given the timing, submissions may not have taken into account the changes to the training regime that came into effect on 1 July 2020, which do address some of the issues raised (see below).

The most recent example of a public finding in relation to the impacts of poor training for private security staff was the Inquiry into Hotel Quarantine in Victoria, which found that overall, guards approached their tasks with honesty and integrity, however:

*"As an industry, casually employed security guards were particularly vulnerable because of their lack of job security, lack of appropriate training and knowledge in safety and workplace rights" (page 20, Volume 1)*

This quotation picks up on a point raised in the Issues Paper, that a significant sector of the workforce is highly casualised, relatively low paid and transient, which adds to issues with effective training and the competency the industry needs to deliver professional services.

The Issues Paper reflected questions about where Private Security fits within the Australian Skills Quality Authority (ASQA) framework. It is currently under "property and cleaning services", and while guarding property is a key role, and many private security companies also offer cleaning services, there is also an argument that it should be re-classified to "security services". Submissions varied significantly in their response to this question in the Issues Paper, but most submissions argued that seeking re-classification would be a better fit for security services, offering both a more targeted approach to training and a higher, more accurate public profile for the Industry.

### The updated training framework

A review of the industry training package was completed by Artibus Innovation (the relevant national Skills Service Organisation) in 2019 and its recommendations were implemented by LRD on 1 July 2020. The new training package is called CPP – Property Services. This has increased hours of face-to-face learning and units required (varying by licence type and occupation). Competencies are set out by activity, so crowd controllers, armed guards, investigators and unarmed guards all have their own competency units that must be met. A full list of competencies for each certificate is set out at [Appendix E](#). There is general agreement amongst stakeholders that the new framework should improve standards across the industry if compliance is enforced.



## LRD's role in managing training delivery

Before going into detail about recommended reform, it is important to note that there are limits on the role LRD has in managing training in Victoria. While LRD manages approval and monitoring of the training units required for Victorian applicants for security licences and registrations, LRD does not have the power to create new training units, mandate additional hours or intervene in the way an RTO operates generally. This is a result of a 2013 COAG decision to manage training at the Commonwealth level. The following two Commonwealth agencies have the following responsibilities:

- ASQA: the Australian Skills Quality Authority's role includes national regulation of Australia's Vocational education and training courses, certificates and the bodies who deliver them (RTOs). ASQA is currently reviewing its compliance framework, having released a consultation paper in December 2020, and is proposing a renewed focus on risk assessment and a range of enforcement options. While they do deal with complaints about individual RTOs, they appear to focus on more systemic issues.
- Artibus: is a Commonwealth funded agency that operates a "Skills Service Organisation" to support a range of industries, including security services, to ensure their qualifications and competency standards are up-to-date, future-focused and aligned with industry needs. Artibus is not a regulatory agency – it works under the leadership of Industry Reference Committees, including the Property Sector Committee (which security fits into). Artibus' role includes industry engagement, research, and support for training package development.

The Victorian Registration and Qualification Authority (VRQA) has a somewhat smaller role to play, because they only regulate RTOs who neither accept international students nor operate both within and outside the Victorian Border. However, they can be of assistance for a small number of RTOs and their involvement would assist LRD in monitoring RTO performance.

### 4.3.1 Training quality and delivery

The introduction of new training units and standards in July 2020, around six months into the Review significantly altered stakeholders' views about what changes are needed to improve the quality and integrity of training. VSIAC considers that the new training package will significantly improve training outcomes and competency across the sector and is satisfied with the units required and the hours of face-to-face learning. In addition, VSIAC has agreed that providing graduating students with essential information about their workplace rights and responsibilities will make them somewhat less vulnerable to exploitation (this is addressed in Recommendation 19).

While the changes to content and hours were seen as very positive, stakeholders continued to hold concerns about the delivery of training and the process of assessing candidates at the completion of training. Examples cited included giving students workbooks with answers to copy as a learning method, cutting delivery of units short,



and questionable behaviour by RTOs, such as giving answers to exams to students at the back of the room, and charging students extra, in cash, for a qualification after providing only a fraction of the required hours.

While complaints about particular RTOs can be raised with ASQA, stakeholders agree that there needs to be a stronger Victorian approach to monitoring and compliance. The Review considers that there would be benefit in LRD being able to more regularly visit and 'sit in' on courses, unannounced, or make random visits on testing days to assess the quality of delivery, engagement of students, and proper exam procedures.

LRD's resourcing currently does not allow it to undertake any significant field compliance activity and that these constraints could potentially be overcome by allowing 'authorised persons' to be appointed to run these checks. Further, relationship building with ASQA and the VQRA could also assist in bolstering inspection resources, noting concerns from some of VSIAC's members that such arrangements would require careful consideration.

### Recommendation 6

That the capacity of LRD to maintain oversight of RTOs be bolstered through additional resources, such as access to the use of authorised officers. Additional oversight would include unannounced visits to RTOs to monitor the quality of delivery of relevant units and the observance of appropriate examination conditions.

In addition, students attending courses and staff working for RTOs who have concerns about training delivery or examination procedures should be empowered to report those concerns directly to LRD. At present, LRD does not have the operational capacity to run a formal complaints processing mechanism of great volume. Accordingly, these recommendations are best practice suggestions, acknowledging that resource solutions or alternatives will be required.

### Recommendation 7

That LRD provides a clear avenue (such as a section on their website) for students and employees of RTOs to raise concerns about the quality of training delivery with LRD for follow up.



### 4.3.2 Ongoing professional development

As noted above, the new training package introduced on 1 July 2020 addresses many of the previous issues raised about the adequacy of the content of the training and the number of contact hours. However, because re-training is only required in limited circumstances, the effects of the changes will likely take years to truly impact on the level of professionalism and consistency of skills across the industry. Other than first aid and cardio-pulmonary resuscitation (CPR), refresher training is not expected or mandatory for most licence holders.

The Security Trainers Association submits that Continuing Professional Development (CPD) training should be mandatory for licence holders to ensure currency of knowledge and skills and that, at the very least, CPD training should be mandatory prior to renewal of licences, particularly in key areas such as first aid and defensive tactics.

The Review heard that some key industry bodies, including ASIAL, have developed training to fill in some of the gaps. While this is a positive development, such training this is open only to members of these organisations, is not mandated by law, and does not have the oversight of LRD.

While there was broad support within the industry for ongoing professional development, how to fund this training was raised by many stakeholders noting that in most professions, workers fund CPD themselves unless their employer needs them to undertake role-specific training. It was also noted that this approach presents particular challenges in an industry where many workers are low paid and in mostly insecure work. While stakeholders agree that the introduction of compulsory CPD is a goal to be worked towards, at this stage, refresher training before licence renewal or in certain circumstances following licence suspension and reinstatement, should be undertaken with units set by LRD. The Review considers that licence holders should be responsible for those costs, although it remains open for employers to pay the cost for employees if they choose.

#### Recommendation 8

That prior to licence renewal, applicants should be required to undertake refresher training with an LRD-approved RTO.

### 4.3.3 On-the-job training

A key issue raised during consultation was that there was a lack of practical training or on-the-job supervision: newly licensed people are walking out of their courses into potentially high stakes and dangerous work environments, often with little or no on-the-ground support.



Ideally, companies providing staff would start them with low risk, easier roles so they can gain experience gradually and have time to develop their skills before applying them in a higher risk situation. In addition, new licensees would receive on-the-job training from experienced industry staff. The Review heard that this approach is more likely to occur in larger organisations and for employees who are engaged in either full-time or part-time employment. Some stakeholders advised that clients will often choose another company rather than pay for on-the-job training with a senior industry worker.

The casualised nature of the workforce, unpredictable demands for a large number of staff, and a perceived unwillingness on behalf of employers and clients to pay the cost of on-the-job training (particularly where it requires the hire of one senior and one junior worker), present particular challenges in delivering regular industry-wide on-the-job training.

However, given the clear benefits of on-the-job training, and the likely contribution to the professional, skilled and reliable private security industry both Government and stakeholders are committed to, a number of options have been identified. These include considering offering businesses a tax benefit for participating in an 'on-the-job' training program, supporting employers to provide a mix of experienced and new guards to jobs requiring multiple guards, and ensuring that the most likely challenges guards face in their roles are emphasised in training activities.

#### Recommendation 9

- a) That the Victorian Government undertake consultation with the Australian Government to examine the possibility of tax benefits for employers (clients) who support on-the-job training.
- b) That DJCS work with groups representing employers (such as ASIAL) on developing a best practice guide for employers which suggests strategically providing a mix of experienced and less experienced workers to the same job to facilitate peer support.
- c) That LRD work with RTOs to emphasise simulations of real-life situations in training.

#### 4.3.4 Technical sector training requirements

If Government accepts the recommendation to replace 'registration' for the technical sector with a licence, the issue of qualifications and training arises. At present, the technical sector argues that appropriate courses and apprenticeships require further development, and that the existing Certificate II in technical security is too basic. In addition, representatives of the technical sector argue that technology changes too rapidly for course work to keep pace.





It is noted that the technical sector has evolved rapidly over the last 10-15 years and continues to do so, and the sector is likely to be resistant to training requirements, particularly with regard to cost. However, to provide some base expectation of knowledge and skill as well as to provide consistency across licences, some sort of qualification requirements would need to be set out.

A significant proportion of VSIAC members (with the exception of the technical sector) agreed that to be licensed, a person employed in technical security should have basic course work to give them a launching pad for on-the-job training (more widely available in the technical sector than the manpower section), as well as the development of further specialist skills. Setting this minimum requirement is important, particularly as a small number of submissions stated that some people were operating in the technical sector without appropriate training, noting in particular that many only undertake enough of an apprenticeship to get their calling or harness licence.

#### Recommendation 10

That applicants for a technical licence should have successfully completed a Certificate II in technical security. Consideration should be given to whether LRD could waive this requirement if the person presented with a relevant tertiary qualification and extensive on-the-job training records.

## 4.4 Client responsibilities

A client is any individual or organisation that hires private security services. Clients range from Government agencies, nightclubs, organisers of music festivals and even to parents hiring security for 18th or 21st birthday parties.

### 4.4.1 Risk assessments

While large organisations are more likely to have prepared their own risk-threat assessments and to share them with the companies they hire for security, stakeholders argue that this does not filter down to frontline security staff, and it is reportedly rare for medium to small operations to prepare their own assessment. Stakeholders report that many clients have not completed their own security risk assessment and have not considered their workplace obligations towards security staff. Despite the availability of professional security advisors to assist them to develop a plan, there is a reported tendency to expect the hired workers to identify and manage risks on their own.

While professional security personnel are trained in risk assessment, the most effective way for them to get straight to work is if they know what the client expects, what the weaknesses in security are, and what the expectations are when incidents arise. This can be achieved by educating clients on their responsibility to have a risk assessment in place, as well as including a requirement in the proposed Code of Conduct (see section



4.5.3) that agencies placing guards with clients and guards themselves, check that there is a risk assessment in place.

#### Recommendation 11

That bodies representing employers and employees work with DJCS and WorkSafe to explore options to educate clients about their responsibility to have a risk assessment in place and to consider the role of the code of conduct in reinforcing this responsibility (see Recommendation 16).

### 4.4.2 Site inductions and Standard Operating Procedures

Site induction is a part of an employer's obligations under occupational health and safety laws, and it is important to enable workers to do their jobs effectively. This is so they can understand the layout of the premises, the entrances and exits, the evacuation system, occupational health and safety training, the emergency management procedures, the number or frequency of expected patrols, and who will be supervising them. Similarly, Standard Operating Procedures (SOPs) should be available to all staff, including security workers.

Unfortunately, this is quite hard to monitor – in practice, guards report they turn up and are expected to work out the details themselves, which places them at risk, as well as hinders their ability to protect the public. This obligation arguably falls within a client's responsibility under workplace relations law to provide a safe work environment, which suggests that agencies responsible for workplace safety could incorporate this message into existing education campaigns.

#### Recommendation 12

- a) That DJCS consults with relevant agencies to develop an education campaign (or add to an existing campaign), focussing on the necessity for clients to conduct site inductions for staff and make SOPs available to them before their first shift.
- b) That the Victorian Government introduce amending legislation to require clients with staff or operations over a certain number or cost to have a risk assessment plan in place.



### 4.4.3 Licensed venues and liquor licensing laws

The managers and owners of these venues are distinguishable from other clients in that they have no choice but to employ security personnel – it is a condition of their liquor licence.

Many submissions stated that RSA is poorly adhered to and there is a suggestion that some sectors of the hospitality industry resent this requirement. The latter was demonstrated by a business association that made a submission to the effect that the Review should avoid doing anything that would lead to more costly private security services because they had no choice but to engage crowd controllers.

As noted earlier in this Report, there are numerous stakeholders who regard security as the sole control on alcohol related harm and violence, with establishments abandoning RSA and leaving it to crowd controllers to deal with the consequences.

The key issue is compliance: if these businesses are complying with RSA requirements, this issue will be better addressed.

#### Recommendation 13

That LRD approach the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to explore the development of an information sharing agreement which would allow for the exchange of information obtained by liquor licence inspectors during their site inspections, and LRD when inspecting licensed establishments to monitor security personnel compliance.

### 4.4.4 Two up patrols

In response to a question in the Issues Paper, several submissions indicated support for two-up patrols, at least in certain situations. Submissions pointed to the risks inherent in patrolling an area (for example, on the outdoor premises of a nightclub) where illicit activity may be occurring, noting that individuals are far more likely to threaten or harm a lone security guard than guards travelling in pairs.

The issue, highlighted by many submissions, is the increased cost for businesses, which may deter them from hiring quality guards or cause them to seek savings in other areas. ASIAL recommends that whether or not guards should patrol in pairs should form part of the client's risk assessment, which means they come to understand that the safety of the guards they hire is part of their responsibility as a client to provide a safe workplace.

Again, this is a matter of compliance. While employers are legally required to provide a safe workplace, mandating two-up patrols in high risk situations is likely to be



unpalatable, especially for licensed premises due to the increased cost of business. However, if Victoria is to truly change and improve the industry into a more professional and respected contributor to positive public safety outcomes, businesses must accept that full compliance – with its additional costs to some employers – is necessary to ensure a more professional, capable and safe private security workforce.

The Review noted that DJCS and LRD intend to work with WorkSafe Victoria to seek to develop a list of ‘high risk’ situations in which guards should patrol in pairs, with further consideration to be given to mandating this practice.

## 4.5 Compliance and enforcement

As noted earlier in this paper, LRD is a small team within Victoria Police which has limited capacity to undertake field inspection and compliance activities to more effectively acquit its regulatory functions. Ideally, LRD would be able to obtain access to more or re-allocated funding, in recognition of the key role it plays in managing private security compliance in Victoria. The main elements of an effective regime include:

- creating a ‘presence’, in such a way that inspections are common enough that businesses are alert to doing the right thing should an officer from LRD visit their worksite. This would operate in a similar way to the change in culture seen in workplace safety over the last 10-15 years,
- engaging in active and public enforcement against RTOs, businesses or clients who are in breach of the Act, including by licence suspension or cancellation, or if required, criminal proceedings, and
- increased investigative powers.

Noting that LRD advised that it cannot absorb this work, there are other options, including partnerships, encouraging people in the community to speak up about non-compliance, and using a code of conduct to improve industry understanding of their obligations. These matters are addressed below.

### 4.5.1 Partnerships

The Labour Hire Authority (LHA) was established in mid-2019 to promote, monitor, investigate and enforce compliance with the *Labour Hire Licensing Act 2018* and regulations. LHA has a team of Inspectors with powers to monitor the scheme, including the power to enter and search premises, take copies of documents or seize items that may be associated with a breach, including Labour Hire records. The Review noted that LRD is currently working with the LHA on a Memorandum of Understanding to facilitate information sharing between the agencies, including information connected to non-compliance with workplace laws, adverse findings and general information regarding licensees.



Clients that use labour hire services may be investigated as part of the LHA's function of monitoring compliance with the licensing scheme, and with written notice, may be required to produce documents.

As set out above, in relation to the VCGLR, it would be of great assistance if LRD was able to obtain their agreement to develop a Memorandum of Understanding so that liquor inspectors are aware of the issues in private security and agree to report any apparent issues to LRD. In addition, it should be clear to the Commission that submissions to this Review pointed to significant issues with compliance with RSA guidelines, and they should be alert to this, and the impact it has on public safety, as well as the safety of security guards. WorkSafe Victoria could also be consulted in the process given the interface with workplace health and safety laws.

ASIAL submitted that industry could play a role in compliance by conducting its own audits and monitoring member compliance. While this is commendable, and could certainly result in valuable intelligence for LRD, this would ultimately be managed entirely by industry, and would be very difficult for LRD to oversee or quality control.

#### 4.5.2 Improved reporting and compliance mechanisms

The *Private Security Act 2004* ('the Act') facilitates the making and investigation of complaints in relation to private security licence holders. Section 48 of the Act enables a person who is affected by the conduct of the holder of a private security licence to make a complaint to the Chief Commissioner about that conduct. The Act requires the Chief Commissioner to have that complaint investigated to determine whether there are grounds for conducting a disciplinary inquiry. Under section 49, there is power to declare the complaint to be frivolous or vexatious.

An effective complaint handling system enables agencies such as LRD to provide a remedy to a person who has been affected by an error, misconduct or other concerns and can restore lost or reduced trust between government and the community. As highlighted by the Commonwealth Ombudsman in its report *Lessons in Good Complaint Handling* (2020)<sup>2</sup>, complaints also highlight systemic problems that call for a policy change that might not otherwise have been apparent. For LRD and Victoria Police more broadly, complaints from the public and security personnel about misconduct in the industry provide an important source of intelligence to the regulator on what is occurring on the ground.

The NSW Security Licensing and Enforcement Directorate (SLED) has detailed information on its website regarding how to make a complaint. This includes a dedicated online complaints form and clear information regarding SLED's jurisdiction to receive a complaint. SLED also provides information on their complaints handling

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<sup>2</sup> Commonwealth Ombudsman, *Lessons in Good Complaint Handling* (2020). Available from [Better.Practice Guide to Complaint Handling \(ombudsman.gov.au\)](https://www.ombudsman.gov.au/Better.Practice/Guide.to.Complaint.Handling.ombudsman.gov.au)



process and referral options for complaints outside their jurisdiction, such as for issues in relation to tax non-compliance.

In Victoria, LRD does not have a dedicated complaints telephone number, or an online complaint form an individual can use to report misconduct in the Industry. It is not clear from the website how an individual might make a complaint or raise an issue for investigation. It follows that people who might have useful information but are concerned about any repercussions from the person or people involved in the misconduct, will give up if they cannot provide the information easily. Ultimately, it is best practice for the complaints mechanism to be simple, clear and easy to use to facilitate people coming forward.

It should be acknowledged that this proposal also makes it very easy for vexatious or frivolous complaints to be lodged, but there is a clear power in the Act to address these. In addition, LRD may receive complaints that would be better dealt with by another agency, to which they can refer the complainant (such as WorkSafe Victoria or the LHA). Again, LRD will need a resource to tend to the complaints function and triage complaints for investigation and so on. Should the recommendation be accepted, an exercise could be undertaken to estimate the likely volume of complaints by looking at similar interstate mechanisms (such as in NSW) and Victorian bodies that might offer a level of comparison (such as the LHA), and therefore estimate the impact on resources.

Another issue with inviting reports of misconduct from industry members is that while criminal activity and workplace law breaches can be easily identifiable as “problematic”, there is other information that may be very valuable to LRD that would go to whether the person remained a fit and proper person to hold licence. While the fit and proper person test is reasonably well defined in case law, it is not necessarily an accessible concept for many members of the community.

To address this, information could be included on the complaints page about the sorts of things that can and should be reported. This may have the additional benefit of avoiding complaints about irrelevant matters. For example, a list of examples of concerning conduct would include the alleged commission of a criminal offence, a lapse in licensing for someone who continues to operate in the industry as if they have a licence, ‘ghosting’ jobs where there is no supervision, companies allowing students on visas to work more than 40 hours a fortnight, and so on. Submissions and stakeholder input resulted in a qualified preference for allowing anonymous complaints. LHA noted that their website’s ‘report a problem’ function is working well, but it can be hard to follow up on anonymous complaints. The United Worker’s Union noted that it was more important to protect the privacy of people making complaints so that they do not experience detrimental outcomes when the person or business they have made a complaint about retaliates by firing them or giving them fewer shifts, amongst other forms of retaliation.



## Recommendation 14

- a) That a new section be developed for the LRD website providing information on how a member of the public can report alleged misconduct or other breaches of the *Private Security Act 2004*. This section should include a complaints form, which could be lodged electronically, as well as a dedicated complaints phone number. This section should also allow for anonymous complaints, with the caveat that if the person does not disclose their identity, the matter may not be able to be followed up to the fullest extent possible.
- b) That the proposed new section of the LRD website note that the Private Security Act defines “Protected Information” to include information that a person provides to LRD that results in a person or business having their licence suspended or revoked, however, this would not exclude the possibility that a person may need to give evidence in legal proceedings.
- c) That the proposed new section of the LRD website also includes a note that people in the Industry are expected to be honest, capable, and of good character and report alleged misconduct or other breaches of the Private Security Act.

Finally, it is noted that the class of people who can make complaints to LRD is limited to someone who is affected by the conduct of the holder of a private security licence to make a complaint. While the people most likely to make complaints are those directly affected by the conduct, it may be harder for another person who is willing to speak up but cannot claim to have been directly affected. For example, a patron in a night-club notices that the two crowd controllers have spent the entire evening talking together in one place. While they can raise this with the management of the club, it is arguable that this is insufficient – staff would have been able to see the problem clearly, and in this example, chose not to take action. This kind of intelligence would be invaluable to LRD. Ideally, it would mean they could investigate the guards’ alleged conduct, as well as that of the host, before the behaviour of the crowd controllers results in injury to a patron or themselves.

The risk of broadening the class of person who may make a complaint is that LRD may be inundated with complaints from persons with a grudge or no real substantive complaint. In the scenario above, that might be because they were banned from the premises by a guard and seek revenge.

On balance, the Review considers that the risk of opening a floodgate of vexatious complaints is not enough to offset the value of the intelligence LRD and other regulators, such as LHA and the VCGLR, may receive from people who have seen something of concern but are not directly affected by it.



### Recommendation 15

That the Victorian Government considers introducing legislation to amend the *Private Security Act 2004* to include a broader range of people who can make a complaint (or report) to LRD regarding concerns about the actions of a person who holds a private security licence.

#### 4.5.3 Industry code of conduct

Another option for improving standards across the industry and seeking to have licensees take on responsibility for their own performance is a code of conduct. Most Australian jurisdictions have legislative power to develop codes of conduct, but it appears only Tasmania and Western Australia have done so to date.

Stakeholders have indicated that for some licensees, despite training, the expectations of the standards they should be upholding while they protect the public are not clear. This lack of clarity about expectations appears to be linked to poor workplace practices and decision making across the industry.

A well-written code can articulate the values and vision Government seeks to foster in leaders and employees and, in doing so, define desired behaviour in the industry. Additionally, a code is a central guide and reference for those in the industry to support day-to-day decision making.

Separate codes can be tailored to different areas of the industry. For example, in both Tasmania and Western Australia there are codes for crowd controllers and security officers. This reflects the differing nature of these sectors and allows for individual tailoring to meet the specific industry sector needs.

To ensure the effectiveness of a code, a disciplinary procedure is necessary when breaches are identified. For example, section 54A(7) of the *Security and Related Activities (Control) Regulations 1997* (WA) states that a breach of a Code of Conduct that has been approved by the Minister and published in the Gazette is a proper cause for disciplinary action against a licensee under section 67(1a)(d) of the *Security and Related Activities (Control) Act 1996* (WA), which allows for the revocation and suspension of a security licence.

Codes of conduct in the industry are typically developed by Government, in consultation with industry and the public. For example, the relevant Northern Territory legislation provides for the Director of the Regulatory body to consult with interested parties, give notice in the newspaper that a code is being developed and invite feedback.





VSIAC members, including ASIAL, support the development of a code of conduct for the industry in Victoria. They support development of a code which would:

- establish a benchmark for expected behaviour of those working in the security industry and to gain the buy-in and ownership of licensees by consulting with them during the code's development;
- apply to all licenced security personnel, with additional requirements tailored to specific sectors if required;
- require licensees to affirm their knowledge and understanding of the code on issuance and/or renewal of a licence;
- contain suitable enforcement measures, including the ability to direct further training, sanctions for breaches, and licence suspension and revocations for serious or repeated breaches; and
- not duplicate or confuse enforcement of regulatory licensing requirements (as included in the legislation).

### Recommendation 16

That the Victorian Government introduces legislation to give effect to a code of conduct for the Victorian private security industry with the following features:

- prescribing the code in the Regulations to give it authority with legislated disciplinary action to apply for relevant breaches,
- making provision in the code for relevant sectors, potentially including the technical, security officer and crowd control sectors (following further consultation during drafting), and
- close consultation with key industry stakeholders and interested members of the public to inform development of the code.

## 4.6 Contracting arrangements

### 4.6.1 Independent contracting security work

Responses to the Issues Paper identify a range of issues relating to both independent contracting by individual security licence holders and subcontracting between businesses in the supply chain.

For the purpose of this report, sub-contracting refers to contracting between businesses for the supply of multiple security workers (who may be either employees or



independent contractors), whereas independent contracting refers to contracting between a business and an individual. Issues relating to sub-contracting security work are addressed below.

Independent contracting is used widely as a means of engaging workers in the security industry.

Genuine independent contracting is a legitimate business arrangement, and as a mode of work can afford flexibility, autonomy, recognition and reward which goes beyond that which would be available in an employment relationship.

However, stakeholders report that there are situations where workers, who should more accurately be treated as employees, are told by their 'employer' that they are independent contractors and treated as such. Deliberately treating a person as an independent contractor to avoid obligations under industrial relations laws is known as 'sham contracting'. Under the *Fair Work Act*, it is unlawful to misrepresent an employment relationship as an independent contracting relationship.

Simply telling a person that they are an independent contractor and requiring that they obtain an ABN as a condition of engagement, may be indicative of 'sham contracting'. This is particularly so if the person was engaged until then as an employee. In such cases, an employee may no longer receive employment entitlements such as overtime, penalty rates, and leave.

Independent contracting is linked to lack of job security and very little protection for workers: workers are not entitled to minimum rates of pay, they do not have access to leave (including sick leave), the nature of their work is sporadic and often allocated on very short notice, and their only control over their work conditions is to accept or not accept the work.

Under the Private Security Act, there is no restriction on individual private security licence holders providing services as an independent contractor. By contrast, in NSW, individuals wishing to operate as independent contractors require both a security operative licence and a security master licence.

Combined with the proposed sub-contracting reforms discussed below, a similar requirement for Victorian security licensing could be effective in discouraging sham contracting arrangements, as individual security workers would need to go through an additional licensing step before legally providing security services as an independent contractor.

This proposed new requirement would need to be carefully designed so that it does not simply impose additional costs and red tape on workers without changing behaviour.



### Recommendation 17

That as part of the licensing model reforms proposed in Recommendation 2, introduce a requirement that individuals wishing to provide security services as independent contractors hold both an individual licence and a business licence.

#### 4.6.2 Sub-contracting security work

A significant proportion of submissions in response to the Issues Paper make it clear that sub-contracting and independent contracting remain key issues affecting the quality of protective security services. These arrangements can be used to take advantage of workers who may otherwise have trouble finding work due to issues with visas or the desire to receive cash-in-hand payments to maintain Centrelink benefits. Many submissions also noted that they have experienced situations where large, well-reputed security providers sign a contract with a client for a certain cost, and then use sub-contractors, who are paid less, to increase their profit margins.

This can lead to unclear expectations for the client about the quality of services that they are getting. For example, a top tier security firm may be engaged but the quality of services and training of sub-contracted staff is not meeting legal and contractual requirements. There are significant industry flow-on effects from the use of sub-contractors as the quality of work delivered impacts the reputation of the industry at large. Because these arrangements are often casual and informal, and may involve cash-in-hand, there is very limited control on checking of licences, training or competency. In some cases, it is questionable whether the guard is at work at all ('ghosting'). Some submissions suggest that ghosting occurs so sub-contracted staff can work more than one job at a time, enabled by low pay and lack of enforcement presence.

The Issues Paper also set out the findings of the Inquiry into Labour Hire in Victoria, which noted that stakeholders reported significant issues with sub-contracting and independent contracting, with a focus on low pay, poor supervision and lack of workplace benefits and protections.

Sub-contracting also emerged as an issue during the course of the Independent Inquiry into Hotel Quarantine. The Board of Inquiry report emphasised the importance of using a workforce made up of ongoing, full-time employees and well-documented casuals and recommended this model for hotel quarantine programs going forward. The Review considers this to be a strong example of the issues raised by unregulated sub-contracting.

It is not unlawful for a company to contract out work to another company, or for a company to engage workers. There are legitimate and sound commercial reasons for



businesses to use contracting and labour hire arrangements. These enable a flexible approach to the engagement of labour which assists businesses to deal with peaks and troughs in demand, without some of the constraints associated with engaging ongoing employees.

Submissions to this Review, and the issues associated with the Hotel Quarantine program in Victoria suggest that sub-contracting should be the subject of two separate, but interdependent changes: increased regulation together with increased oversight and enforcement. Early in the Review, there was discussion about the number of 'levels' of sub-contracting that would be appropriate. However, upon further consultation, it became clear that the number of levels required has too many variables to allow a specific number to be identified. This applies not only to surge demand, where the company simply does not have enough employees to cover the requirements of the contract but also allows flexibility for a company to sub-contract expertise. For example, a company specialising in providing crowd controllers may need to sub-contract technical specialists to cover other aspects of security, such as installing and monitoring security cameras, or using drones. They may also need to sub-contract to a company supplying armed guards to transfer money and other high-value goods to and from the premises, as well as guards with dogs to detect drugs on the premises. Stakeholders noted that this flexibility was paramount.

The NSW Police unit responsible for licensing and regulating the private security industry in NSW has noted in consultation with this Review that the single most effective reform introduced in their 2017 legislative amendments was the introduction of strict controls on sub-contracting.

The aim of those amendments was to promote both transparency and accountability. Essentially, sub-contracting is prohibited unless it is done with the informed, written consent of the client (there is a contract), and each further level of sub-contracting must also be agreed in writing. Lists of individual workers and site logs and records are required to be available for inspection by the regulator, and there are significant fines for breaching these provisions. For every offence, liability attaches to everyone involved – the security company, the sub-contracting company and potentially the guards themselves.

On an operational level, guards would be required to sign in and a supervisor would be required to check that they are properly licensed and operating within the sub-contracting provisions. The NSW regulator notes that this system has been an effective deterrent to sub-contracting, however NSW Police continue to pick up a significant amount of non-compliance even in their own Hotel Quarantine program, which explicitly prohibits sub-contracting. This highlights the key role that oversight and compliance activities play in deterring breaches.

As noted previously, the NSW regulator has significantly more staff than LRD, and accordingly, other oversight and compliance measures will be necessary to give effect to Recommendation 18.



### Recommendation 18

That the Victorian Government consider introducing tighter controls so that head contractors are required to be transparent about sub-contracting arrangements, and that clients must agree to sub-contracting. Other controls to be considered could include making it mandatory for the client to agree in writing and all parties to keep clear, up-to-date employment records and site logs, and introduce penalties for non-compliance.

## 4.7 Industrial relations issues

As noted earlier in this report, both the Issues Paper and the response from stakeholders highlight a range of industrial relations issues facing the security industry, including:

- wage theft
- cash in hand payments (where tax has not been taken out)
- widespread sham contracting
- lack of access to benefits such as leave and superannuation
- the extensive use of vulnerable overseas students in the industry
- the use of enterprise agreements made before 1 July 2009 (so-called 'zombie' agreements) that may leave workers worse off than the relevant award
- workers being classified as casuals even when they are working on a regular and systematic basis over many years
- insecure work that in turn means people are pressured to accept poor conditions
- student visa holders being limited by the visa to working no more than 20 hours per week, thus providing an incentive for workers to work cash in hand or as independent contractors
- workers being underpaid or not receiving correct entitlements
- the use of messaging apps (such as WhatsApp) to allocate work.

Victoria has referred most of its industrial relations powers to the Commonwealth, and its ability to legislate on industrial relations matters is affected by the national regulatory framework provided for by the Commonwealth *Fair Work Act* and the Commonwealth *Independent Contractors Act*.



However, within its powers the Victorian Government has introduced significant reforms to improve outcomes for vulnerable and insecure workers, including many security industry workers. The Victorian Government has also advocated strongly to the Commonwealth to address issues related to insecure work, underpayment of entitlements, shame contracting and enforcement of workplace laws.

#### 4.7.1 Labour hire licensing and the private security industry

As outlined earlier in this Report, the Victorian Government established the Labour Hire Authority ('the LHA') and associated scheme, which commenced operation in mid-2019.

Many security businesses are required to hold a labour hire licence. The objectives of the scheme are to protect workers (employees and independent contractors) from being exploited by providers and hosts, and to improve the transparency and integrity of the labour hire industry. The LHA is responsible for administering the scheme under the *Labour Hire Licensing Act 2018*.

Providers must hold a labour hire licence if they wish to provide labour hire services. Hosts must not source workers from unlicensed providers. Failure to comply with these laws may result in significant penalties (up to 800 penalty units for a natural person and 3,200 penalty units for a body corporate).

To hold a labour hire licence, providers must comply with workplace laws and all 'relevant persons' of a provider must meet a statutory fit and proper person test. When providers apply for a licence, they must provide the LHA with evidence that they comply with workplace laws. At any time after the LHA grants a licence, it may make enquiries to satisfy itself that a provider is compliant with workplace laws. It has a broad range of information gathering powers, including coercive entry, and search and seizure powers, which may be used in appropriate circumstances.

While in many cases the work of a security business will require a labour hire licence, there are some instances where security does not meet the general definition of labour hire services test, for example:

- if it is providing a service, rather than supplying workers to work in and as part of the business or undertaking, and
- if it is providing to an individual or household (for example, crowd controllers hired by parents hosting an 18<sup>th</sup> birthday party).

Where the LHA uncovers non-compliance with workplace laws, it may take 'licensing action' such as refusing a licence application, imposing licence conditions, suspending and in the most serious cases, cancelling a licence.



## 4.7.2 Wage theft laws

Submissions responding to the Issues Paper provide reports of wage theft occurring in the industry. This issue has been raised by industry representatives for a number of years.

In June 2020, the Victorian Parliament passed new wage theft legislation. Under the *Wage Theft Act 2020*, employers who dishonestly withhold wages, superannuation or other employee entitlements, will face fines of up to \$198,264 for individuals as well as 10 years imprisonment, and fines of up to \$991,320 for companies. The Act commenced operation on 1 July 2021.

On 1 July 2021, Wage Inspectorate Victoria (WIV) was established as a new statutory authority with powers to investigate and prosecute wage theft offences. WIV's compliance, enforcement and education activities will assist in protecting workers from being exploited by their employer and to recover their lawful workplace entitlements.

Offences will also capture employers who falsify employee entitlement records, such as payroll records, or who fail to keep employment records.

## 4.7.3 Portable long service entitlements

A portable long service benefits scheme has operated in Victoria since 1 July 2019 for specific industries.

Workers in the security industry (and other industries covered by the scheme) rarely qualify for long service entitlements under traditional long service schemes, due to the contract and project nature of the industry.

The scheme ensures eligible workers in the community services, contract cleaning and security industries can build up long service benefits based on service to the industry as a whole, rather than service with a single employer. The Portable Long Service Authority was created to administer the scheme (the security industry is defined as where security activities are undertaken by people licensed or registered under the *Private Security Act 2004*).

Under the scheme, employers register themselves and their workers, report their employees' service each quarter, and pay a levy based on that service (currently 1.8 per cent of ordinary pay for the security industry). The levy is set by the Governing Board, which comprises employer and employee representatives, as well as an independent chair and deputy chair. The levy is used to pay out long service at the appropriate time. The qualifying period is seven years.

Victorian employers that are engaged in the security industry and employ at least one other person to undertake security work, must register with the Portable Long Service



Authority. Self-employed industry workers can choose to register for the scheme. They will be required to meet employer obligations and will receive entitlements to portable long service benefits as a result.

It is an offence for an eligible employer not to register for the scheme, not to register eligible employees, not to provide a quarterly return, or not to pay the levy. As at 31 December 2020, 296 registered employers were registered for the scheme with 16,434 workers.

#### 4.7.4 Reforms underway or under consideration

##### **Fair Jobs Code**

A key issue in the Industry is known as ‘undercutting’, where businesses that do not meet their legislated obligations gain an unfair competitive advantage by being able to offer services at lower costs.

The Victorian Government is developing a Fair Jobs Code, which will outline standards to be met by certain businesses that seek to be considered for significant business expansion grants or for threshold procurement contracts for goods and services with the Victorian Government. These standards seek to ensure that these businesses are providing fair working conditions, are compliant with their workplace obligations and will outline standards to be met by businesses.

The Code is being developed to create a level playing field so that businesses that fail to meet their obligations do not gain an unfair advantage when applying for Government contracts or significant industry grants. Government is working towards finalising and implementing the Code in the next few months

##### **Recommendation 19**

That a fact sheet on workplace rights be developed in consultation with industry and unions and included with each new or renewed security licence setting out rights and contacts for organisations that can provide advice and help.

#### 4.7.5 Inquiry into the Victorian On-Demand Workforce

Many of the issues facing the on-demand sector relate to a lack of clarity around whether workers are employees or independent contractors. This is also true for the security sector.

The Victorian Government commissioned the Inquiry into the Victorian On-Demand Workforce in September 2018 in response to concerns about the wages and conditions





of workers in the on-demand or 'gig' economy. The Inquiry was chaired by Natalie James, former Fair Work Ombudsman.

The Inquiry into the Victorian On-Demand Workforce submitted a report to the Government which was published in July 2020. It made 20 recommendations to achieve the following key outcomes:

- Clarifying and codifying work status to reduce doubt about work status and applicable worker entitlements, protections and obligations.
- Streamlining advice and support for on-demand workers, especially where work status is borderline.
- Providing fast-track resolution of work status so that workers and businesses do not operate with prolonged doubt about the laws that apply.
- Providing for fair conduct for platform workers who are not employees by establishing principles for fair conduct and accountability standards.
- Improving remedies for non-employee workers – existing avenues to challenge the fairness of arrangements are limited, including under the *Independent Contractors Act 2006* (Cth).
- Enhancing enforcement to ensure compliance with work laws, including where sham contracting has occurred, and giving a regulator the ability to intervene to address borderline work status matters.

On 13 May 2021, the Minister for Industrial Relations announced the Victorian Government's support for all 20 recommendations of the report in full or in principle.

The Victorian Budget 2021-22 includes \$5.2 million in funding support for Industrial Relations Victoria to start work on implementing the Victorian Government's response to these recommendations.

#### 4.7.6 Secure Work Scheme Pilot

Submissions to the Issues paper identified the lack of leave entitlements as an issue for industry workers, either because they are engaged as casual employees or as independent contractors.

In November 2020, the Government announced the Secure Work Scheme Pilot, under which staff would be provided with up to five days of sick and carer's pay at the national minimum wage for casual or insecure workers in priority industries, including security.



The pilot will roll out in two phases over two years with the occupations eligible for each phase to be finalised after a consultation process that will include workers, industry and unions.

Casual and insecure workers in eligible sectors will be invited to pre-register for the scheme, providing their contact details and information about their employment so that applications can be fast-tracked if they need to apply for payments. An education campaign will also be rolled out to ensure eligible workers are aware of the support available when they need sick or carer's pay.

The 2020-21 Victorian Budget provided \$5 million for consultation on the design of the pilot scheme to work through issues including documentation required to support payment applications and protections for workers who apply to access the scheme.

#### **4.7.7 Advocacy to the Commonwealth on sham contracting and enforcement of workplace laws**

The Commonwealth is responsible for Australia's national system of workplace laws and can make changes in collaboration with states and territories. The Victorian Government has advocated strongly to the Commonwealth in the past to address issues about insecure work, underpayment of entitlements, sham contracting and enforcement of workplace laws.

The Victorian Government will continue to pursue these issues with the Commonwealth through appropriate forums.

Advocacy to the Commonwealth was also a key recommendation of the Inquiry into the Victorian On-Demand Workforce. While the Inquiry Report noted that change ideally should be led nationally, there are options for Victoria to collaboratively work with other jurisdictions to lead reform and achieve greater national consistency in the absence of action by the Commonwealth.

Future advocacy could also seek a greater focus on enforcement of the accessorial liability provisions in the *Fair Work Act 2009*.

Accessorial liability occurs when a person or company is involved in the contravention of a workplace law. When this happens, they are treated the same way as the employer responsible for the contravention. They can be ordered by a court to pay employees' unpaid wages and entitlements, as well as penalties for their involvement in the contravention.

If a greater focus were placed on enforcement of accessorial liability provisions, this could assist in preventing security industry customers or head contractors from avoiding responsibility or turning a blind eye to contraventions of workplace laws by



businesses in their supply chains. For example, if they are procuring property services, at hourly rates that would necessitate workers to be underpaid.

#### Recommendation 20

That the Victorian Government continue to advocate with the Australian Government to advance Victoria's objectives in the enforcement of workplace laws and elimination of sham contracting.

## 4.8 Government to lead on purchasing security contracts

In its submission on the Issues Paper, ASIAL noted the Fair Work Ombudsman Inquiry into the procurement of security services by local government found that 61 per cent of councils had non-compliance with their labour supply chain. ASIAL went on to submit that this non-compliance has contributed to some of the issues addressed in this Report, such as problems with sub-contracting and sham contracting. They conclude that State "Government needs to lead the way by being a 'model purchaser', by developing responsible and informed procurement practices."

State Government had existing appropriate controls within the State Purchasing Contract. These controls were identified in the report into Hotel Quarantine. The State Purchasing Contract offers additional protections for private security workers and limits sub-contracting.

#### Recommendation 21

That the changes already implemented in the Security Services State Purchasing Contract by the Department of Treasury and Finance be communicated more broadly during implementation of this Review.



## 5. MATTERS OUT OF SCOPE OF THE REVIEW

### 5.1 National standards and licensing

Many security businesses and organisations operate across various Australian (and overseas) jurisdictions. These organisations have advocated strongly for a national licensing and regulatory framework to facilitate operations nation-wide, and to increase worker mobility.

At present, each state has its own Act and regulations, and while some are regulated by police, some are regulated by consumer affairs or fair trading bodies. Naturally, the approach to compliance by these agencies differs significantly – police regulators focus on licensing and regulation to ensure public safety and peace including by ensuring that the industry is not infiltrated by serious and organised criminal elements, while consumer affairs and fair trading agencies have a significant focus on customer satisfaction.

Advocates argue that to raise industry capability and professionalism, a consistent national approach to security licensing eligibility is needed to ensure equity, fairness and rigour, and to ensure that appropriate probity checks are conducted on individuals seeking to enter the industry, regardless of which state or territory they are in. Despite this, most advocates recognise that this would be a long-term project given the significant differences in the current regulatory models.

### 5.2 Mutual recognition of security licences

In the absence of national standards, COAG agreed in July 2020 to introduce an automatic mutual recognition scheme for occupational licences. This would include everything from real estate agents and builders, to the security Industry. While the Review supports this approach in principle, it is considered that private security be exempted from the scheme until such time as Victoria can be confident that other jurisdictions have at least the same regulatory model and standards of training and enforcement of breaches of the relevant legislation.

Unless all jurisdictions have the same model (that is, police or consumer affairs regulation), there will continue to be disparity in focus, goals and legislation. Given that Victoria has a police regulator model, agreeing to recognise the licences of workers and organisations from jurisdictions licensed by consumer affairs or fair trading agencies, would be unacceptable due to the disparity in rigour and enforcement of inappropriate conduct. Criteria for obtaining a licence also differ across jurisdictions.

In terms of training, each jurisdiction is bound by the parameters set out by ASQA, however, jurisdictions have different training standards and enforcement practices. Accordingly, there is a risk that by accepting automatic mutual recognition, Victoria -



which is already working to improve inadequacies in training programs - would not have oversight of a licensee's training or even the work they are undertaking in Victoria.

As set out above, key issues, such as different regulatory approaches and training standards, which would require cooperation and agreement on a national level, would need to be addressed before mutual recognition of security licences could occur without the risk of lowering standards in Victoria.



## APPENDIX A – Consolidated list of recommendations

1. That Victoria Police retain responsibility for regulatory activities under the *Private Security Act 2004*.
2. That the Victorian Government streamline the *Private Security Act 2004* by regulating all private security activities through licensing (specifically by creating different sub-classes of licences for individuals and business) and removing the requirement for a 'registration' for both individuals and businesses.
3. (a) That the current definition in section 6 of the Private Security Regulations 2016 of 'security equipment' be maintained.  
  
(b) That any electrician or locksmith handling 'security equipment' will need to be licensed under the *Private Security Act 2004* to do so, unless their work wholly entails usual business, such as lighting, wiring, electrical repairs, and new locks.
4. That the requirement to advertise an application in a daily newspaper be removed and an alternative such as requiring publication on a suitable website be developed.
5. That DJCS consult across Government, including with the Human Rights and Equal Opportunity Commission regarding implications arising from the *Equal Opportunity Act 2010*, to consider potential legislative amendments that will require a person wishing to apply for a private security licence to have built up enough time and reputation in Australia for a reliable probity check to be undertaken.
6. That the capacity of LRD to maintain oversight of RTOs be bolstered through additional resources, such as access to the use of authorised officers. Additional oversight would include unannounced visits to RTOs to monitor the quality of delivery of relevant units and the observance of appropriate examination conditions.
7. That LRD provide a clear avenue (such as a section on their website) for students and employees of RTOs to raise concerns about the quality of training delivery with LRD for follow-up.
8. That prior to licence renewal, applicants should be required to undertake refresher training with an LRD-approved RTO.
9. (a) That the Victorian Government undertake consultation with the Australian Government to examine the possibility of tax benefits for employers (clients) who support on-the-job training.



(b) That DJCS work with groups representing employers (such as ASIAL) on developing a best practice guide for employers which suggests strategically providing a mix of experienced and less experienced workers to the same job to facilitate peer support.

(c) That LRD require RTOs to emphasise simulations of real-life situations in training.

10. That applicants for a technical licence should have successfully completed a Certificate II in technical security. Consideration should be given to whether LRD could waive this requirement if the person presented with a relevant tertiary qualification and extensive on-the-job training records.
11. That bodies representing employers and employees work with DJCS and WorkSafe to explore options to educate clients about their responsibility to have a risk assessment in place and to consider the role of the code of conduct in reinforcing this responsibility.
12. (a) That DJCS consult with relevant agencies to develop an education campaign (or add to an existing campaign), focussing on the necessity for clients to conduct site inductions for staff and make standard operating procedures available to them before their first shift.  
  
(b) That the Victorian Government introduce amending legislation to require clients with staff or operations over a certain number or cost to have a risk assessment plan in place.
13. That LRD approach the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to explore the development of an information sharing agreement which would allow for the exchange of information obtained by liquor licence inspectors during their site inspections, and LRD when inspecting licensed establishments to monitor security personnel compliance.
14. (a) That a new section be developed for the LRD website providing information on how a member of the public can report alleged misconduct or other breaches of the *Private Security Act 2004*. This section should include a complaints form, which could be lodged electronically, as well as a dedicated complaints phone number. This section should also allow for anonymous complaints, with the caveat that if the person does not disclose their identity, the matter may not be able to be followed up to the fullest extent possible.  
  
(b) That the proposed new section of the LRD website note that the Private Security Act defines 'Protected Information' to include information that a person provides to LRD that results in a person or business having their licence suspended or revoked; however, this would not exclude the possibility that a person may need to give evidence in legal proceedings.



- (c) That the proposed new section of the LRD website also include a note that people in the industry are expected to be honest, capable, and of good character and report alleged misconduct or other breaches of the Private Security Act.
15. That the Victorian Government consider introducing legislation to amend the *Private Security Act 2004* to include a broader range of people who can make a complaint (or report) to LRD regarding concerns about the actions of a person who holds a private security licence.
  16. That the Victorian Government introduce legislation to give effect to a code of conduct for the Victorian private security industry with the following features:
    - prescribing the code in the Regulations to give it authority with legislated disciplinary action to apply for relevant breaches
    - making provision in the code for relevant sectors, potentially including the technical, security officer and crowd control sectors (following further consultation during drafting), and
    - close consultation with key industry stakeholders and interested members of the public to inform development of the code.
  17. That as part of the licensing model reforms proposed in Recommendation 2, introduce a requirement that individuals wishing to provide security services as independent contractors hold both an individual licence and a business licence.
  18. That the Victorian Government consider introducing tighter controls so that head contractors are required to be transparent about sub-contracting arrangements, and clients must agree to sub-contracting. Other controls to be considered could include making it mandatory for the client to agree in writing and all parties to keep clear, up-to-date employment records and site logs, and introduce penalties for non-compliance. It is noted that the NSW model would be a useful example.
  19. That a fact sheet on workplace rights be included with each new or renewed security licence setting out rights and contacts for organisations that can provide advice and help.
  20. That the Victorian Government continue to advocate with the Australian Government to advance Victoria's objectives in the enforcement of workplace laws and elimination of sham contracting.
  21. That the changes already implemented in the Security Services State Purchasing Contract by the Department of Treasury and Finance be communicated more broadly during implementation of this Review.





## APPENDIX B – Victorian Security Industry Advisory Council (VSIAC)

A Chairperson appointed by the Minister

A nominee of Australian Security Industry Association Limited

A nominee representing the Crowd Controllers Employers Association

A nominee of the Australian Skills Quality Authority

A nominee of the Victorian Security Institute

A nominee of the Security Trainers Association

A nominee of ASIS International

A nominee of the United Workers Union

A nominee of the National Electrical and Communications Association

A nominee of the Chief Commissioner of Police

Such other members with expertise or knowledge as the Minister may decide to appoint including, but not limited to, suitably qualified industry members or academics



## APPENDIX C – Background to the *Private Security Act 2004* and previous reviews

### Background

Victoria's private security Industry legislation was introduced in the context of continuous industry growth and concern over unsuitable persons providing security services. Such concerns were heightened following the death of cricket coach David Hookes who, in 2004 was killed during an interaction with a crowd control officer outside a club. While the crowd controller was licensed and a court ultimately ruled that he was acting in self-defence, the high-profile tragedy drew significant attention to the issues in the Industry.

The *Private Security Act 2004* (the Act) and complementary Private Security Regulations 2016 (which first came into effect in July 2005) applied new and expanded regulatory requirements for the industry, including: extending licensing to include bodyguards, introducing registration requirements for the technical sector, and introducing competency standards (training) for all licensed activities.

It has been more than 10 years since the Act was last reviewed.

### PricewaterhouseCoopers Review

In March 2009 PricewaterhouseCoopers (PwC) on behalf of DJCS delivered a statutory review of the Act. The review sought to determine whether the policy objectives of the Act remained valid and whether the provisions in the Act were still appropriate to secure those objectives. It found, overall, the provisions of the Act and Regulations were appropriate and promoted public peace and ensured security of property. The Review made 34 recommendations focused on reducing the regulatory burden on the industry and providing a more targeted regulatory effort. There were few recommendations for legislative change.

PwC recommended increasing penalties for non-compliance and removing the registration requirement for all current registered sectors. Other recommendations focused on the need for the Government and the regulator to work closely with industry to increase awareness of requirements under the Act. The impact of the Review on the regulatory framework has been minimal.

### The Council of Australian Governments (COAG)

In July 2008 the Council of Australian Governments (COAG) agreed to implement a nationally consistent approach to the Industry to improve the sector. COAG agreed to:

- establish national minimum standards for protective security personnel to improve their competency and skills, and to improve legitimate mobility of licences across jurisdictions;



- explore national minimum regulatory standards for the technical sector as well as improving the mobility of business licences; and
- explore a national registration or licensing system for the private security industry.

Changes to the Act came into force in 2011 to give effect to the COAG decision to enhance probity in the protective security sector. Changes included: clarifying the scope of licensing activities; prescribing additional offences and thresholds that result in mandatory disqualification of a licence; making fingerprinting of licence applicants mandatory for identity verification; and allowing the regulator to refuse or cancel a licence if the applicant or holder is the subject of criminal intelligence that renders their presence in the industry to be detrimental to public safety. These additional requirements were positive and strengthen the industry's ability to protect itself against criminal activity.

In 2013 COAG proposed the implementation of a National Occupation Licensing System (NOLS) following extensive state-based consultation. Most jurisdictions identified concerns with the model and potential costs of moving to one national regulator. However, this has not stopped states and territories working together to harmonise standards across the industry, where possible. Competency standards for the protective security sector are largely harmonised across states, however, there is greater discrepancy in how the technical sector is regulated and a national licensing system is fraught with difficulties and while it has been pursued at the Commonwealth level, is unlikely to be a viable option for at least several years.

## Coronial inquiries

Between 2011 and 2015 several coronial inquiries across jurisdictions made adverse findings with respect to the conduct of licensed security officers and the adequacy of their training. In 2016 the Australian Skills Quality Authority (ASQA) reviewed training in security programs (the ASQA Review). An audit of 67 RTOs that offered security training found that more than 80 per cent were non-compliant with at least one of the national training standards. One of the key findings of the ASQA Review was that despite having national qualifications for security roles, the regulation of security licensing is state and territory based, making it more difficult to ensure consistency and alignment between qualifications and licence requirements. The ASQA Review also found that lack of clarity in the training packages pose fundamental challenges in ensuring high-quality security personnel are equipped to safely carry out their duties.

In 2016 the Regulations were introduced following a public consultation period on a Regulatory Impact Statement and Exposure Draft Regulations. After considering public submissions, the Victorian Government decided to make only minor and technical changes to the original 2005 Regulations.



## APPENDIX D – Examples of alternative licensing models

### FOR INDIVIDUALS

The NSW regulatory framework provides a positive model for regulating private security activities through licensing sub-classes. Note this is an example only, and if agreed, details of licensing categories would be developed in consultation with stakeholders.

#### Class 1 Licences

- 1A - Bodyguard authorises the licensee to act as a bodyguard.
- 1B - Crowd controller authorises the licensee to act as a crowd controller.
- 1C - Unarmed guard: authorises licensee to patrol, protect or guard property while unarmed, static or mobile; and monitor activity (via CCTV monitors or similar).
- 1D - Investigator authorises licensee to obtain and furnish information as to the personal character or actions of any person; or as to the character or nature of the business or occupation of any person; or to search for missing persons.
- 1E - Armed guard (includes cash-in-transit): authorises licensee to patrol, protect or guard approved classes of property while armed (must have firearms licence)
- 1F - Guard dog handler authorises licensee to patrol, protect or guard property with a dog.

#### Class 2 Licences

- 2A - Security adviser authorises licensee to sell security methods or principles, and act as a consultant by identifying and analysing security risks and providing solutions and management strategies to minimise those security risks.
- 2B - Security seller authorises licensee to sell, and provide advice in relation to, security equipment, and to act as an agent for, or otherwise obtain contracts for, the supply of any security equipment.
- 2C - Security specialist authorises licensee to sell, install, maintain, repair and service, and provide advice in relation to, security equipment.
- 2D - Private security trainer authorises licensee to provide training, assessment or instruction in relation to any security activity.
- 2E - Monitoring centre operator authorises licensee to carry on monitoring centre operations, (for example, interpreting signals from alarms transmitted to the centre, taking appropriate action, or relaying and receiving situation reports to/from other personnel).



## FOR BUSINESSES

- BA - authorises the holder (who is self-employed and holds a class 1 or 2 licence, or both) to provide his or her services to carry on security activities
- BOB - authorises the holder to provide up to three persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or 2 licence
- BC - authorises the holder to provide up to 14 persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or 2 licence.
- BD - authorises the holder to provide up to 49 persons on any one day to carry on security activities, each of whom must be the holder of a class 1 or 2 licence.
- BE - authorises the holder to provide unlimited numbers on any one day to carry on security activities, each of whom must be the holder of a class 1 or 2 licence.



## APPENDIX E – Training requirements prescribed by LRD

As of 1 July 2020, all RTOs are delivering the units of competencies listed below.

### **Certificate II in Security Operations (Unarmed Guard & Crowd Control) CPP202018**

- Apply effective communication skills to maintain security (CPPSEC2101)
- Apply legal and procedural requirements to work effectively within a security team (CPPSEC2102)
- Apply WHS, emergency response and evacuation procedures to maintain security (CPPSEC2103)
- Apply risk assessment to select and carry out response to security risk situations (CPPSEC2104)
- Provide quality services to a range of security clients (CPPSEC2105)
- Protect self and others using basic defensive techniques (CPPSEC2106)
- Patrol premises to monitor property and maintain security (CPPSEC2107)
- Screen people, personal effects and items to maintain security (CPPSEC2108)
- Monitor and control access and exit of persons and vehicles from premises (CPPSEC2109)
- Monitor and control individual and crowd to behaviour to maintain security (CPPSEC2110)
- Apply security procedures to manage intoxicated persons (CPPSEC211)
- Apply security procedures to remove persons from premises (CPPSEC2112)
- Escort and protect persons and valuables (CPPSEC2113)
- Provide first aid (HLTAID003)

### **Certificate III in Security Operations (Armed Guard) CPP31318**

- Contribute to team effectiveness (BSBFLM312)
- Manage conflict and security risks through negotiation (CPPSEC3101)
- Maintain operational safety and security of work environment (CPPSEC3102)
- Determine and implement response to security risk situation (CPPSEC3103)



- Coordinate monitoring and control of individual and crowd behaviour (CPPSEC3104)
- Coordinate provision of quality security services to clients (CPPSEC3105)
- Gather, organise and present information and documentation (CPPSEC3106)
- Maintain work health and safety (HLTWHS003)
- Control security risk situations using firearms (CPPSEC3114)
- Carry, operate and maintain revolvers for security purposes (CPPSEC3115)
- Carry, operate and maintain semi-automatic pistols for security purposes (CPPSEC3116)
- Control persons using batons (CPPSEC3110)
- Restrain persons using handcuffs (CPPSEC3111)
- Implement security procedures to protect critical infrastructure and public assets (CPPSEC3125)

### **Certificate III in Security Operations (Cash-in-Transit) CPP31318**

- Contribute to team effectiveness (BSBFLM312)
- Manage conflict and security risks through negotiation (CPPSEC3101)
- Maintain operational safety and security of work environment (CPPSEC3102)
- Determine and implement response to security risk situation (CPPSEC3103)
- Coordinate monitoring and control of individual and crowd behaviour (CPPSEC3104)
- Coordinate provision of quality security services to clients (CPPSEC3105)
- Gather, organise and present security information and documentation (CPPSEC3106)
- Maintain work health and safety (HLTWHS003)
- Control security risk situations using firearms (CPPSEC3114)
- Carry, operate and maintain revolvers for security purposes (CPPSEC3115)
- Carry, operate and maintain semi-automatic pistols for security purposes (CPPSEC3116)
- Inspect and test cash-in-transit security equipment (CPPSEC3118)
- Implement cash-in-transit security procedures (CPPSEC3119)



- Load and unload cash-in-transit in secured and unsecured environments (CPPSEC3120)

### **Certificate III in Security Operations (Combined armed guard & cash-in-transit) CPP31318**

- Contribute to team effectiveness (BSBFLM312)
- Manage conflict and security risks through negotiation (CPPSEC3101)
- Maintain operational safety and security of work environment (CPPSEC3102)
- Determine and implement response to security risk situation (CPPSEC3103)
- Coordinate monitoring and control of individual and crowd behaviour (CPPSEC3104)
- Coordinate Provision of quality security services to clients (CPPSEC3105)
- Gather, organise and present security information and documentation (CPPSEC3106)
- Maintain work health and safety (HLTWHS003)
- Control security risk situations using firearms (CPPSEC3114)
- Carry, Operate and maintain revolvers for security purposes (CPPSEC3115)
- Carry, Operate and maintain semi-automatic pistols for security purposes (CPPSEC3116)
- Inspect and test cash-in-transit security equipment (CPPSEC3118)
- Implement cash-in-transit security procedures (CPPSEC3119)
- Load and unload cash-in-transit in secured and unsecured environments (CPPSEC3120)
- Control persons using batons (CPPSEC3110)
- Restrain persons using handcuffs (CPPSEC3111)
- Implement security procedures to protect critical infrastructure and public assets (CPPSEC3125)

### **Certificate III in Security Operations (Control room & Monitoring centre operator) CPP31318**

- Contribute to team effectiveness (BSBFLM312)
- Manage conflict and security risks through negotiation (CPPSEC3101)





- Maintain operational safety and security of work environment (CPPSEC3102)
- Determine and implement response to security risk situation (CPPSEC3103)
- Coordinate monitoring and control of individual and crowd behaviour (CPPSEC3104)
- Coordinate Provision of quality security services to clients (CPPSEC3105)
- Coordinate Provision of quality security services to clients (CPPSEC3105)
- Gather, organise and present security information and documentation (CPPSEC3106)
- Maintain work health and safety (HLTWHS003)
- Monitor security and coordinate response from control rooms (CPPSEC3107)
- Store, protect and dispose of security information (CPPSEC3108)
- Use and maintain security databases and compile reports (CPPSEC3109)
- Monitor electronic security equipment and respond to alarm events (CPPSEC2114)
- Use and maintain security databases and compile reports (CPPSEC3109)
- Monitor electronic security equipment and respond to alarm events (CPPSEC2114)
- Implement security procedures to protect critical infrastructure and public assets (CPPSEC3125)
- Control evacuation to muster point (PMAOMIR210)

### **CPP31318 Certificate III in Security Operations (Guarding with a dog)**

- Contribute to team effectiveness (BSBFLM312)
- Manage conflict and security risks through negotiation (CPPSEC3101)
- Maintain operational safety and security of work environment (CPPSEC3102)
- Determine and implement response to security risk situation (CPPSEC3103)
- Coordinate monitoring and control of individual and crowd behaviour (CPPSEC3104)
- Coordinate provision of quality security services to clients (CPPSEC3105)
- Gather, organise and present security information and documentation (CPPSEC3106)
- Maintain work health and safety (HLTWHS003)



- Control persons using batons (CPPSEC3110)
- Restrain persons using handcuffs (CPPSEC3111)
- Manage training and wellbeing of dogs for security functions (CPPSEC3112)
- Handle dogs for security patrols (CPPSEC3113)
- Control persons using empty hand techniques (CPPSEC3121)
- Implement security procedures to protect critical infrastructure and public assets (CPPSEC3125)

### **Certificate III in Close Protection Operations (CPP31318)**

- Manage conflict and security risks through negotiation (CPPSEC3101)
- Determine and implement response to security risk situation (CPPSEC3103)
- Coordinate provision of quality security services to clients (CPPSEC3105)
- Maintain work health and safety (HLTWHS003)
- Provide advanced first aid (HLTAID006)
- Control persons using empty hand techniques (CPPSEC3121)
- Plan provision of close protection services (CPPSEC3122)
- Implement close protection services (CPPSEC3123)
- Operate commercial vehicle (TLIC1051)
- Contribute to team effectiveness (BSBFLM312)
- Maintain operational safety and security of work environment (CPPSEC3102)
- Coordinate monitoring and control of individual and crowd behaviour (CPPSEC3104)
- Control persons using batons (CPPSEC3110)
- Restrain persons using handcuffs (CPPSEC3111)