

Australian Capital Territory

Security Industry Amendment Regulation 2020 (No 1)

Subordinate law SL2020–25

made under the

Security Industry Act 2003

EXPLANATORY STATEMENT

Overview

The *Security Industry Act 2003* (the Act) provides the overarching legislative framework for security licences in the Territory. The *Security Industry Regulation 2003* (the Regulation) has been made under Section 52 of the Act.

The Security Industry Amendment Regulation 2020 (No 1) (the Amendment Regulation) amends the Regulation to implement new minimum security operations qualification requirements determined by Australian Skills Quality Authority (ASQA), the national regulator for Australia's vocational education and training sector.

Background

In 2016, ASQA, initiated a strategic review into security training programs in Australia. The review was initiated in response to concerns raised in successive reports by coroners investigating the deaths of patrons during, or as a result of, restraint or intervention by security personnel in the course of incident control, particularly around licensed premises.

In its review, ASQA highlighted that security services have been the subject of significant public scrutiny and that concerns about the security industry, including about the adequacy of training have been longstanding and persistent. Another key finding included that people were crossing borders to attain licences in jurisdictions with fewer requirements, driving distortions in where training is occurring compared to where the jobs are, and that this potentially compromised public safety. A key recommendation arising from ASQA's review was the need for licensing authorities from all jurisdictions to agree on a single set of qualifications and units to be used, to pave the way for consistent licensing arrangements.

Following the national strategic review, Artibus Innovation (Artibus) was commissioned by the Australian Government and the Australian Industry and Skills Committee to strengthen the quality and safety of security training and assessment provided to learners to address the public safety concerns raised by Coroners.

Artibus consulted representatives from security regulators from States and Territories across Australia at the Security Industry Regulators Forum (SIRF) to develop a new set of units of competency and skill sets for the qualification of security officers. All jurisdictions ultimately agreed to adopt a set of minimum qualification requirements set out in Release 8 of the CPP - Property Services Training Package (CPP08).

The Regulation as in force immediately before the commencement of the Amendment Regulation is referred to as the pre-amendment regulation.

The amendments in this Amendment Regulation update the qualification requirements for the various subclasses of employee licenses set out in section 8, table 8 of the pre-amendment regulation. The first aid training requirements has been retained for all the employee licence subclasses.

Human rights compatibility

During the development of this Amendment Regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

Rights engaged

Right to life

As noted above, concerns had previously been raised by coroners' about the quality of training courses for security officers across Australian jurisdictions, in the course of investigating the deaths of individuals that occurred as a result of intervention by security personnel. This Amendment Regulation engages and promotes the right to life under section 9 of the HRA by updating training requirements in-line with minimum training standards and the agreed national approach.

Right to equality and non-discrimination

The right to equality and non-discrimination (section 8 of the HRA) is not engaged or limited by the Regulation. Section 8(2)-(3) of the HRA relevantly provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

The term 'discrimination' encompasses any distinction or exclusion which is based on certain protected grounds (such as, race, colour, sex, sexual

orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or 'other status'), and which has the purpose (direct discrimination) or effect (indirect discrimination) of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of rights and freedoms.¹ That is, not every differential treatment will amount to discrimination as it must be linked to a prohibited ground of discrimination.²

While the new training requirements will only apply to a select group of people from 1 July 2020, this differential treatment is not linked to any grounds of discrimination. The training requirements will apply to:

- a) security officers who allow their subclass of employee licence to lapse for more than 12 months after its expiry;
- b) security officers who hold a current subclass of employee licence but who wish to obtain an additional licence in a different subclass will need to complete additional training for that additional licence; and
- c) those who have not previously held a subclass of employee licence.

In this respect, the differential treatment is based on reasonable and objective criteria. The Amendment Regulation seeks to reduce public safety risks by implementing minimum standards for security training requirements that are consistent with other jurisdictions. The Amendment Regulation also aims to elevate the reputation of the security industry by boosting public confidence in security officers' ability to perform their duties, following the outcome of the strategic review conducted by ASQA in 2016.

The Amendment Regulation also recognises prior practical experience held by security officers in the industry and of existing security industry standards in the ACT (contained in the pre-amendment regulation) are higher when compared with some other jurisdictions. Accordingly, the right to equality and non-discrimination is not engaged or limited.

Clause notes

Clause 1 Name of regulation

This clause specifies the name of the Amendment Regulation. This clause provides that the Amendment Regulation may be cited as the *Security Industry Amendment Regulation 2020 (No 1)*.

Clause 2 Commencement

¹ Human Rights Committee, *General Comment No. 18: Non-discrimination*, 37th sess (10 November 1989) ('General Comment No. 18') [7].

² The grounds of discrimination are not specifically or exhaustively defined under the HRA. However, the following examples of discrimination are provided in the HRA: 'race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.'

This clause provides for the commencement of the Amendment Regulation. The Amendment Regulation will commence on 1 July 2020.

Clause 3 Legislation amended

This clause names the regulation that is being amended by this Amendment Regulation. This Regulation amends the *Security Industry Regulation 2003*.

Clause 4 Section 8

This clause substitutes section 8 of the *Security Industry Regulation 2003* and updates the prescribed training courses required for employee licences.

Section 8 (1) notes that column 4 in Table 8 sets out the new prescribed training courses for each subclass of employee licence.

Section 8 (2) clarifies that the training courses set out in column 3 of Table 8 are also recognised as prescribed training courses so long as:

- (a) the person applying for the subclass of employee licence completed the prescribed training courses prior to 1 July 2020; and,
- (b) the person applying for the licence either:
 - (i) on 1 July 2020, holds a current subclass of employee licence to which the prescribed training course relates and does not at any time allow their licence to lapse for a continuous period of more than 12 months; or
 - (ii) before 1 July 2021, applies to the Commissioner for the issue of the subclass of employee licence to which the prescribed training course relates.

This is to provide some recognition of those already qualified under the old training requirements.

Table 8 which is set out in section 8 has been updated to introduce column 4. Column 4 sets out the new prescribed training courses. The contents of columns 1, 2 and 3 in Table 8 have not been amended.