

**REGULATORY IMPACT STATEMENT – PRIVATE SECURITY PERSONNEL AND PRIVATE
INVESTIGATORS ACT 2010 - REGULATIONS**

AGENCY DISCLOSURE STATEMENT

This Regulatory Impact Statement was prepared by the Ministry of Justice. It provides an analysis of options for mandatory training for three categories of security personnel regulated under the Private Security Personnel and Private Investigators Act 2010.

In November 2009, the Government confirmed the former Government's decision that crowd controllers, property guards and personal guards would be subject to training requirements. The proposed regulations implement that decision. A significant constraint faced by the Ministry in its analysis was that the cost of the training will depend heavily on commercial decisions by providers once training becomes a regulatory requirement.

The Ministry's best estimate of the cost of the preferred option is approximately \$300. This estimate is consistent with the cost of delivering other New Zealand Qualifications Authority unit standards of a similar difficulty level. However, it is likely that the cost of the training will vary depending on:

- decisions by training providers on how to structure their programmes and what fees they charge
- decisions by employers and individuals about which training option suits their individual needs
- individuals' existing knowledge and skills (NZQA standards are competency-based, so experienced security personnel may require only a small amount to training to meet the required standard).

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EXECUTIVE SUMMARY

The Private Security Personnel and Private Investigators Act 2010 reforms the private security industry. The Act's objective is to ensure that security personnel are suitably qualified and do not behave in ways that are contrary to the public interest. The Act does this by means of a licensing regime which screens out unsuitable people, such as those with serious convictions for offences of violence or dishonesty.

One of the key changes that the Act makes is to allow regulations to be made setting out training requirements for security personnel. The main driver for this change was to address the risk of physical harm associated with unskilled security personnel responding inappropriately to situations involving conflict.

The Act divides security personnel into seven categories according to the type of work they do. The preferred option is to require people in front-line security roles (eg, crowd control) to demonstrate they meet a minimum level of competency by requiring them to be assessed against relevant NZQA unit standards. Two alternative options were considered. Both options covered a broader range of skills than necessary to address the risk of security personnel responding inappropriately to conflict. These options were not preferred because the benefits of the additional skills would not outweigh the significant increase in compliance costs.

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PROBLEM AND STATUS QUO

The Government has decided that crowd controllers, personal guards and property guards should be trained. The detail of the training is left to regulations. The problem to be addressed is that people who undertake these categories of work are at considerable risk of becoming involved in a physical confrontation. Suitable training could reduce the risk of harm to themselves and others. In the past, there have been some serious incidents involving altercations between bar patrons and door staff. If training requirements are not imposed, there is a higher risk of further incidents occurring which result in people being injured or killed. This would detract from achieving the Act's objective of ensuring that security personnel are suitably qualified and do not behave in ways contrary to the public interest.

There are currently no minimum competency or training requirements for security personnel. Some security firms already support their staff to complete formal training and the number of trainees enrolled in New Zealand Qualifications Authority (NZQA) programmes has been steadily increasing in recent years. However, many firms employ large numbers of casual and transient staff and there are few incentives to invest in training. As a result, many security personnel are currently working in the industry with no formal training.

OBJECTIVE

The objective of the regulations is to improve public safety by reducing the risk of harm associated with untrained security personnel facing confrontation.

TRAINING

When evaluating the options it was necessary to balance the need to build and maintain public confidence in the industry against ensuring that the regulatory requirements are achievable and enforceable. Important considerations included:

- the casual and transient nature of the workforce in some security roles;
- accessibility to on-the-job training and assessment;
- potential cost burden on security firms and individuals; and
- long term benefits for the industry and public.

Non-regulatory options

Continuing to rely on the voluntary uptake of training will not achieve the Act's objective because it is inconsistent across the industry. A minimum level of competency needs to apply to all front-line security personnel in order to assure members of the public that people who hold a licence or certificate of approval under the Act are suitably qualified.

Preferred option

The preferred option is to make regulations requiring crowd controllers, personal guards and property guards to be assessed against unit standards registered on the National Qualifications Framework. These standards have recently been developed by the Government-recognised industry training organisation, the Electro-technology Industry Training Organisation (ETITO), in consultation with the industry.

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The standards cover:

- introductory knowledge essential to working in a security role, including relevant law (eg the use of force and trespass), communication skills, emergency procedures, health and safety, reporting incidents; and
- the ability to respond to conflict, or potential conflict, appropriately, such as using communication to defuse tension, and exiting a situation safely.

The training requirements would not apply to office-based personnel who do not patrol premises or attend callouts, such as people who monitor alarms. People who have already completed equivalent training (eg, all or relevant parts of a current NZQA security qualification) would be exempt from the requirement to complete the introductory training. They would, however, still have to achieve the conflict management unit standards because they are new to the industry and critical to achieving the regulatory objectives.

The industry would be allowed at least six months to complete the training after the regulations have been made and announced. New entrants to the industry can apply for a temporary certificate of approval which is valid for three months so they can work while they train.

This option is preferred over the other options because it is likely to be achievable across a diverse industry and minimises costs by targeting the training at the specific risk the regulations seek to address (ie, responding to conflict).

The level of training proposed is consistent with the *Government Policy Framework for Occupational Regulation*. This Framework sets out the principle that the aim of regulating occupations is to protect the public from potential harm caused by incompetent, reckless or dishonest practice of an occupation. There is a stronger case for government intervention where the risk is incurred non-voluntarily. The risks associated with untrained security personnel are largely non-voluntary because incidents can occur without warning when carrying out everyday activities.

The *Framework* specifies that where government intervention is justified, regulation should be the minimum necessary to solve the problem. Intervention would usually only be justified if there is potential for significant, irreversible harm. Although the incidents that mandatory training is intended to prevent are infrequent, the potential harm is significant and irreversible (eg, serious injury or even death).

The proposed conflict management training directly targets the risk of harm. The introductory training covers a range of skills essential to working in a front-line security role that will complement the training in conflict management (eg, knowledge of when force can lawfully be used).

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Alternative options

Option 1 - Different competency standards for crowd controllers, personal guards and property guards

This option would involve tailoring the training requirements to the specific role. For example, training for door staff could focus on controlling access to premises and training for personal guards could focus on identifying threats and counter-surveillance. This approach would facilitate learning on-the-job and might be viewed by trainees and their employers as more beneficial to their career or business than basic training that is generic to all roles. However, this option is not preferred because it is not sufficiently targeted at the objective of introducing mandatory training, which is to address the risk of harm from physical conflict. Conflict can arise in all three roles, even though the circumstances, frequency and options for dealing with it may differ. Any role-specific training requirements would need to be in addition to the introductory and conflict management skills necessary for all roles in order to achieve the regulatory objective. This would increase compliance costs and require security personnel who are licensed to work in all three categories to comply with three sets of training requirements

Option 2 - Additional training in controlling entry and exit to premises, first aid and emergency management

This option builds on the preferred option by requiring additional training in controlling access to premises, first aid and responding to emergencies. Security personnel are often the first point of contact in an incident or emergency and members of the public expect them to respond appropriately. Training in screening entry (eg, checking proof of age identification in licensed premises) might improve the ability of businesses to comply with their obligations under sale of liquor legislation and avoid incidents caused by people who should not have been allowed into the premises.

This option is not preferred because it goes beyond what is necessary to address the risk of harm from physical conflict and would not be consistent with the principle in the *Government Policy Framework for Occupational Regulation* that government intervention should be the minimum necessary to address the risk. While more comprehensive training in a broader range of subject areas would clearly be beneficial to the industry and its clients, it is important to balance these benefits against the cost. Parts of the industry rely on low paid, casual and part-time staff. Setting the standard too high may lead to difficulty recruiting and retaining staff, particularly door staff in the hospitality industry. It might also create incentives for some businesses to avoid the Act's requirements by employing fewer or unlicensed security personnel, which could increase, rather than decrease, the risk of harm. It might also increase reliance on the Police to respond to security incidents.

Non-viable options

Restricting the training requirements to apply only to security personnel in a supervisory role or those working without supervision was not considered viable because conflict can sometimes arise without warning or in situations where the staff member cannot readily be observed (eg outside a busy bar).

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Introducing training requirements for other categories of licensed security personnel was not considered a viable option because there is insufficient evidence of a problem that needs addressing. For skilled roles such as a security technician, entry into the industry would require the person to demonstrate a certain level of competency. In light of this, the benefits do not outweigh the compliance costs.

Expected impact of the preferred option

Security industry

Individuals and businesses in the security industry will be affected by the proposed regulations. We estimate that approximately 20,000 individuals and businesses will be regulated under the Act once it is fully implemented and that over half of those people will fall into a category that will be subject to the training requirements.

Some large firms are registered and accredited to train and assess their staff against NZQA standards. Many security personnel already working in the industry have completed, or are currently undergoing, relevant in-house training offered through their employer and may already meet the required standard of competency for some of the unit standards, particularly the introductory training. This means they would only need to be assessed against the unit standards and may not have to complete any further training to reach that standard. In 2010, approximately 3,500 security personnel were enrolled in NZQA training through the ETITO. However, it is not clear how many of those people fall into categories which will be subject to the regulations.

People who are already licensed when the regulations take effect would be required to complete the training by the specified date or they risk losing their licence. The industry will be allowed at least six months to comply after the regulations have been made and announced. New entrants to the industry could apply for a temporary certificate of approval which allows them to work for three months while they train.

The cost of training and assessment is difficult to quantify as providers are free to set their own prices. The cost to firms who are registered and accredited to train and assess their staff will also vary depending on the size of the firm and how they choose to deliver and assess the training. Some employers might choose to seek accreditation to provide in-house training, while others might find it more cost effective for their staff to attend a short, intensive course at a private training establishment. We estimate that the cost is likely to be approximately \$300 per trainee on average. The cost would be lower for someone who is exempt from the introductory training (because they have previously achieved relevant unit standards) or who only needs to be assessed because they already have the necessary knowledge and skills.

The cost will be incurred by either the trainee or their employer, depending on what is agreed between the parties. Large security firms who already provide in-house training may cover all or most of the costs. Some employers will also need to absorb the cost of their employees taking time off work to complete the training. Individuals not currently working in the industry and individual licensees are likely to fund the training themselves.

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People who only enrol in the mandatory training would be ineligible for funding assistance because industry training funding is unavailable for programmes focussed solely on meeting regulatory requirements. However, there are incentives to exceed these requirements as trainees who enrol in a full security qualification through an agreement between their employer and ETITO would be eligible for a funding subsidy. The subsidy would reduce the cost to a level similar to that of the proposed mandatory training. However, completing a full qualification would be more time consuming.

The time commitment will vary depending on the individual's existing knowledge, experience and access to workplace training and mentoring. Submissions received during consultation indicated that the time commitment could range from 2-3 days to a maximum of 3 weeks. This is likely to vary significantly depending on how the programmes are structured and whether the trainee works while they train. For example, the Licence Controller Qualification for bar managers (which consists of approximately half the credits of the proposed training) can be delivered in an intensive course of 1-2 days. Firms who train their own staff might choose to do so over a longer period.

Introducing mandatory training will increase business costs for employers who choose to support their staff to complete the training and do not currently do so. It might also reduce the number of security personnel in the market, leading to increased wages. These costs might be passed on to clients. On balance, these additional costs are outweighed by the benefits of improved public safety and confidence in the security industry.

We expect that individuals and businesses working in the security industry will also benefit from the training, as it will improve their ability to protect their own safety and contribute towards raising standards in the industry. Benefits may include the opportunity for career progression and improved reputation for the industry.

Other individuals/organisations

Employers of crowd controllers who are not licensees (eg, bars who employ door staff) will also be affected by the proposed regulations. They will need check compliance with training requirements when recruiting door staff and comply with requirements to keep records of staff training.

Training providers will be able to take advantage of the increased demand for training from large numbers of security personnel. Increased demand for training might lead to large numbers of providers seeking accreditation which could put workload pressure on NZQA and the ETITO.

The workload of the Private Security Personnel Licensing Authority is likely to increase because of the need to check compliance when considering a licence application or if there is widespread non-compliance that generates complaints.

Government

The workload of the Complaints, Investigation and Prosecution Unit, Department of Internal Affairs, would increase if there is widespread non-compliance that generates complaints which need investigating.

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The Ministry of Justice provides administrative support to the Private Security Personnel Licensing Authority and will be affected by the increase in the Authority's workload.

It is expected that Police workload may reduce over time as a result of security personnel dealing with incidents effectively.

CONSULTATION

Industry representatives were consulted on three training options. Approximately half of the submissions supported the preferred option. The ETITO was consulted on the content of the standards and possible costs. The proposed regulations refer to unit standards that have been developed by ETITO in consultation with the security industry.

IMPLEMENTATION

The regulations will be enforced through the disciplinary regime, which could be triggered on the initiative of the Licensing Authority or through the formal complaints process. Non-compliance could lead to suspension or cancellation of a licence or certificate of approval, or refusal of a renewal application.

MONITORING, EVALUATION AND REVIEW

The effectiveness of the regulations will be monitored by keeping data on the number and nature of complaints about the conduct of security personnel and disciplinary action taken by the Licensing Authority. The Ministry will seek feedback from Police on the volume of callouts to violent incidents before and after the regulations take effect. The cost of the training across a range of providers will be also be monitored to ensure that the benefits of the regulatory requirements continue to outweigh the compliance costs.

When the regulations take effect, the public register maintained by the Licensing Authority will indicate whether a person has complied with the regulations, so there is an incentive for people to advise the Authority when they have completed their training and assessment. The register will be a useful tool for assessing the level of compliance. Compliance will become apparent at the beginning of the next five year licensing period, as applicants will be required to provide proof of their training with their application.