

EXPLANATORY STATEMENT

DEFENCE (CONTRACTED DEFENCE SECURITY GUARDS – TRAINING AND QUALIFICATION REQUIREMENTS) DETERMINATION 2013

Defence Act 1903

GENERAL SUMMARY

Introduction

The *Defence Legislation Amendment (Security of Defence Premises) Act 2011* (the Act) introduces powers that may be exercised by three identified classes of persons who will perform a security role at Defence Premises, namely contracted Defence security guards, Defence security screening employees and security authorised Defence Force members. Collectively these categories of persons are referred to as Defence security officials. This instrument deals with contracted Defence security guards (CDSG) a category of Defence security official; who are authorised to exercise the consensual identification, search and related powers under the Act.

Legal authority for instrument

Subsection 71B(4) of the Act provides that the Minister must, by legislative instrument, determine the training and qualification requirements for contracted Defence security guards.

Subsection 71F(1) of the Act provides that the Minister may, by writing, delegate the Minister's power under subsection 71B(4) to:

- (a) the Secretary; or
- (b) an APS employee who holds or performs the duties of an SES Band 3 position, or an equivalent or higher position, in the Department.

The Minister delegated this power for the training and qualification requirements for contracted Defence security guards to the Deputy Secretary Intelligence and Security, an SES Band 3 position, on 30 April 2012.

Reasons for making the instrument

This instrument will bring into effect an important safeguard associated with the exercise of powers under the Act. It will ensure that contracted Defence security guards exercise their powers appropriately and do not trespass unduly on personal rights and liberties while performing security functions on Defence premises.

Likely impact and effect

Visitors, contractors, ADF members and Defence employees may be subject to consensual identification and search actions on entry to, or exit from, Defence premises, or consensual identification actions at other locations on Defence premises by contracted Defence security guards. Under Defence security policy, persons with diplomatic credentials who are accompanied by a Defence Force member or Defence civilian employee are exempt from the statutory identification search and seizure regime. Civilian law enforcement officers (including Australian Customs and Border Protection Service Officers); emergency service personnel and other Commonwealth government officials (such as COMCARE inspectors) are also provided with a limited exemption under Departmental policy when they are undertaking their statutory functions on Defence premises.

The Department intends to implement a number of administrative measures to ensure that persons entering Defence premises are aware of the requirements of the identification search and seizure regime and the obligations and consequences arising from it.

Given the diverse nature and composition of Defence premises, the definition of which includes movable assets such as aircraft, vessels and vehicles, the selection and implementation of these measures will be tailored to the particular circumstances of each Defence premise. Measures will include:

- a) prominently displaying signs at the entrance to Defence premises notifying people that they, their carried items and vehicles may be subject to consensual and non-consensual searches;
- b) conducting a comprehensive awareness campaign, prior to the introduction of the Act's measures, to ensure all Defence personnel and contractors are aware of the Act's provisions and their rights and responsibilities in relation to consensual and non-consensual searches;
- c) incorporating appropriate advice on the Act's provisions in recruitment material for all advertised Defence vacancies and tenders to ensure prospective employees and contractors are aware of Defence's expectations and security requirements;
- d) addressing the Act's provisions during staff and contractor induction training and in regular, mandatory security awareness training; and
- e) requiring Defence Force members and Defence civilian employees who are hosting or escorting visitors on Defence premises to notify visitors of search requirements.

Consultation

The Office of Best Practice Regulation (OBPR) in the Department of Finance and Deregulation was consulted on the proposed legislative amendments and, on 19 Apr 2010, agreed that the amendments would have no to low regulatory impact on business and individuals and that no further regulatory impact analysis was required (OBPR Letter 11359 refers).

Defence gave a commitment to Parliament that the Australian Federal Police (AFP) would be consulted to assist in identifying the appropriate training and qualification requirements for contracted Defence security guards. Consultation with the AFP has been undertaken throughout the development of the training regime. The AFP has been represented at trials, training workshops and working groups.

Defence consulted union representatives on a number of occasions during the development of the Act and intends to provide further briefings through Defence's National Workplace Relations Committee as the statutory search regime is implemented.

Details of the instrument are outlined in Attachment 1.

The Act specifies no condition that must be met before the power to make the instrument may be exercised.

The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Act commenced on 12 October 2011

The instrument commences on the day after registration.

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SPECIFIC PROVISIONS

Item 5(1) Legislative authority

This item refers to subsection 71B(4) and provides the legislative authority to determine the training and qualification requirements for a contracted Defence security guard in a legislative instrument.

Item 5(2) Certificate II in Security Operations.

This item provides that a contracted Defence security guard must hold as a minimum a Certificate II in Security Operations (Certificate II) or another qualification that, in the Minister or their delegate's opinion is equivalent to this qualification. This provides flexibility should the Certificate II course be altered in the future.

The Certificate II in Security Operations is regarded as an appropriate minimum training requirement as it:

- a) is a recognised qualification under the Australian Qualification Training Framework;
- b) provides a range of core and elective units suited to Defence's requirements for security guarding services, including the expected breadth, depth and complexity of knowledge and skills of the individual in a defined workplace and team;
- c) is consistent with other Commonwealth requirements in security situations; and
- d) is the minimum qualification requirement for the award of an appropriate licence to operate as an unarmed security guard in some States and Territories.

A Training Needs Analysis (TNA) confirmed that completion of the Certificate II in Security Operations provided the necessary intellectual skills and procedural techniques to exercise the statutory powers available to contracted Defence security guards under the *Defence Act 1903*.

Item 5(3) Security licence

This item provides that a contracted Defence security guard must possess a current licence to operate as a security guard in the State or Territory in which they are, or may be, employed on Defence premises. This fulfils State and Territory legislative requirements for the licensing of private security guards.

Item 5(4) Competency training approved by the Minister or Delegate

The Certificate II in Security Operations comprises twelve units of competency comprising seven core units and at least five elective units.

To ensure that contracted Defence security guards undertake training in the areas most relevant to the exercise of their powers under the *Defence Act 1903*, they must complete training, approved by the Minister or their delegate designed to ensure competency in these key areas:

- Screen people. This training will prepare contracted Defence security guards to screen people and items for dangerous or prohibited items. It may involve training on the preparation and use of screening equipment, monitoring of people and alarms and carrying out searches of persons and their personal effects. It will also involve development of the knowledge of legal issues relevant to the rights and responsibilities of persons involved in search actions.
- Screen items. Contracted Defence security guards may use equipment to assist them undertake a search. Training in this area may include the ability to operate security screening equipment and accurately interpret images to detect prohibited and dangerous items.
- Control access to and exit from premises. The outcomes of this training will prepare contracted Defence security guards to monitor and manage the entry and exit of persons and vehicles from Defence premises. It includes the ability to manage people, inspect items and vehicles and manage vehicular traffic.
- Self Protection. The outcomes of this training will prepare contracted Defence security guards to use basic lawful defensive techniques to protect themselves or others in a security risk situation. The training includes the use of basic negotiation techniques to defuse conflict as well as the identification of potential risk factors that might impact on the safety and security of themselves and others and the implementation of appropriate response measures.

These competencies may be undertaken as part of the Certificate II in Security Operations and are not necessarily competencies that must be undertaken in addition to this qualification.

Item 5(5) Additional training approved by the Minister or Delegate.

This item provides that contracted Defence security guards undertake additional Defence specific training to develop their knowledge of the *Defence Act 1903* as well as other Commonwealth, State and Territory law relevant to the exercise of their powers.

Additional training will also cover Departmental policies, guidelines and procedures relating to the duties of contracted Defence security guards, the operation of protective security measures in Defence such as the security alert system and policing

arrangements as well as generalised information relating to security issues relevant to the Department.

Item 5(6) Refresher training

This item provides that contracted Defence security guards undertake training approved by the Minister or their delegate designed to maintain and update their skills and knowledge regarding the organisational policies, guidelines and procedures relating to the statutory search regime. This training is to be undertaken annually.

Item 5(7) First aid qualification

A first aid qualification is a requirement for a license to be a security guard in some States and Territories. The intention is for contracted Defence security guards to be able to administer basic first aid if required to do so as the result of an accident or injury during the exercise of their powers.

Item 5(8) Drivers licence

Current Departmental security policy requires security guards to hold a current drivers licence.

Item 5(9) Security clearance

Defence security policy mandates the security clearance requirements for security guards. This provides Defence with a level of assurance as to the probity and background of security guards.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the Instrument

The instrument identifies the training and qualification requirements for contracted Defence security guards; a category of Defence Security Official authorised to exercise the consensual identification, search and related powers under the *Defence Act 1903, Part VIA*.

Human rights implications

This instrument engages the following human rights:

- *the right to work* (article 6 of the International Covenant on Economic, Social and Cultural Rights) (ICESCR);
- *the right to just and favourable conditions of work, including safe and healthy working conditions* (article 7(b) of the ICESCR); and
- *the right to security of the person and freedom from arbitrary detention* (article 9 of the International Covenant on Civil and Political Rights).

Legitimate Objective: This instrument requires a person to meet a set of relevant training and qualification preconditions in order to be eligible for appointment as a contracted Defence security guard. It will ensure that contracted Defence security guards exercise their powers appropriately and do not trespass unduly on personal rights and liberties while performing security functions on Defence premises. As such it will limit the right to work by setting out preconditions on who can work as a contracted Defence security guard.

Reasonable, necessary and proportionate: Given the identification, search and related powers available to contracted Defence security guards, including the authority to restrain and detain persons under the Act, it is considered reasonable, necessary and proportionate to require contracted Defence security guards to meet specified training and qualification requirements prior to exercising these powers.

There are a number of safeguards in place in relation to the exercise of these powers, (for example strict liability offences where search powers are exercised without consent) which further demonstrates the need for contracted Defence security guards

to meet specified training and qualification requirements to exercise these powers as Defence Security Officials and to understand their obligations under the Act.

This instrument will promote the right to work, which includes access to technical and vocational guidance and training to achieve full and productive employment. The instrument also promotes the right to security of a person, which requires States to provide reasonable and appropriate measures to protect a person's physical security. It will also promote the rights to safe and healthy working conditions. This instrument promotes these rights by ensuring that contracted Defence security guards meet rigorous and comprehensive training and qualification requirements and are prepared to deal with a range of situations that may arise during the exercise of their duties. Included in this is a consideration of the safety of the contracted Defence security guard and others, in the event of a security incident.

Conclusion

This instrument is compatible with human rights because it advances the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Stephen Meekin, AM
Deputy Secretary Intelligence and Security
Department of Defence