

## Regulatory Impact Statement

### AGENCY DISCLOSURE STATEMENT

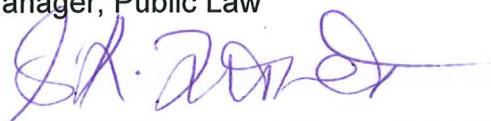
This Regulatory Impact Statement has been prepared by the Ministry of Justice (the Ministry). The Private Security Personnel and Private Investigators Act 2010 comes into force on 1 April 2011. The following regulations are needed to implement it:

- licensing processes to allow the Act to operate as intended
- fees to recover the cost of the regime

The guidelines of the Controller and Office of the Auditor General (OAG) and the Treasury were taken into account in setting the fees.

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Date:

3/3/11

### EXECUTIVE SUMMARY

The Private Security Personnel and Private Investigators Act 2010 modernises the regulation of the private security industry. The objective is to ensure that security personnel are suitably qualified and do not behave in ways that are contrary to the public interest. This will be achieved by means of a licensing regime which screens out unsuitable people, such as those with serious convictions and allows training requirements to be imposed. The Act comes into force on 1 April 2011 and regulations are needed to implement it. The proposals aim to minimise the costs of complying with the Act, while still achieving its objective.

The Act leaves the detail of the licensing process to regulations and authorises fees to recover the cost of establishing, administering and enforcing the regime. Private security businesses require a licence and individuals who work for licence holders (or as crowd controllers) require a certificate of approval. The preferred option is to prescribe the manner in which applications must be made to the Private Security Personnel Licensing Authority (Licensing Authority), details of how notice of a licence application must be published, forms, photograph specifications, record-keeping requirements and fees. Two variations of the preferred option were considered.

### ADEQUACY STATEMENT

The Internal Ministry of Justice Quality Assurance Panel has reviewed the attached Regulatory Impact Statement prepared and considers that it meets the quality assurance criteria.

### PROBLEM AND STATUS QUO

Licensing regulations are necessary to allow the Act to operate as intended. The Act leaves much of the detail of the application process and other procedural matters to regulations.

For example, the Act sets out the circumstances in which a person can be appointed without a certificate of approval to address an immediate staff shortage and imposes a requirement to notify the Licensing Authority, but leaves the detail of the notification process to regulations. The fees regulations are necessary to recover the costs of establishing, administering and enforcing the licensing regime.

## **OBJECTIVE**

The objectives of the proposed regulations are to:

- prescribe processes to assist the Licensing Authority in fulfilling its functions under the Act
- recover the full cost of administering and enforcing the licensing regime, including implementation costs

The licensing and fees regulations must be in place on 1 April 2011 when the Act commences as a matter of law.

## **LICENSING PROCESSES**

The preferred option is to make regulations:

- requiring applications for a licence or certificate of approval to be submitted to the Licensing Authority in writing
- specifying how licence applicants must publish notice of their intent to make an application as required by the Act (ie provide it to the Licensing Authority for publication on its website) and the content of that notice
- requiring photographs that must be provided with an application to meet certain quality specifications
- specifying the information that must be included on a licence or certificate of approval issued by the Licensing Authority (eg, name, expiry date and any conditions)
- specifying how a person must notify the Licensing Authority if they employ or engage a person under the emergency appointment procedure set out in the Act and the information that must be provided (eg name and date of birth of the person being appointed)
- requiring licensees, certificate holders and anyone who employs crowd controllers to keep records (eg employment and training details)
- specifying the information that must be recorded on the register of licensees and certificate holders which the Licensing Authority is required to maintain
- setting fees
- requiring people who have been issued with a licence or certificate to collect it from a designated location and provide photographic evidence of their identity.

The status quo is not a viable option because the Act leaves the detail of the licensing process and other procedural matters to regulations. This detail is needed to allow the Act to operate as intended. For the same reason, there are no non-regulatory options. Two variations of the preferred option were considered.

*Option 1 - Publishing notice of a licence application in a newspaper*

The Act requires licence applicants to publish notice of their intention to make an application. This allows members of the public the opportunity to object to the application. Currently, a similar notice must be published twice in a newspaper. Continuing this approach was considered because it is a common way to notify the public of an application and has the advantage of continuity as current licence holders are familiar with the process. However, this requirement currently costs licence applicants approximately \$200 - \$500 per year. The Ministry's records indicate that less than one percent of licence applications result in public objections. The preferred option would allow applicants to meet the Act's requirement by providing a notice to the Licensing Authority for publication on its website, at no cost.

*Option 2 - Authentication of photographs provided with application*

The Act requires applications to be accompanied by a photograph, which will be displayed on an individual's licence or certificate of approval and identification badge. Currently, the photograph must be witnessed by a Justice of the Peace, solicitor or other person authorised to take statutory declarations. This provides some protection against a person using someone else's details to obtain a licence or certificate. However, the time and cost involved in verifying the witnessed photographs of several thousand applicants would be significant. This requirement would also detract from the efficiency and cost savings of offering an online application service. It is instead proposed that successful applicants be required to collect their licence or certificate in person from a local outlet and provide photographic identification. This would impose travel costs for some applicants. In most cases this would incur less cost and inconvenience than obtaining a witnessed photograph. On balance, the preferred option provides a more efficient and cost-effective means of checking a person's identity than a requirement to provide a witnessed photograph with an application.

*Expected impact of preferred option*

Individuals and businesses in the private security industry will be subject to the proposed licensing regulations. There are approximately 12,500 existing licence and certificate holders. It is estimated that when the Act commences there will be approximately 9,000 additional individuals (and possibly some businesses) who will become subject to the licensing regime. This is because two new categories of security personnel (crowd controllers and personal guards) will be regulated for the first time. Businesses which employ crowd controllers but who do not require a licence will be subject to the record-keeping requirements.

Some requirements will impose costs on licensees and certificate holders eg, learning the new requirements, keeping records and providing information to the Licensing Authority. These costs are not expected to be onerous and are necessary for the Licensing Authority and enforcement unit to perform their licensing, compliance and enforcement roles effectively.

Keeping records of employees is a necessary part of doing business so the additional information specific to this regime eg, keeping records of certificate holders' compliance with training requirements, is not expected to be onerous. Individual certificate holders would be required to keep records of their training and assessment. It will be necessary for individuals to keep those records anyway when they apply for a licence or certificate so they can provide evidence that they have complied with the regulations.

People who have been granted a licence or certificate will be required to collect it from a local outlet, which may incur travel costs. However, this is necessary in order to verify their identity before issuing a licence or certificate. It also avoids the need to incur costs associated with obtaining a witnessed photograph before lodging their application. The Ministry of Justice intends to engage an external provider to produce and distribute licences and certificates. One of the selection criteria is that the provider must have geographical coverage throughout New Zealand towns and cities to enable an individual to visit a location that is convenient to them.

## FEES

Regulations prescribing licence fees are necessary to recover the costs of establishing, administering and enforcing the licensing regime. Currently, licences and certificates of approval are renewed annually. Under the Act, licences and certificates will be valid for five years. Licence holders will be required to submit an annual return updating certain details about their business and each of the certificate holders who work for them.

### *Preferred option*

The preferred option is to make regulations setting fees at a level that achieves full cost recovery. The proposed fees are similar to the indicative fees that were included in the explanatory note to the Bill when it was introduced in 2008. The most significant difference is that a lower fee is proposed for online applications, which reflects cost savings from more efficient processing. Other differences are as follows:

- the indicative fee for a licence or certificate application included the issue of a temporary certificate of approval (which an applicant may request to allow them to work while their application is being processed). Under the preferred option, a separate fee would be charged for this additional benefit.
- the indicative fee for submitting an annual return was calculated at \$30 per employee, with a minimum fee of \$90 and maximum of \$600. Under the preferred option there would be no minimum annual fee.

**Table A** compares the proposed fees with current fees and the indicative fees that were made publicly available in 2008 when the Bill was introduced.

The preferred option consists of an application fee, which must be paid upfront to cover the full five year licensing period, and an annual return fee for licensees who employ or engage certificate holders. Certificate holders are not required by the Act to provide annual returns. The annual return fee would be calculated on the basis of the number of certificate holders who work for them. This fee would cover the cost of processing annual returns which must include information about each certificate holder.



The other fees proposed are set on a user-pays basis and reflect the additional cost of providing the service (eg replacement of a lost licence). Minor licensing activities such as removing a class of business from a licence would not attract a fee because volumes are expected to be low and a fee might provide a disincentive to provide the Licensing Authority with updated details.

**TABLE A**

Type of fee	Current fee under 1974 Act	2008 indicative fees	Proposed fee (including GST)
Licence application (individual)	\$100 application fee plus \$20 for issue of licence (total \$122.66 including GST)  Total over 5 years = \$613	\$600	\$600 (\$510 online)  Note: It is proposed that there will be no longer be any newspaper advertising costs (currently approximately \$200 - \$500 per annum) in addition to the licence fee
Licence application (company)	100 application fee plus \$20 for issue of licence  (total \$122.66 incl GST)  Total over 5 years = \$613	\$725	\$725 (\$616 online)  Notes: <ul style="list-style-type: none"> <li>It is proposed that there will be no longer be any newspaper advertising costs (currently approximately \$200 - \$500 per annum) in addition to the licence fee</li> <li>The fee for a company licence is higher than for an individual licence because the suitability of every company officer will be assessed</li> </ul>
Approval to add a new officer of a licensed company	No fee	\$75	\$75 (\$64 online)
Licence amendment	\$0-\$120, depending on change	\$75	\$75 (\$64 online) for adding a class of business
Annual return	No fee (currently licences are renewed annually so annual returns are not required)	\$30 per employee (minimum \$90, maximum \$600)	\$30 per certificate holder (no minimum fee, maximum \$600)  (\$26 per certificate holder online, to a maximum of \$510)
Certificate of approval	\$60 plus \$20 for issue of certificate (\$60)	\$200	\$200 (\$170 online)

Type of fee	Current fee under 1974 Act	2008 indicative fees	Proposed fee (including GST)
application	annual renewal) (\$81.77 incl GST)  Total over 5 years = \$408.85		Note: This is a new fee for two new categories of security personnel (crowd controllers and personal guards) who are not currently regulated.
Licence amendment	\$0-\$120 depending on nature of change	\$75	\$75 (\$64 online) for adding a class of business
Temporary certificate of approval	No fee	No fee	\$20 (\$17 online)
Replacement of lost licence or certificate approval	\$20 (\$20.44 incl GST)	\$45	\$45 (\$38 online)

Three alternative fee charging options were considered:

**Option 1** - minimum \$90 fee for annual returns (as per 2008 indicative fees)

**Option 2** - remove (or raise) the capped per employee fee of \$600 for annual returns;

**Option 3** – no charge for temporary certificate of approval (as per 2008 indicative fees)

All options, including the preferred option, share the following features:

- a lower fee for online applications (85% of paper applications), which reflects the significantly lower cost in processing them
- annual fees for licensees are calculated on the basis of the number of certificate holders who work for them, which reflects the cost of processing annual returns in respect of each certificate holder and the size of the business
- no charge for minor or low cost transactions such as updating details on a licence or certificate, which avoids creating a disincentive to notify changes to the Licensing Authority.

The status quo is not a viable option because charging fees is necessary to recover the costs of the regime. There are no non-regulatory options.

## *Criteria for assessing options*

All options were considered against the following criteria:

- achieving full cost recovery, including the ability to produce total revenue of approximately \$8.3m over the 5 year licensing period
- comparison with current fees
- comparison with the indicative fees in the explanatory note to the Bill, which have been publicly available since 2008 when it was introduced
- administrative and cost efficiency

## ***Analysis of alternative options***

### *Option 1 - Minimum \$90 fee for annual returns (as per 2008 indicative fees)*

Under this option, licensees who employ only one or two certificate holders would pay the same as those with three employees. The advantage of this option is that it would generate significantly more revenue because of the large pool of licensees of that size in the industry. However, this option is not preferred because the benefits of increasing revenue from the annual fee are outweighed by the disproportionate cost burden on small businesses.

### *Option 2 – Remove or raise the capped fee for annual returns*

Under this option, large licence holders with over 20 employees would bear most of the burden for annual fees. The advantage of this approach is that the fees are better linked to the size of a business and its ability to absorb costs. However, this option is not preferred because it would increase costs for large businesses by an unacceptable percentage when compared to the status quo. For example, a company with 100 employees currently pays approximately \$600 over five years (plus advertising costs of approximately \$1000-\$2,500). Under the preferred option, with a capped annual fee of \$600, that business would pay \$3,125 (ie, a licence fee of \$725 plus \$600 per year for the remaining four years). If the capped fee was \$1000, it would pay \$4,725 and if there was no cap at all it would pay \$12,725.

### *Option 3 – no charge for temporary certificate of approval (as per 2008 indicative fees)*

An applicant for a licence or certificate of approval may also apply for a temporary certificate of approval to allow them to work in the industry while their application is being processed. Under this option, there would be no extra cost for this service. The advantage of this approach is that more people are likely to apply for temporary certificates, which allows the Licensing Authority to keep a record of who is working in the industry. It might also reduce the risk of people working unlawfully. The main disadvantage of this approach from a cost recovery perspective is that people who do not need a temporary certificate of approval (eg because they have submitted their application in time for it to be processed) will be subsidising others who receive the benefit of that service. Not charging a fee would provide an incentive for more applicants to request a temporary certificate, whether they are likely to need one or not, which would significantly increase processing costs. On balance, charging a separate fee was considered more appropriate because it better reflects the purpose of a temporary certificate of approval and the cost of providing that service.

The following options were identified but not considered viable:

- Two stage payment process whereby an applicant pays an application fee (to cover processing costs) and then, if the application is approved, a separate fee for issue of the five year licence or certificate. Although this approach seems fairer for unsuccessful applicants who will not receive the benefit of a licence or certificate for five years, putting systems in place to implement it would significantly increase the costs of the licensing regime. Those costs would then need to be recovered elsewhere. This would be inefficient and unfairly increase the costs for successful applicants because it is expected that only a small number of ineligible applications will be received. The eligibility criteria are clearly specified in the Act and will be communicated to applicants.
- Flat annual return fee for licence holders, regardless of the size of the employer. This approach was not considered viable because it would unfairly disadvantage small businesses and does not reflect the additional workload associated with processing annual returns of licensees who employ large numbers of certificate holders (updated details for each certificate holder must be provided).
- Risk-based fees, whereby high risk categories of security personnel (based on the likely need for enforcement activity) pay more than low risk categories. This approach was considered inappropriate because some of the higher risk security roles such as crowd control are largely made up of personnel in low paying positions and increasing the fees is likely to impose a significant barrier to entry. Unlike more comprehensive regulatory regimes, a risk-based approach is not well suited to this regime because a large proportion of the costs to be recovered are associated with processing applications, which is the same for each category.

Although all options have advantages and disadvantages, the preferred option achieves the most acceptable balance between generating enough revenue to achieve full cost recovery and ensuring that no one sector of the industry is unjustifiably disadvantaged.

#### *Expected impact of the preferred option*

When considered over the five year licensing period, fees would halve for certificate holders, stay approximately the same for individual licensees without any employees and increase for licensees who employ or engage certificate holders. The increase in fees for some licensees will be mitigated by the change to a five year licensing period and proposed changes to advertising requirements, which is expected to save each licence applicant approximately \$200 - \$500 per annum.

Two categories of security personnel (crowd controllers and personal guards) which will be regulated for the first time will be the most affected as they do not currently have to pay fees. Under the preferred option, some temporary and casual personnel who do not wish to work during the full five year period would have to pay up to \$200 upfront instead of \$80 per year as is the case currently. This will increase costs for those who only wish to work over a one year period, but is more cost effective for those who remain in the industry for the full five year licensing period.



## **CONSULTATION**

Due to time constraints, there was no consultation on the proposed licensing and fees regulations. The licensing regulations are largely technical and operational. The proposed fees are similar to the indicative fees that were made publicly available when the Bill was introduced in 2008.

DIA, Police, MSD, DoL, Treasury and MED were consulted on the proposal. No significant concerns were raised.

## **IMPLEMENTATION**

The Ministry will minimise regulatory costs by providing information on the new requirements to current licensees, certificate holders and potential applicants and encouraging the use of online applications (which will be simpler and cheaper to submit). Compliance will be enforced through the disciplinary regime, which could be triggered through the complaints process or by the Licensing Authority. Non-compliance could lead to suspension or cancellation of a licence or certificate, or refusal of an application.

## **MONITORING, EVALUATION AND REVIEW**

The regulations will be monitored by keeping data on complaints, disciplinary action, and feedback from the enforcement unit in the Department of Internal Affairs and Police. Cost recovery through fees will be monitored by means of a memorandum account. If necessary, the fees will be reviewed.

