



**Australian Security Industry
Association Limited**

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ASIAL Submission

Victorian Law Reform Commission

Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries

Introduction

The Australian Security Industry Association Limited (ASIAL) welcomes the opportunity to provide a response to the Victorian Law Reform Commission (VLRC) 'Consultation Paper' regarding the Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries.

ASIAL is the peak national body for the security industry representing 2,750 member organisations across Australia. ASIAL is a Registered Organisation of Employers under the *Fair Work (Registered Organisations) Act 2009*, an Accredited Cabling Registrar under the Australian Communications Media Authority's *Cabling Provider Rules* and an Approved Security Industry Organisation within the legislative framework in the ACT, Victoria and Queensland.

As a national association many of our members operate across multiple jurisdictions in a complex model of service delivery involving varying degrees of security and risk levels. Given the many complexities of delivering a security service security providers develop a close and confidential relationship with clients, one based on trust.

The security industry is highly regulated with many activities subject to probity assessments for individual licence holders and organisation representatives to obtain security licence and/or registration. Regulation of a security activity is on state by state basis, with some variations between jurisdictions.

ASIAL is supportive of a regulated framework for the security industry, preferably one that is based on a nationally uniform and consistent approach to ensure that 'jurisdiction shopping' does not occur.

ASIAL encourages Regulators to actively engage with industry through a co-regulatory approach to encourage greater information sharing and industry compliance.

In response to the VLRC Consultation Paper, ASIAL conducted a member survey reflecting the areas covered in the consultation paper. Based on the responses received it is of note that there is the perception that the industry is or is vulnerable to infiltration by organised crime groups with some being aware of such infiltration. Potential infiltration was identified via security guards, crowd controllers, and bodyguards. Another area of infiltration identified was through organisational management and investors. A third of respondents considered the licensing regime a positive barrier, whilst all respondents supported more effective compliance monitoring, the imposition of criminal sanctions against organisations and the strengthening of probity and reference checking.





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Specific Response to Consultation Paper Questions

- 1. What changes or additions would you make to the information presented in Table 1 (pages 23–26 of the consultation paper) and Table 2 (pages 31–32 of the consultation paper) regarding the purposes of infiltration? You may wish to comment on occupations or industries that are not listed in Tables 1 or 2.*

ASIAL Comment:

Courier organisations are currently able to transport cash and valuables without a security licence.

ASIAL's position is that any organisation contracted to transport cash and valuables that does so on the basis of providing some form of 'protection or guarding' or in simple terms 'keeping safe' the cash/valuables being transported, should be required to hold a security licence and use vehicles fitted out with the appropriate security equipment and subject to appropriate risk assessments.

Allowing courier companies to transport cash for clients without the need to hold a security licence raises significant safety and probity concerns. It also creates an environment in which crime groups could operate legitimate businesses to launder money.

ASIAL has flagged this issue with state and national regulators, but to date no action has been taken.

- 2. Is the draft model for assessing the risk of infiltration (pages 32–37) a helpful way to assess the risk of organised crime group infiltration of lawful occupations and industries?*

ASIAL Comment:

The draft risk model based on situational crime prevention (SCP) is only one aspect that should be considered in recognising avenues of opportunity for criminal infiltration into industry sectors. An over reliance on a SCP model can mean it becomes an academic and clinical model that may fail to recognise and appreciate other industry intelligence. Such intelligence can include the identification of 'grooming' strategies undertaken by criminal elements and their investment in future opportunities.

- 3. What changes or additions would you make to the draft model for assessing the risk of infiltration (pages 32–37 of the consultation paper)?*

ASIAL Comment:

A risk management model incorporating and utilising the intelligence available from industry would enhance the identification of potential criminal infiltration of an industry sector. It could be further enhanced if Regulators formally established communication relationships with recognised Industry Associations, through for example a Memorandum of Understanding.



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4. Having regard to the regulatory tools described in Chapter 4, which regulatory tools are, or might be, useful in addressing each of the risks identified in the draft model for assessing the risk of infiltration (pages 32–37 of the consultation paper)?

ASIAL Comment:

The security industry would have a general risk profile as considered and interpreted against AS/NZS ISO 31000,¹ where the infiltration of organised crime within the security industry would be possible or likely to occur at some time with the consequences being significant although not permanent. Naturally the impact of such infiltration may have a greater risk on organisations, assets and personnel being serviced or associated with the delivery of security services. This impact may be reflective of potential events linked with critical infrastructure, government premises, sporting, gaming and entertainment events and financial institutions.

Due to the unique nature of the security industry and the variety of service delivery models and the intimate relationship security providers develop with clients and the availability and access to sensitive client information and assets, no one risk model could, would or should cover the security industry. Of the suggested risks the security industry can reflect part or all of the suggested risk infiltrations including, access to inputs for the commission of crime, distribution of illicit goods and services, obfuscation of criminal conduct, exploitation of competitive advantage and the concealment or laundering of the proceeds of crime.

Victoria's security industry licensing regime should remain and be strengthened by an improved legislated relationship with industry stakeholders and in particular the peak industry body. With suitable amendments the Regulator would be empowered to deal with the identified risks.

The strengthening of legislation should include the regulation of 'in-house' security where such operatives can exist without holding the appropriate security licence and operate without the required training and avoid probity requirements.

To encourage regulatory compliance and reduce red tape, legislation could be streamlined to combine the licence and registration process whereby differences could be recognised by categories instead of separate applications, process and cost. The current process creates unnecessary duplication and confusion, leading to avoidance and non compliance.

5. For the purpose of preventing organised crime group infiltration of lawful occupations and industries, what are the advantages and disadvantages of regulation by:

(a) a traditional occupation or industry regulator such as the Business Licensing Authority

(b) Victoria Police

(c) both a traditional regulator and Victoria Police?

ASIAL Comment:

The regulation the security industry across Australia varies from state to state, agencies responsible for regulation include Consumer Affairs and the Office of Fair Trading.

¹ AS/NZS ISO 31000:2009 – Standards - Risk Management and Guidelines



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ASIAL does not have a preference for which government agency regulates the industry, so long as whoever regulates the industry is genuinely committed to engaging with the industry and to proactively enforcing compliance with legislative requirements.

ASIAL's experience (regardless of who regulates the industry) is that an inadequate portion of the large amount of revenue generated through security licence fees is actually spent on compliance and enforcement.

6. If a regulator is required to prevent the infiltration of organised crime groups into an occupation or industry, how does this affect, or how might this affect, the pursuit of its other regulatory purposes and objects (whether positively or negatively)?

ASIAL Comment:

With Police being the Victorian security industry Regulator, ASIAL has not experienced difficulty in the regulator fulfilling their legislative function and general policing role in preventing infiltration of organised crime within society.

ASIAL is not supportive of a Regulatory function where the prevention of criminal infiltration and activity forms part of that function and where the cost is recovered from industry through a cost recovery licensing model. Preventing the infiltration of organised crime into an occupation or industry is a societal cost not industry alone.

7. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate entry into an occupation or industry (for example, by requiring would-be entrants to obtain a licence)?

ASIAL Comment:

The security industry is appropriately regulated and provides suitable probity assessments of entrants into the security industry. Other comments within this submission identify areas where legislative changes could improve the existing system.

In Victoria, the ability for an individual (appropriately licensed and able to work as an independent contractor for an organisation under an ABN arrangement) leaves the individual open to influence and abuse from unscrupulous operators including the infiltration of organised crime groups.

8. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of any of the following:

- (a) positive licensing regimes*
- (b) negative licensing regimes*
- (c) registration schemes*
- (d) rules relating to the effective control of a business*
- (e) rules relating to who may be employed in a business*



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(f) rules relating to re-entry

(g) other entry-regulation tools that you would like to comment on?

Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.

ASIAL Comment:

The security industry is subjected to a Regulatory cost recovery model. The current licensing and registration regime in Victoria should be combined to reduce the cost impact on security business and individuals who require both a licence and registration for the security activities in which they work.

Any additional costs relating to strategies to prevent the infiltration of organised crime groups into lawful occupations and industries should not be a burden on the industry.

9. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of group-based licence exclusions?

ASIAL Comment:

The regulatory framework surrounding security licensing and regulation has minimal exclusions. If an individual and organisation undertakes a security activity, they should be subject to the regulatory regime including the legislated probity requirements.

ASIAL has concerns regarding the security activities undertaken by sectors such as information technology, facilities management, couriers carrying cash/valuables and electrical industries where individuals and organisations provide security activities without a licence or registration and where no probity is undertaken. The opportunity for infiltration by organised crime groups in those sectors continues without any vetting.

10. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to monitor an occupation or industry?

ASIAL Comment:

ASIAL supports the continual monitoring of all licensed and registered personnel in the security industry. This is the current practice in Victoria and identifies a person coming to the attention of Police or being charged with an offence, to be 'flagged' with the Regulator. The Regulator has the option to investigate the situation and/or commence a show cause process.

Positive action by the Regulator includes site-based inspections. These inspections should remain and be expanded to include industry sectors where the organisation undertakes a security activity without the appropriate licence.

11. When monitoring an occupation or industry in order to prevent or detect the infiltration of organised crime groups, what are the costs and benefits of any of the following:

(a) short licence periods/regular licence renewals



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(b) a complaints-based model versus an inspection-based model

(c) investigative powers (or particular investigative powers)

(d) prohibited practices

(e) record-keeping obligations

(f) continuous disclosure obligations

(g) other monitoring tools that you would like to comment on?

Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.

ASIAL Comment:

The Victorian security industry Regulator currently undertakes and provides many of the areas identified in question 11 on a cost recovery model. Continuous monitoring of individual licence holders strengthens the continuous disclosure requirement. Licence duration of 3 years is a suitable entry duration although the cost is significant.

Subcontractor reporting and record keeping could be introduced to manage and identify inappropriate relationships and business conduct that may enable the infiltration of organised crime groups. Any such requirement needs to be mindful of the administrative cost burden placed on organisations.

12. What are the most useful ways of detecting people (particularly organised crime groups) who are operating in a lawful occupation or industry without the required authorisation (such as a licence)?

ASIAL Comment:

Within the security industry any unlicensed activity will have the propensity to encourage the infiltration of organised crime groups.

ASIAL supports the continuation of a positive regulated licensing regime. Detection of people or organisations operating without a licence, whilst undertaking a security activity, should be encouraged by the reporting of such incidents /events to the Regulator for positive follow up and action.

ASIAL currently invests in advertising and industry promotion to encourage people only to use appropriately licensed organisations and personnel. The Regulator could actively engage in a campaign to promote awareness within the community to only use appropriately licensed organisations and individuals.

13. Which enforcement measures are useful, or might be useful, in preventing organised crime group infiltration of lawful occupations and industries?

ASIAL Comment:

The most effective tool in preventing organised crime is a strongly regulated environment supported by communication, knowledge and situational understanding. This includes appropriate



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intelligence being provided by industry and all stakeholders in an environment of trust and cooperation.

14. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate the exit of people from an occupation or industry? Which tools are, or might be, useful for this purpose?

ASIAL Comment:

The implementation of exit interviews for the purposes of the identification of criminal organisation infiltration would not be the most appropriate use of available resources. As indicated it would be more appropriate to engage with industry and stakeholders with intelligence gathering and the appropriate response to the information collected.

15. Are there any problems with current information-sharing arrangements? If so, how might these problems be overcome? Information-sharing arrangements can refer to information sharing between regulators and Victoria Police, between different Victorian regulators, between Victorian and interstate regulators, and between any other agencies that hold relevant information.

ASIAL Comment:

We understand that Regulators have information sharing arrangements in place with other jurisdictional regulators regarding legislative and licensing matters however, we are not aware of what arrangements are in place between Regulators regarding the sharing of criminal intelligence.

Under the current state based licensing system there seems to be a complete lack of sharing of information. For example licence information such as fingerprints, criminal history and family member details are unable to be shared between states, with a new application required to be submitted in each state. A uniform and consistent national licence would address this.

16. Please comment on the extent to which regulatory tools that may be used to prevent the infiltration of organised crime groups into lawful occupations and industries may:
(a) insufficiently protect the rights of people affected by decisions of the regulator
(b) insufficiently protect the rights of any other stakeholder
(c) impose additional burdens on regulators, courts and/or tribunals in relation to the provision of reasons for decisions and opportunities for review.

ASIAL Comment:

In general a legislative framework that respects the rights of individuals and provides for a review of Regulator decisions exists within the security industry.

The industry recognises the need for legislative provisions that exist to protect Police criminal intelligence from being revealed at or upon a legislative review process. The industry expects Regulators to have access to and use Regulatory tools to manage criminal intelligence and



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criminal infiltration including the broad legislative tools such as control orders, forfeiture and money laundering provisions.

17. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries:

(a) What issues are, or might be, better dealt with through legal responses other than occupation/industry-based regulatory regimes (including but not limited to the 'other legal responses' described at pages 66 to 68 of the consultation paper)?

(b) What issues are, or might be, better dealt with through occupation/industry-based regulatory regimes rather than other legal responses?

ASIAL Comment:

It is considered that the legislative model for security licensing provides suitable barriers for entry and empowers the Regulator to appropriately manage and enforce the provisions within the Private Security Act and Regulations.

As previously indicated no one model suits all in preventing the infiltration of organised crime groups into lawful occupations and industries. It is appropriate that the Regulators are encouraged to use and access all legitimate legislative power and authority to prevent and deal with infiltrations as they are identified. This includes the cooperation with other law enforcement agencies.

In addition Regulators and other law enforcement agencies should be encouraged to establish 'intelligence' communication strategies with industry stakeholders to identify and prevent the infiltration of organised crime groups into lawful occupations and industries.

Submission Status

ASIAL provides permission for the submission and name to be included on the VLRC website.

Conclusion

It is ASIAL's view that a uniform and consistent national approach is required to prevent the infiltration of organised crime into lawful occupations, such as the security industry. A vital component of such an approach would be to ensure that sufficient resources are allocated to ensure that there is a robust and effective compliance and enforcement regime put in place.

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