

Private Security Regulations 2016

Regulatory Impact Statement



Contents

1	Executive Summary	6
1.1	Introduction.....	6
1.2	Context.....	6
1.3	Overview of the legislative and regulatory framework.....	6
1.3.1	Private Security Act 2004.....	6
1.3.2	Private Security Regulations 2005.....	7
1.4	Nature and extent of the problem.....	7
1.5	The regulated community.....	8
1.6	Objectives of the proposed regulations.....	8
1.7	Options.....	8
1.8	Options analysis.....	9
1.9	Fees analysis.....	9
1.10	Evaluation.....	12
1.11	Consultation on this RIS.....	12
2	Introduction	14
2.1	Context.....	14
2.2	The Private Security sector in Australia and Victoria.....	14
2.3	Overview of the legislative and regulatory framework.....	15
2.3.1	Private Security Act 2004.....	15
2.3.2	Private Security Regulations 2005.....	16
2.3.3	COAG Agreement.....	16
2.3.4	Requirements for a Regulatory Impact Statement.....	17
3	Nature and extent of the problem	18
3.1	Context for the Regulations: the broad problem that the regulatory framework seeks to address and the operations of the Act.....	18
3.1.1	Scope of the private security industry.....	18
3.1.2	Underlying problem.....	19
3.1.3	Requirements of the Act.....	24
3.2	Residual problems: Issues that could be addressed through remaking the Regulations.....	25
3.2.1	Applications: The documentation of the licence/registration application procedures would not be prescribed.....	26
3.2.2	Exemptions: Exemptions from licensing or registration for certain people would cease.....	29
3.2.3	Definitions of security equipment: Registration requirements might need to be expanded to encompass currently unregulated activities.....	31
3.2.4	Licence/registration holder record keeping: Additional record-keeping obligations would not be prescribed.....	32
3.2.5	Other matters covered by the Regulations.....	34
3.2.6	Effectiveness of the Regulations in addressing these problems.....	37
4	The regulated community	41
4.1	Scale of the regulated community.....	41
4.2	Number of new applications (2005 to 2015).....	41
4.3	Number of renewal applications (2005 to 2015).....	42
4.4	Applications to vary an activity or condition (2005 to 2015).....	43
4.5	Number of cancelled applications (2005-15).....	44
4.6	Victoria Police Licensing and Regulation Division activity.....	44

4.6.1	Regulatory approach of Victoria Police	44
4.6.2	Enforcement and compliance activity	45
4.6.3	Changes in approach in the past 10 years	45
4.6.4	Prospective changes in approach over the next 10 years.....	46
4.7	Jurisdictional comparison	46
4.7.1	Coverage	46
5	Objectives of proposed regulations.....	47
5.1	Objectives of the Private Security Act 2004	47
5.2	Objectives of the Private Security Regulations 2005	47
6	Options.....	48
6.1	Broad alternative approaches.....	48
6.2	Regulatory options considered within the preferred regulatory approach.....	48
6.2.1	Reduce the number of record keeping particulars required of industry	51
6.2.2	Change the application system to introduce incentives where industry participants demonstrate compliance.....	52
7	Options analysis – assessing the costs and benefits.....	53
7.1	Multi-criteria analysis	53
7.2	Base Case	54
7.2.1	Base case assessment.....	54
7.3	Option 1 – Continuing the current Regulations.....	54
7.4	Option 2 – Continuing the current Regulations, but reducing the record keeping requirements.....	57
7.5	Option 3 – Continuing the current Regulations, but changing the application system to introduce incentives where industry participants demonstrate compliance	58
7.6	Overall options assessment.....	60
8	Fee analysis.....	61
8.1	Cost recovery framework.....	61
8.1.2	Appropriateness of the current fee levels	64
8.2	Estimating the efficient cost base to be recovered	64
8.2.1	Costs incurred across Victoria Police and associated activities.....	65
8.3	Current fees and revenue	71
8.4	Level of cost recovery	72
8.5	Objectives	72
8.6	Fee options	73
8.6.1	Fee Option 1 - Retain current fee structure (full cost recovery)	74
8.6.2	Fee Option 2 – Modified fee structure (full cost recovery).....	75
8.6.3	Fee option 3 – Introduce incentives where industry participants demonstrate compliance	76
8.6.4	Summary of fee options.....	78
8.7	Multi-criteria analysis	79
8.7.1	Base case	79
8.7.2	Fee Option 1 – Retain current fee structure (full cost recovery).....	80
8.7.3	Fee Option 2 – Modified fee structure (full cost recovery).....	81
8.7.4	Fee Option 3 – Introduce incentives where industry participants demonstrate compliance	82
8.8	Preferred option	84
9	Impact on small business and competition	85
9.1	Small business.....	85

9.2	Competition.....	85
10	Implementation strategy	87
11	Evaluation strategy.....	88
12	Summary of stakeholder feedback	90
12.1	Competency and probity requirements.....	90
12.2	National harmonisation and interstate mutual recognition	91
12.3	Sole traders	91
Appendix 1	History of Private Security Regulations.....	94
Appendix 2	Competency requirements	96
Appendix 3	Other options considered.....	97
Appendix 4	Detailed cost breakdown for LRD and RSD.....	101
Appendix 5	Assumptions underlying the structure of the current fee model.....	102

List of figures

Figure 1:	Summary of private security industry since the 1960s	15
Figure 2:	Five most common offences recorded under the Private Security Act 2005-2015	39
Figure 3:	Scale of the regulated community	41
Figure 4:	Number of new applications (2005 to 2015).....	42
Figure 5:	Number of renewed application (2005-2015)	42
Figure 6:	Number of variation applications (activity).....	43
Figure 7:	Number of variation applications (condition)	43
Figure 8:	Number of cancelled applications (2005-2015).....	44

List of tables

Table 1:	Summary assessment of all options considered	9
Table 2:	Summary assessment of all fee options	11
Table 3:	Fee Options	11
Table 4:	Description of broad professions as defined in the Act	18
Table 5:	Number of individuals/businesses licensed to offer private security activities in Victoria 2014-15.....	19
Table 6:	Number of individuals/businesses registered to offer private security activities in Victoria 2014-15.....	19
Table 7:	Summary of regulated professions and associated risks	19
Table 8:	Summary of the sources and scale of regulatory burdens related to the Regulations.....	26
Table 9:	Licence and registration requirements for applications	26
Table 10:	Licence and registration requirements for inclusions	31
Table 11:	Summary of regulated professions and associated risks	32
Table 12:	Licensing and registration requirements for record keeping	33
Table 13:	Information to accompany a permit application	36
Table 14:	Time taken to comply with Regulations	40
Table 15:	Coverage of regulatory frameworks in each state jurisdiction.....	46
Table 16:	Base case summary assessment.....	54
Table 17:	Summary of the estimated regulatory burden of the current Regulations per annum.....	55
Table 18:	Option 1 summary assessment	57
Table 19:	Option 2 summary assessment	58
Table 20:	Option 3 summary assessment	59
Table 21:	Summary assessment of all options considered	60
Table 22:	Relevance of circumstances for not fully cost recovering.....	62
Table 23:	Summary of Victoria Police's activities and their cost data sources.....	65
Table 24:	Estimated cost of LRD regulatory activities	66

Table 25: Estimated cost of RSD regulatory activities.....	67
Table 26: Estimated cost of strategic monitoring and enforcement.....	68
Table 27: Summary of costs incurred by Victoria Police	69
Table 28: Interstate application fees for licence types 2015-16 based on the lowest annualised fee payable for one security sub-class	71
Table 29: Forecast revenue from fees 2015-16.....	72
Table 30: Fee structure assumptions and potential modifications.....	75
Table 31: Fee Options	78
Table 32: Criteria and weightings used to assess fee options	79
Table 33: Assessment of fees base case	80
Table 34: Assessment of fees Option 1	80
Table 35: Assessment of fees Option 2.....	81
Table 36: Assessment of fees Option 3.....	83
Table 37: Summary assessment of all fee options	84
Table 38: Published training courses.....	96
Table 39: Security industry organisations	96
Table 40: Summary of options considered	97
Table 41: Key assumptions underpinning the current fee structure	102
Table 42: Secondary assumptions underpinning the current fee structure	103

1 Executive Summary

1.1 Introduction

The Private Security Regulations 2005 (the Regulations) were due to sunset on 28 June 2015 and have been extended for one year (sunsetting on 27 June 2016) to allow the Department of Justice and Regulation (the Department) time to analyse current provisions in the *Private Security Act 2004* (the Act) and the Regulations. The Department engaged KPMG to lead this process and deliver a Regulatory Impact Statement (RIS). This process included:

- ◆ Understanding the objectives and impact of the Regulations;
- ◆ Understanding the key issues facing the private security industry;
- ◆ Consulting with key stakeholders in the industry;
- ◆ Consulting with the regulator, Victoria Police; and
- ◆ Preparing a RIS.

1.2 Context

Private security emerged in the 1960s and 1970s as a prominent and distinct industry, and grew rapidly through this period as well as into the 1980s¹. Issues of misconduct have continually damaged the reputation of the industry since its inception, often becoming highly publicised in the wake of incidents such as a 1990 report released by the Victorian Community Council Against Violence and the death of cricket coach David Hookes.² After continued problems, Victoria revised its regulatory approach with the *Private Security Act 2004* which was operationalised through the *Private Security Regulations 2005*.

In spite of these reforms in Victoria in the 2000s, many stakeholders continued to observe issues with probity in the industry, specifically related to organised crime infiltration. The Australian Crime Commission released a 2013 report suggesting that the identification of organised crime is of material concern to the Australian Government, and that outlawed motorcycle gangs were understood to have penetrated the industry.³ This context informs this Private Security Regulations 2016 Regulatory Impact Statement.

1.3 Overview of the legislative and regulatory framework

In Victoria, the private security industry is regulated by the Act and operationalised through the Regulations. Each piece of legislation is summarised below:

1.3.1 Private Security Act 2004

The Act lays out the framework for a licensing and registration regime for the private security industry in Victoria. The aim of this framework is to improve the integrity and competency of the private security industry and exclude inappropriate persons or businesses from the industry, in order to mitigate the risk of harm being caused to members of the community by industry members when carrying out private security activities. The Act outlines:

- ◆ A set of requirements for two classes of activities:
 - Class A activities, which require a licence and include requirements for probity (for example, through satisfying a 'fit and proper person' test and criminal history check) and competency (through qualifications, experience and/or industry membership), these are stated in the Act as:
 - Investigators;
 - Bodyguards;
 - Crowd controllers;

¹ Prenzler and Sarre, *Regulating Private Security in Australia*, 1998. Accessed 3 September 2015 at <http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi098.pdf>

² *Ibid.*

³ Australian Government and the Australian Crime Commission. *Criminal Infiltration in the Private Security Industry*, 2013. Accessed 3 September 2015 at <<https://www.crimecommission.gov.au/sites/default/files/CRIMINAL%20INFILTRATION%20IN%20THE%20PRIVATE%20SECURITY%20INDUSTRY%20JULY%202013.pdf>>

- Security guards; and
- Security trainers.
- Class B activities, which require a registration and carry requirements for probity only, these are stated in the Act as:
 - Security equipment installers; and
 - Security advisor.
- ◆ A dispute resolution system for licence or registration applications, revocations or suspensions (the Act stipulates that persons may apply for a review by the Victorian Civil and Administrative Tribunal (VCAT));
- ◆ A number of powers of the Chief Commissioner of Police that assist with operationalising the Act; and
- ◆ Offences for non-compliance.

1.3.2 Private Security Regulations 2005

The Regulations are in place to operationalise and prescribe processes for a variety of provisions in the Act. As such, the Regulations allow the Act to function effectively. These processes are largely divisible into policy-related issues (such as application particulars) and the setting of fees. Specifically, the breadth of issues addressed include:

- ◆ the *exemption* of certain classes of persons from the Act's requirements;
- ◆ the *information that licence and registration applicants* must provide as part of their application;
- ◆ *fees* for licences, registrations and permits under the Act;
- ◆ requirements for licence and registration holders to *keep records* and notify Victoria Police of changes in circumstances;
- ◆ the *particulars of licence and registration holders that Victoria Police must keep* and make available for public inspection on request;
- ◆ certain *additional requirements for crowd controllers*; and
- ◆ a list of *infringement penalties* for infringement offences under the Act.

1.4 Nature and extent of the problem

To reduce their exposure to the risk of crime, individuals and businesses employ a range of methods, one of which is the use of private security services. Victoria's private security industry supplies services for securing private property, maintaining public safety, and meeting personal security needs.

Specific risks in this area can arise because businesses and individuals providing security-related services have access to private property, and to privileged personal and security information. As a result, a range of specific problems can arise in the provision of these services, including physical harm and misuse of security or private information.

The extent to which harms arise depends on the character, decisions and actions of industry participants. Problems can arise through the negligence or incompetence of private security providers, or deliberate misbehaviour. For example, the positions of trust filled by industry participants provide an incentive and opportunity for crime groups to infiltrate and exploit private security activities.⁴ The potential for criminal infiltration in the industry remains an ongoing concern for Victoria Police.⁵

To some extent, incentives and mechanisms to mitigate potential harms exist in the absence of Regulations. For example, consumers and employers of private security industry members aim to use the services of only those members with appropriate competence and character. However, both consumers and employers of private security industry members lack a reliable low cost means of ensuring that the operators they engage have met minimum requirements for competency and character. Employers also have a range of responsibilities under the *Occupational Health & Safety Act 2004*, which includes various criminal sanctions to provide disincentives for individuals and businesses to abuse their role as trusted providers of private security services. However, the Department considers that relying on such incentives alone does not provide clear and uniform guidance on the specific

⁴ Australian Crime Commission, *Criminal Infiltration in the Private Security Industry*, 2013.

⁵ Victoria Police Blue Paper, 2014.

character, training and skills of industry participants that are most likely to minimise those risks and maximise the related benefits of crime prevention and enhanced community safety.

The Act intends to mitigate the potential risks to community safety and well-being posed by the private security industry if industry standards and practices are deficient or inappropriate persons or businesses operate in the industry. The primary mechanism the Act uses to achieve this is the establishment of a security licensing and registration system designed to protect industry clients, consumers of private security services and innocent bystanders from harm, and provide confidence in the industry's operations.

The key function of the Regulations is to operationalise the Act, and as such, the nature and extent of the problems that the Regulations can help to address are relatively limited in scope. They potentially relate to matters such as improving information provision and targeting the Regulations to areas of most risk (such as through how narrowly or broadly exemptions and categories of security equipment are defined).

1.5 The regulated community

As regulators of the private security industry, Victoria Police collects information regarding the volumes of applications in the industry.

As at June 2015, 31,164 individuals and 1,452 businesses were licenced or registered under the Regulations. Specifically, there are:

- ◆ 27,916 individual licences;
- ◆ 3,248 individual registrations;
- ◆ 743 business licences; and
- ◆ 709 business registrations.

Overall, the number of individual licence/registration holders grew at a compounded average rate of 3 per cent from 2008 to 2015. Registered individuals and licensed businesses also grew, at a compounded average rate of 3.5 per cent and 2 per cent respectively.

In contrast, registered businesses experienced modest negative growth from 2008 to 2015 (of -0.3 per cent compounded).

1.6 Objectives of the proposed regulations

In assessing whether to remake the Regulations, the relevant objectives are to regulate the private security industry in a manner that:

- ◆ Mitigates the potential risks to community safety and well-being posed by the private security industry if industry standards and practices are deficient or inappropriate persons or businesses operate in the industry; and
- ◆ Imposes the minimum efficient level of regulatory burden on the private security industry.

The Regulations aim to achieve these objectives to the extent possible within its scope for setting out the operational requirements of the Act.

1.7 Options

To satisfy the objectives of the Regulations, a range of options were developed for analysis. There are a number of different approaches that could be made in remaking the regulations. Given the constraints imposed by the Act, some form of regulatory approach involving a licensing and registration system was deemed to be the only broad approach that was viable. Within this, several specific variations were considered, but the Department considered that only three were worthy of deeper analysis:

- ◆ The current Regulations (**licensing and registration system**);
- ◆ **Reduce the number of record keeping particulars** required of industry; and
- ◆ Change the application system to **introduce incentives where industry participants demonstrate compliance**.

A number of further possibilities were considered, however those listed above were the only options considered as viable regulatory options. Other options were not considered viable for a variety of reasons, with common explanations including:

- ◆ The option would create inconsistencies with the Act;
- ◆ The option would have a negative/no impact on assisting the Regulations in meeting its objectives; and
- ◆ The option would add complexity to the regulatory framework for marginal benefit.

More detail about these other options is provided in Appendix 3 on page 97.

1.8 Options analysis

In measuring and comparing options, a multi-criteria analysis (MCA) has been used to assess the relative strength of each option. This framework is particularly useful where extensive quantification and monetisation is not possible as a means of understanding the benefits and costs of each option, and largely only qualitative evidence is available.⁶

The MCA used the following criteria to assess each of the options:

- ◆ **Competency and probity of the private security industry:** the primary objective of the regulatory framework is to mitigate potential risks posed by the private security industry to community safety if inappropriate persons or businesses are allowed to operate in the industry or if industry standards and practices are deficient. As such, each option will be scored against this criteria based on the extent to which it is likely to increase or decrease the competency and probity of market participants both when they enter the industry and on an ongoing basis;
- ◆ **Compliance costs for regulated parties:** Consistent with the objective of the regulatory framework to efficiently regulate the private security industry, each option will be assessed against this criteria based on the extent to which it increases or decreases the burden imposed on industry, for example, through imposing record keeping requirements; and
- ◆ **Costs of administering the framework:** Consistent with the objective of the regulatory framework to efficiently regulate the private security industry, each option will be assessed against this criteria based on the extent to which it increases or decreases the costs incurred by the Government in administering the regulatory framework, for example, whether an option makes it more difficult (and therefore more costly) or easier to monitor and enforce the requirements of the regulatory framework.

The MCA resulted in the following ratings of the options:

Table 1: Summary assessment of all options considered

Option	Weighted Score
Base case (the Regulations sunset)	0.00
Option 1 – Continuing the current Regulations	+3.50
Option 2 – Continuing the current Regulations, but reducing the record keeping requirements	+2.00
Option 3 – Continuing the current Regulations, but changing the application system to introduce incentives where industry participants demonstrate compliance	+3.30

Based on the relative scores of each of the options, remaking the current Regulations (Option 1) is considered to be the preferred option. That said, there is a very marginal difference in the scores for Option 1 and Option 3. As such, any conclusions about which of these two options is preferred is very sensitive to changes in the assumptions which support the scoring of the options.

Option 1 is preferred because relative to the base case and other options, this option has a marginally greater ability to meet the government's objectives.

1.9 Fees analysis

Allowing the Regulations to sunset will result in the schedule of fees that must be paid when submitting an application not being prescribed, and as such there will be no legal basis to compel private security licence/registration applicants to pay fees.

⁶ Victorian Guide to Regulation Toolkit 2, p. 14.

If this were the case, the regulatory framework would be funded entirely by general revenue (i.e. appropriation funding), assuming this funding is increased to meet current activity levels. This would mean that all taxpayers, not just those who benefit from the service or those whose actions give rise to the need for the service, would fund the costs of regulatory activity relating to the private security industry.

The Victorian Government's default position with regard to cost recovery is *full cost recovery*, where 'full cost' represents the value of all the resources used or consumed in the provision of the associated output or activity. This policy aims to achieve two key objectives:

- ◆ Efficiency: Full cost recovery ensures that the cost of providing private security services incorporates the cost of associated regulatory activity, and therefore provides a price signal to users of those services regarding the *efficient* price and service levels from a whole-of-economy perspective.
- ◆ Equity: Cost recovery aims to avoid the situation where all taxpayers have to pay the costs associated with regulating the private security industry regardless of whether or not they benefit from, or give rise to the need for, the Government's activities in this area. It also aims to ensure that fees reflect any differences in the extent of regulatory activity conducted by Victoria Police in relation to different industry participants

Costs to be recovered

Victoria Police incurs costs associated with administering the regulatory framework through assessing licence/registration applications and conducting ongoing activities such as strategic monitoring and enforcement through taskforces. These costs are estimated to be \$6.44m in 2015-16. These costs are estimated in this RIS using a pro rated allocation of costs on a proportionate basis by using measures which are easily available – such as staff costs and numbers of applications.

It should be noted that the most accurate way of allocating the costs of Victoria Police's regulatory activity to regulated entities would be through using a fee structure that was informed by an activity based costing. The activity based costing method would link Victoria Police's output (e.g. in relation to applications assessed) to activities used to produce these outputs, which in turn would link to Victoria Police's costs. An activity based costing has not been undertaken to support the proposed remaking of the Regulations. This was a result of a range of factors, in particular uncertainty regarding the future costs to Victoria Police of administering the regulatory framework. The major component of this uncertainty is the potential impact of substantial improvements to Victoria Police's application assessment process currently being undertaken (through the Electronic Lodgement Process (ELP) IT upgrade). There is also some degree of uncertainty regarding the appropriate ongoing apportionment of costs incurred by various Victoria Police taskforces.

Given this uncertainty, the Department and Victoria Police will complete an activity based costing and review of the fee structure within five years to ensure the fee structure best reflects the future costs of the regulatory framework, in particular by incorporating efficiencies resulting from the planned rollout of the ELP.

Revenue generated through fees and level of cost recovery

In 2014-15, the revenue generated from private security fees was \$6.19m. In 2015-16, revenue from fees is forecast to be \$6.43m.

Based on the forecast costs and revenue associated with the Regulations, the expected level of cost recovery in 2015-16 is estimated to be about 100 per cent. This indicates that the fees are expected to fully recover the cost to Government of administering the regulatory framework, as do the current fees.

Objectives and options assessment

Given these factors, in remaking the fees, the Government's objectives are to achieve the outcomes described below:

- ◆ Efficiency – the price for private security regulation provides a signal to the economy regarding the full cost of providing the service that incorporates the costs of regulatory activity.
- ◆ Equity – the cost of the activity is funded by those who benefit from the service or those whose actions give rise to the need for the service.
- ◆ Effectiveness of related policy objectives – fees do not pose a substantial disincentive for industry participants to be registered or licensed.
- ◆ Disruption to industry – changes should minimise potential short-term disruptions to industry, given the planned detailed activity-based costing and further review in five years' time, which may result in further changes based on a better understanding of the underlying costs of regulatory activities.

The RIS assesses the following options based on their ability to meet these objectives:

- ◆ Option 1 – Retain current fee structure at current fee levels (full cost recovery)
- ◆ Option 2 – Modified fee structure (full cost recovery)
- ◆ Option 3 – Introduce incentives where industry participants demonstrate compliance

A range of other options were briefly considered, such as partial cost recovery and risk-based fees, however these were either not viable or dismissed for other reasons.

Table 2: Summary assessment of all fee options

Option	Weighted score
Base case	0
Option 1 – Retain current fee structure at current fee levels (full cost recovery)	4.8
Option 2 – Modified fee structure (full cost recovery)	4.0
Option 3 – Introduce incentives where industry participants demonstrate compliance	4.3

Based on the relative scores of each of the options, Option 1 – Retaining current fee structure at current fee levels (full cost recovery), is considered to be the preferred option. Option 1 is preferred because relative to the base case and other options, this option has a marginally greater ability to meet the government's objectives.

That said, there is a very marginal difference in the scores for Option 1 and Option 3. As such, any conclusions about which of these two options is preferred is very sensitive to changes in the assumptions which support the scoring of the options.

Given the close scores between Options 1 and 3, it is noted that the detailed activity-based costing exercise to be completed in five years' time will consider the relative merits of all options in more detail.

The current and proposed fees are outlined in Table 3. Note that there are no major proposed changes to the fees under the remade Regulations. More specifically, there are no changes in terms of the number of fee units or the broad fee structure, apart from three small changes to allow for licence fees to be charged for a fifth category of private security activity where they were previously charged for four, increase from one month to two months the minimum fee increment applicable to individual operator licence and registration fees, and to correct an error in the fee prescribed for individual registration applicants (for two activities)⁷ in the Regulations to make it consistent with the intent of the Regulations and Victoria Police's current practice.

Table 3: Fee Options

Major fee types	No. of activities	Current fees (2015-16)			Proposed fees (2015-16) under preferred option (Option 1) –					
		App fee (\$)	Maint. fee (\$)	Total fee	App fee (\$)	App. fee (fee units)	Maint. fee (\$)	Maint. fee (fee units per two months)	Total fee	Change
Individual Licence	1	\$59.80	\$332.90	\$392.70	\$59.80	4.4	\$332.90	1.36	\$392.70	-
	5	\$77.80	\$430.80	\$508.60	\$83.80	6.16	\$455.30	1.86	\$539.10	*
Business Licence (natural person)	1	\$131.60	\$763.80	\$895.40	\$131.60	9.68	\$763.80	3.12	\$895.40	-
	5	\$171.10	\$959.60	\$1,130.70	\$184.30	13.55	\$1,008.50	4.12	\$1,192.90	*
Business Licence (Body Corporate)	1	\$219.40	\$1,243.60	\$1,463.00	\$219.40	16.13	\$1,243.60	5.08	\$1,463.00	-
	5	\$285.20	\$1,625.50	\$1,910.70	\$307.10	22.59	\$1,743.00	7.12	\$2,050.20	*

⁷ Note that this change in prescribed fees is not presented in Table 3 as a change in fees actually paid by applicants, given that the change is a correction of an error in the Regulations rather than a change in the amount that is being charged to applicants.

Major fee types	No. of activities	Current fees (2015-16)			Proposed fees (2015-16) under preferred option (Option 1) –					
		App fee (\$)	Maint. fee (\$)	Total fee	App fee (\$)	App. fee (fee units)	Maint. fee (\$)	Maint. fee (fee units per two months)	Total fee	Change
Individual Registration	1	\$45.20	\$244.80	\$290.00	\$45.20	3.32	\$244.80	1.00	\$290.00	-
	2	\$49.80	\$264.40	\$314.20	\$49.80	3.66	\$264.40	1.08	\$314.20	-
Business Registration (sole trader)	1	\$98.30	\$572.80	\$671.10	\$98.30	7.23	\$572.80	2.34	\$671.10	-
	2	\$108.30	\$621.80	\$730.10	\$108.30	7.96	\$621.80	2.54	\$730.10	-
Business Registration (body corporate)	1	\$164.80	\$959.60	\$1,124.40	\$164.80	12.12	\$959.60	3.92	\$1,124.40	-
	2	\$181.30	\$1,052.60	\$1,233.90	\$181.30	13.33	\$1,052.60	4.30	\$1,233.90	-

Source: Victoria Police, KPMG analysis. Note*: Although it appears that fees are increasing for licences granted for five activities, as noted above, this change is not an increase in the fee charged for each activity, rather it is only occurring because the licence fee for five activities was previously charged for only four activities. This affects a very small proportion of the regulated industry (around 19 licensees apply per year for all five activities).

Please also note that fees paid in 2016-17 will be approximately 2.5 per cent higher in dollar terms than those listed in this table. This reflects a change in the value of a fee unit from \$13.60 for 2015-16 to \$13.94 for 2016-17.

There are other fees not shown in the above table relating to variations to licences and registrations, temporary visitor permits and certain applications. For these, please see the attached exposure draft of the proposed Regulations.

1.10 Evaluation

The Department will carry out post implementation review in a number of ways over the life of the proposed Regulations to assess their continued efficiency and effectiveness. This will include monitoring industry trends through data analysis provided by Licensing and Regulation Division of Victoria Police and the Crime Statistics Agency, relevant reports such as those undertaken by the Australia Crime Commission, and consultation with industry members.

As discussed above, the Department in consultation with Victoria Police will complete an activity based costing and review of the fee structure in five years' time to ensure the fee structure best reflects the future costs of the regulatory framework, in particular by incorporating efficiencies resulting from the planned rollout of the ELP.

1.11 Consultation on this RIS

While the RIS includes a number of prompts on specific areas for consultation, the Department is seeking comment on the entire contents of the RIS. To assist stakeholders in responding to these prompts, each of the specific questions included in the RIS are listed below, however please note that the relevant areas of the RIS provide important context for each of the questions:

- 1) The RIS identifies that one of the benefits of the licensing/registration framework is that it enables employers and consumers to more easily identify private security operators of appropriate character and competence. In the absence of licencing and registration, would it be difficult for employers and consumers to identify private security operators of appropriate character and competence? Why or why not? (Section 3.1.2 on page 19)
- 2) If you think it would be difficult to identify private security operators of appropriate character and competence, approximately how much time, money and/or effort would it take to do so? Would this vary across entities in the industry? For instance, would a large business contracting private security operators have a different, more effective due diligence process than would an individual? (Section 3.1.2 on page 19)
- 3) The current licensing/registration process requires applicants to provide a range of information in their application. While many application requirements relate to provisions of the Act (and are therefore out of scope for this RIS), the Regulations require that applicants provide information such as passport photographs, name, and date of birth. Do stakeholders consider that all of the information requirements required in submitting an application are necessary? Why or why not? (Section 3.2.1 on page 26)

- 4) The Regulations currently exempt a small number of classes of persons who would otherwise be captured by the licensing/registration framework such as employees of public sector bodies or local Councils acting as investigators, apprentices and students undertaking vocational training and employees advising on security equipment when required to sell it in the course of their employment at the premises of a non-private security business such as a retail store. Broadly, this is based on an assessment that the burden that would be imposed upon these classes of persons if required to obtain a licence or registration is not justified given their activities pose a lower risk of harm to the community. Do stakeholders consider that there are any other classes of persons that should be exempted from the requirements of the regulatory framework? Why or why not? (Section 3.2.2 on page 29)
- 5) One of the options for remaking the Regulations considered in this RIS is an incentive model that offers discounted renewal fees to industry members who demonstrate compliance. However, the Department has rejected this option because, as formulated, it would lead to an under-recovery of costs (since almost all applicants would be eligible due to high levels of industry compliance), and therefore in order to provide the discount but still achieve full cost recovery, the standard (non-discounted) fee for all applicants would need to be increased in the first instance, which would lead to an effective negligible reduction in fees for applicants receiving the discount. What are the advantages and disadvantages of the incentive model outlined in this RIS? Would it provide enough of an incentive for good behaviour? Why or why not? Are there any possible unintended consequences? Would other approaches be more appropriate? (Section 6.2.2 on page 52)
- 6) When setting fees to recover government costs, the Victorian Government's default position is *full* cost recovery, where 'full cost' represents the value of all the resources used or consumed in the provision of the associated output or activity. Do stakeholders consider that there is any reason not to pursue full recovery of the cost the government incurs in administering the private security industry? Why, or why not? (Section 8.1 on page 61)
- 7) The fee options considered in this RIS all continue to require that fees are paid by industry members through licence/registration applications. It could be suggested that imposing fees poses a deterrent to private security industry participants to applying for a licence/registration. Is the imposition of fees at risk of posing a deterrent to obtaining a licence/registration? (Section 8.1 on page 61)
- 8) The RIS raises a large number of potential options for remaking the Regulations, both in terms of the non-fee options and fee options. However many of these options are subsequently ruled out based on their inconsistency with the Act, inconsistency with government objectives, or a brief assessment of their viability. Do stakeholders consider that any of the excluded options raised throughout this RIS and subsequently excluded are potentially viable? Why or why not? (Section 8.6 on page 73)
- 9) Are stakeholders aware of any other potentially viable options that should be considered (both non-fee options and fee options)? Section 8.6 on page 73)

2 Introduction

Overview

Key considerations for the proposed Private Security Regulations 2016 include:

- ◆ The Regulations seek to operationalise the *Private Security Act 2004* by the most efficient means possible, and in so doing assist in mitigating potential risks to community safety and well-being posed by the private security industry in protecting public safety if industry standards and practices are deficient or inappropriate persons or businesses operate in the industry;
- ◆ The Regulations impact on over 30,000 individuals and businesses;
- ◆ As the requirements of the proposed Regulations are incremental to the broader requirements of the Act, the regulatory burden on the private security industry associated with the Regulations is likely to be small; and
- ◆ The overall regulatory burden is likely to be less than \$8m per annum, including fees of approximately \$6m per annum.

2.1 Context

The Regulations were due to sunset on 28 June 2015, and were extended for one year to allow the Department time to analyse current provisions in the Act and the Regulations. The Department engaged KPMG to lead this process and deliver a RIS. This process included:

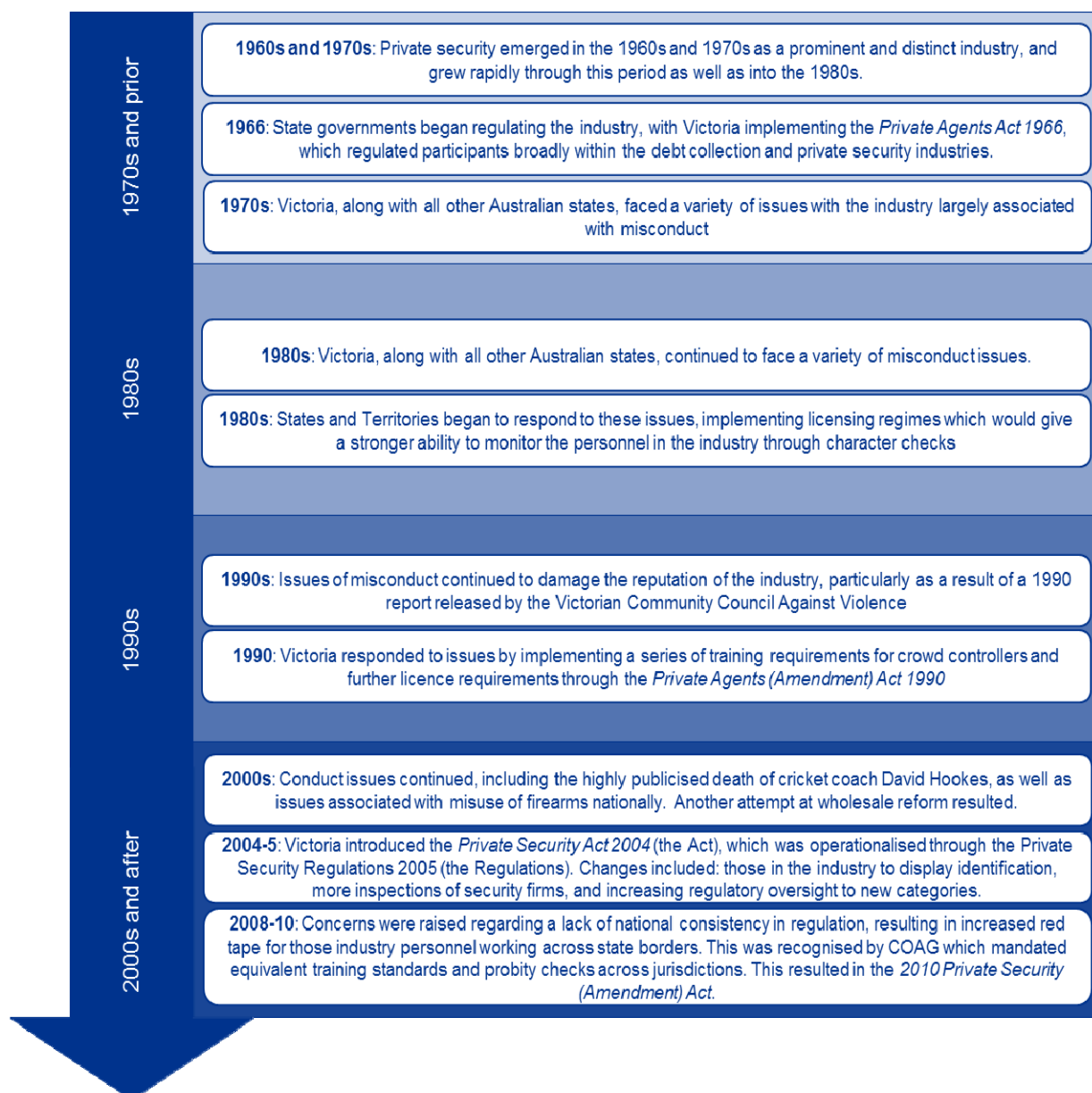
- ◆ Understanding the objectives and impact of the Regulations;
- ◆ Understanding the key issues facing the private security industry;
- ◆ Consulting with key stakeholders in the industry;
- ◆ Consulting with the regulator, Victoria Police; and
- ◆ Preparing a RIS.

The Department has prepared an exposure draft of the proposed Private Security Regulations 2016 (the proposed Regulations) to accompany this RIS.

2.2 The Private Security sector in Australia and Victoria

A high level summary of how the private security industry has grown since the 1960s is discussed in Figure 1 . For a more detailed breakdown of key influences in the industry's development, please see Appendix 1 History of Private Security Regulations on page 94 .

Figure 1: Summary of private security industry since the 1960s



2.3 Overview of the legislative and regulatory framework

In Victoria, the private security industry is regulated by the Act and operationalised through the Regulations. A summary of each document is provided below:

2.3.1 Private Security Act 2004

The Act lays out the framework for a licensing and registration regime for the private security industry in Victoria. The aim of this framework is to improve the integrity and competency of the private security industry and exclude inappropriate persons or businesses from the industry, in order to mitigate the risk of harm being caused to members of the community by industry members when carrying out private security activities.

The Act lists seven specific professions to which the Act's requirements, including probity standards, apply, with five of these professions also attracting competency requirements such as training or industry association membership. In the event of disputes regarding licence or registration applications, revocations or suspensions, the Act stipulates that persons may apply for a review by the Victorian Civil and Administrative Tribunal (VCAT). The Act also outlines the powers of the Chief Commissioner of Police and establishes offences for non-compliance.

The Act is intended to reduce risks to community safety by excluding from the industry persons or businesses likely to increase those risks, and by preventing abuses by private security providers which infringe upon the rights of others. The primary mechanism the Act uses to achieve this is the establishment of a security licensing and registration system designed to protect industry clients,

consumers of private security services and innocent bystanders from harm, and provide confidence in the industry's operations.

The Act establishes requirements for two classes of activities: Class A activities, which require a licence and include requirements for probity (for example, through satisfying a 'fit and proper person' test and criminal history check) and competency (through qualifications, experience and/or industry membership) and Class B activities, which require a registration and carry requirements for probity only.

Class A activities are typically associated with 'manpower' activities within the sector and comprise investigators, bodyguards, crowd controllers, security guards and (since 2010) security trainers.

Class B activities are associated with the 'technical' activities within the sector and comprise security equipment installers and security advisers.

2.3.2 Private Security Regulations 2005

The Regulations are in place to operationalise and prescribe processes for a variety of provisions in the Act. As such, the Regulations allow the Act to function effectively. These processes relate to:

- ◆ the *exemption* of certain classes of persons from the Act's requirements;
- ◆ the *information that licence and registration applicants* must provide as part of their application;
- ◆ *fees for licences*, registrations and permits under the Act;
- ◆ requirements for licence and registration holders to *keep records* and notify Victoria Police of changes in circumstances;
- ◆ the *particulars of licence and registration holders that Victoria Police must keep* and make available for public inspection on request;
- ◆ certain *additional requirements for crowd controllers*; and
- ◆ a list of *infringement penalties* for infringement offences under the Act.

Please see Section 4 on page 41 for a more detailed discussion of how the Regulations have been operating since their implementation in 2005.

2.3.3 COAG Agreement

The Act and Regulations function within a broader regulatory context. In 2008, the Council of Australian Governments (COAG) agreed (the COAG Agreement) to address the disparity of approaches across jurisdictions and implement nationally consistent regulation of the private security industry in three stages.

Under Stage 1 of the COAG Agreement, jurisdictions agreed to implement national minimum standards for probity and training to improving the probity, competence and skills of security personnel in the manpower sector.

Stage 2 focused on the technical sector, with jurisdictions agreeing in 2009 that where a jurisdiction regulated the technical sector, the probity and background checking requirements for the sector should be mandated, as for the manpower sector. COAG did not, however, recommend mandatory regulation by all jurisdictions or minimum competency standards for this sector. The background to this 'lighter touch' regulatory approach is discussed further in section 11.

Stage 3 of the COAG Agreement commenced in mid-2010 and was to look at options for national licensing of the industry. The proposed National Occupational Licensing System (NOLS) reform was not pursued following a decision of COAG in December 2013.

In line with the Stage 1 reforms, Victoria passed the *Private Security Amendment Act 2010* (the Amendment Act) in September 2010. The Amendment Act came into force on 4 July 2011 and fully satisfied Stage 1 of the COAG Agreement. It provided new licensable activities (guarding with a dog, guarding with a firearm, monitoring centre operations and security training); additional disqualifying offences such as assault, firearms and terrorism offences; mandatory fingerprinting requirements for identity verification and ongoing probity monitoring; broader licence cancellation powers; and new provisions relating to non-disclosable criminal intelligence, in order to protect the integrity of police investigations.

In addition, under the Chief Commissioner's statutory power to approve training requirements, the industry regulator Victoria Police implemented nationally-agreed, minimum training standards for the manpower sector.

2.3.4 Requirements for a Regulatory Impact Statement

Each RIS must meet the requirements outlined in the Department of Treasury and Finance's (DTF) Victorian Guide to Regulation, with specific details required for sunseting regulations.⁸ They include:

- ◆ Identification of the nature and extent of the problem;
- ◆ A statement of the objectives of the proposed Regulations;
- ◆ Consideration and assessment of options for addressing the problem and the identification of a preferred option;
- ◆ A cost-benefit assessment of proposed options;
- ◆ Assessment of impact on competition and small business;
- ◆ An implementation plan and evaluation strategy for the identified preferred option; and
- ◆ Consultation with affected stakeholders.

In order to address the requirements as outlined by DTF, the approach in the RIS is as follows:

- ◆ Nature and extent of the problem (Section 3 on page 18);
- ◆ The regulated community (Section 4 on page 41)
- ◆ Objectives of proposed Regulations (Section 5 on page 47);
- ◆ Options (Section 6 on page 48);
- ◆ Options analysis (Section 7 on page 53);
- ◆ Fees analysis (Section 8 on page 61);
- ◆ Impact on small business and competition (Section 9 on page 85);
- ◆ Implementation strategy (Section 10 on page 87);
- ◆ Evaluation strategy (Section 11 on page 88); and
- ◆ Summary of stakeholder feedback (Section 12 on page 90).

⁸ Department of Treasury and Finance. *Victorian Guide to Regulation*, 2014.
TRIM ID: CD/16/189184

3 Nature and extent of the problem

For clarity, the discussion of the nature and extent of the problem has been divided into two major categories:

- 1) A discussion of the broader problems that the legislative framework seeks to address (i.e. the Act, and to some extent, the Regulations); and
- 2) The specific residual problems that are raised regarding the sunseting of the Regulations and the making of the proposed Regulations to replace them.

3.1 Context for the Regulations: the broad problem that the regulatory framework seeks to address and the operations of the Act

3.1.1 Scope of the private security industry

The private security industry in Victoria is defined in the Act⁹ as containing seven broad professions:

Table 4: Description of broad professions as defined in the Act

Profession	Description
Security Guarding	A person who is employed or retained to protect, watch or guard any property by any means including by patrolling the property in person, or by monitoring the property by operating a security system that utilises closed circuit television, a closed monitoring system, radio or other similar alarm device. This licence category involves six sub-categories which each require specialised training qualifications (unarmed guard, armed guard, cash-in-transit, control room operator, monitoring centre operator, and guard with a dog).
Crowd Control	A person who is employed or retained principally to maintain order at any public place by screening entry, monitoring or controlling people's behaviour or removing people from the place (unless the person is doing nothing more than checking that a person has made payment or holds an admission pass)
Investigators	A person who on behalf of another person is employed or retained to obtain and furnish information as to the personal character or actions of any person or the character or nature of the business or occupation of any person, or alternatively who is employed to search for missing persons.
Bodyguards	A person who is employed or retained to provide a close personal protection service.
Trainers	A person engaged by a registered education and training organisation to provide or assess private security training.
Security Adviser	A person who is employed or retained to provide advice in relation to security equipment or security methods or principles.
Security equipment installer	A person who is employed or retained to install, repair, service or maintain security equipment.

Outlined in the tables below are the numbers of individuals and businesses engaged in each of these professions in Victoria. Note that as an individual or business may engage in multiple professions, these numbers do not refer to the total number of industry participants. Further, Victoria Police data is based on the number of private security individuals/businesses who are licensed and registered to undertake these activities. While illegal, it is likely that there is some proportion of individuals/businesses who provide these services without a licence/registration.

⁹ Definitions are contained in section 3 of the *Private Security Act 2004*

Table 5: Number of individuals/businesses licensed to offer private security activities in Victoria 2014-15

	Crowd controller	Security guard	Investigator	Private Security Trainer	Bodyguard
Licensed individuals	25,513	26,637	1,528	331	961
Licensed businesses	497	618	198	31	138

Source: Victoria Police

Table 6: Number of individuals/businesses registered to offer private security activities in Victoria 2014-15

	Security equipment installer	Security adviser
Registered individuals	2,751	2,339
Registered businesses	651	625

Source: Victoria Police

3.1.2 Underlying problem

To reduce their exposure to the risk of crime, individuals and businesses employ a range of methods, one of which is the use of private security services. Victoria's private security industry supplies services for securing private property, maintaining public safety, and meeting personal security needs.

In providing these private security services, the character, decisions and actions of industry participants give rise to a range of risks, including physical harm and misuse of security or private information. The regulatory framework seeks to ensure public safety by mitigating the risks posed by the private security industry.

Outlined below (Table 7) is a summary of each regulated profession (by licence and registration) and the risks associated with their activities.

Table 7: Summary of regulated professions and associated risks

	Licensed (competency and probity requirements)					Registered (probity requirements only)	
	Private investigator	Body guard	Crowd controller	Security guard	Security Trainer	Security adviser	Security equipment installer
Impact on probity - Access to private property	No	Yes	Yes	Yes	No	Yes	Yes
Impact on probity - Access to privileged personal information	Yes	No	No	No	No	No	No
Impact on probity - Access to privileged security information	Yes	Yes	No	Yes	No	Yes	Yes
Impact on community safety	No	Yes	Yes	Yes	No	No	No

Maintaining industry probity

The nature of the services provided by the private security industry places operators and individuals in a position of trust, which is open to abuse by industry members.

Industry participants are placed in this position of trust through having:

- ◆ Physical access to private property, relevant to bodyguards, crowd controllers and security guards working at privately owned establishments. This is also applicable to security equipment installers and security advisers providing expertise on systems at private residences and businesses;
- ◆ Access to privileged personal information, relevant to private investigators often dealing with sensitive details of their clients' lives; and
- ◆ Access to privileged security information, relevant to private investigators, bodyguards and security guards as they can obtain sensitive information of people and establishments they are protecting in the regular course of business.

The above positions of trust expose customers and the public to substantial risks by providing both an incentive and an opportunity for crime groups to infiltrate and exploit private security activities.¹⁰ Persons with the incentive and means to infiltrate the private security industry may include members of organised crime groups, disreputable or corrupt business operators, and terrorists.

The potential for criminal infiltration in the industry remains an ongoing concern for Victoria Police.¹¹

Victoria Police has advised that over the course of the last five years in particular, it has become increasingly aware of organised criminal elements having infiltrated or attempted to infiltrate various sections of the private security industry in Victoria. Key areas of focus by these groups have involved the crowd control sector, particularly with due to its association with nightclubs and entertainment venues, and the guard sector working at the maritime ports. Access by organised crime to both sectors facilitates a variety of criminal activities, including the movement of illicit drugs and firearms trafficking. Several of these criminal groups have connections either directly or indirectly with Outlaw Motorcycle Gangs (OMCGs). According to Victoria Police these trends are consistent with national indicators.

Victoria Police considers that organised criminal elements are becoming increasingly sophisticated in their attempts both to infiltrate the industry and to disguise this activity, and in their ability to adapt quickly to the rapid pace of change in a contemporary global environment. The availability to police of effective legislative tools both as a law enforcement agency and as a regulator of the private security industry is critical to police efforts to ensure proper oversight of the industry while contributing to the maintenance of public safety. Regulations supporting audit and probity activities within the industry are of particular importance in addressing the threat posed by organised crime to the industry. The ability to successfully identify close associates of a particular business and the sources of its financial backing are particularly pertinent.

Anecdotal evidence prior and subsequent to the introduction of the current regulatory framework suggests that some participants in the private security industry have questionable character and competence, and that this has resulted in harmful outcomes to the public through neglect and the facilitation of criminal activity. Evidence from the operation of the current regulatory framework may support these claims, with 621 licence/registration rejections occurring under the current regulatory framework as a consequence of either not being in the public interest, or not being a fit and proper person.¹² However, it should be noted that this data does not directly provide evidence of a link between the functioning of the regulatory framework and reductions in harmful outcomes.

Evidence of poor conduct by industry participants has also been raised through reports in the media. For example in late 2014, Victoria Police suspended the licence of one private operator as a result of concerns that they were not meeting workplace obligations, sub contracting to unlicensed private security guards and recruiting and using unlicensed guards.¹³ Six officers from the company involved were subsequently charged for related misconduct.¹⁴

Where industry participants are of poor character, there is also the potential for their poor performance to incur reputational damage and associated financial loss to unrelated industry participants. For

¹⁰ Australian Crime Commission, *Criminal Infiltration in the Private Security Industry*, 2013.

¹¹ Victoria Police Blue Paper, 2014.

¹² Victoria Police data.

¹³ Special Broadcasting Service, *Vic security firm licence suspended*. Accessed on 8 September 2015 at <http://www.sbs.com.au/news/article/2014/12/18/vic-security-firm-licence-suspended>.

¹⁴ Calligeros, M, *Three more charged in ACG Security money laundering probe*. Accessed on 8 September 2015 at <http://www.theage.com.au/victoria/three-more-charged-in-acg-security-money-laundering-probe-20150226-13qey0.html>

example, where a security guard conducts business in a manner that is harmful to others, and this information is made public, it is likely that their actions will result in reputational damage for unrelated industry participants and there may be an associated decrease in demand for services provided by the industry. As such, to some extent an externality exists in the market for private security services.

Australian Crime Commission (ACC) - Criminal infiltration in the private security industry fact sheet, released 2013

The Australian Crime Commission provides issues information to the public regarding a range of organised crime themes. In 2013, the ACC addressed the issue of criminal infiltration in the private security industry.

In particular, the ACC outlined a number of risks associated with the activities of the private security industry given that the access they are granted provides both an incentive and an opportunity for criminal infiltration. These risks include fraud, incompetence and poor standards, under-award payments and exploitation of staff, corruption, violence and associated malpractice, insider crime, misuse of weapons, trade in illicit commodities and money laundering.

While the ACC noted that it is difficult to determine the percentage figure of criminal infiltration of the industry, an ACC special operation found a number of examples of criminal influence and organised crime across all states and territories, including by members of outlaw motorcycle gangs.

The ACC concluded that law enforcement agencies are concerned about any potential infiltration of the private security industry by organised crime given the range of potential impacts:

- ◆ forcing down contract prices and placing pressure on legitimate operators through 'cash-in-hand' payments to employees, avoiding tax and superannuation payments;
- ◆ damaging the integrity and reputation of the sector;
- ◆ increasing opportunities for organised criminals;
- ◆ breaching privacy laws through the illegal trade in confidential information;
- ◆ compromising security standards at critical sites such as airports and maritime ports;
- ◆ facilitating trade in illicit drugs; and
- ◆ helping launder the profits of crime.

Maintaining industry competency

The private security industry plays a role in ensuring community safety in a range of recreational, commercial and public environments.

For example, through their role in providing security services in a range of public circumstances, bodyguards, crowd controllers and security guards are more likely to encounter instances where they are responsible for mitigating a risk of, or responding to an instance of, physical harm to members of the public. Responding to such situations requires skills in areas such as managing conflict, communication, controlling access to and exits from a premise and first aid. These skills can be developed in a number of ways, one of which is formal training.

Where these skills are poorly developed or lacking, the risks to public safety and security are increased. For example, instances of industry incompetence have contributed to members of the public being injured and exposed to substantial risks, for example, in incidents where industry members have used inappropriate levels of force, or where firearms have been discharged into crowds of people.¹⁵ A further risk arises from industry negligence, such as where firearms have been stolen as a result of being inappropriately secured.¹⁶

For example, following a death in 2007 that was directly causally connected to a crowd controller, the State Coroner made the following findings¹⁷:

'The places in which crowd controllers are required to work are often volatile environments in and around licensed premises late at night, with alcohol and sometimes drugs fuelling the behaviour of some legitimate patrons; some would be patrons and others gathering in the environment.'

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ State Coroner Judge Coate, Finding - Inquest into the death of Jerry Karamesinis, 5 October 2011. Accessed on 18 January at http://www.coronerscourt.vic.gov.au/resources/6efa73a5-ed44-4b22-80a6-a22b4c93fa5c/jerrykaramesinis_180407.pdf

To emphasise the nature of the environment in which crowd controllers work, one need go no further than to examine the highly disturbing and confronting statistics compiled by the Coroner's Prevention Unit on the number of deaths in and around licensed premises in the last decade. Between the years 2000 to 2010, there have been 35 deaths in and around licensed premises in Victoria... In 57% of these deaths, the deceased and the assailant were not known to each other. In 62% of the deaths, they occurred immediately outside the licensed venue. Three of the deaths referred to in the above figures have been directly causally connected to a crowd controller who worked at the venue.

Crowd controllers are given considerable authority in their workplace and heavy responsibilities... It is a reasonable expectation of the community that such people will be given the basic skills, training and supervision to perform their role.'

The Regulations also make provisions to ensure interstate private security operators have a minimum performance standard. Through mutual recognition schemes, any individual from interstate who is planning to conduct a private security activity can apply for a temporary permit based on their recognition in their home state. This protects Victoria from unlicensed operators moving to the state for major events that have a high demand for private security resources (e.g. Australian Open) and undermining the quality of the industry's performance.

Counter-Terrorism

In addition to its role in providing conventional security services, private security operators contribute to Victoria's response to the threat of terrorism.¹⁸

Victoria remains exposed to the threat of terrorism as indicated by the Australian Government's announcement in 2014 that it had raised the National Terrorism Public Alert level from Medium to High.¹⁹ This threat level has not changed, but is now classified, under a new National Terrorism Threat Advisory System announced in November 2015, as a *High* level of alert, and a *Probable* threat level²⁰. While the physical harm from terrorism in Australia continues to be low compared to other everyday risks such as driving a car or smoking, terrorist events are of particular concern because they have a range of other impacts, including that they contribute to "profound and far-reaching consequences in terms of social unity, civil liberties and general community wellbeing".²¹

As discussed above in relation to community safety, private security services are increasingly being used as part of responses to terrorism. Any deterioration in the industry's probity or competency standards or any infiltration of the industry by terrorist groups poses a risk to efficient and effective responses to terrorism. For example:

- ◆ In March 2015, the Federal Government announced \$18 million in funding for schools at risk of attack as a result of racial or religious intolerance, including schools in Victoria – which for the first time can be used to employ security guards and install security.²²
- ◆ Further, governments are increasingly relying on private security services to complement their responses to terrorist threats, for example through training which will enable security officers to serve as an auxiliary force in the event of a major terrorist incident.²³
- ◆ From February 2015, a private security provider has been contracted to provide services for Victoria Police in response to elevated risks of a terror attack.²⁴

The increasing importance of these additional public security roles for private security providers reinforces the level of risk associated with instances of negligence or intentional harm arising from any failure by the private security industry to meet minimum probity or competency standards, or from criminal infiltration of the industry by terrorists and other criminal groups.

¹⁸ Victoria Police Counter Terrorism Framework, November 2013. Accessed on 17 December 2015 at http://www.police.vic.gov.au/retrievemedia.asp?Media_ID=99883

¹⁹ Department of Prime Minister and Cabinet, *National Terrorism Public Alert Level Raised to High*. Accessed on 2 September 2015 at <https://www.pm.gov.au/media/2014-09-12/national-terrorism-public-alert-level-raised-high>.

²⁰ Minister for Justice media release 26 November 2015. Accessed 5 January 2016. <http://www.nationalsecurity.gov.au/Securityandyourcommunity/Pages/National-Terrorism-Threat-Advisory-System.aspx>

²¹ Aly and Green, *Social Implications of Fearing Terrorism. A report on Australian responses to the images*, 2009. Page 38. Accessed on 15 December 2015 at <http://ro.ecu.edu.au/cgi/viewcontent.cgi?article=10>

²² Minister for Justice media release 2 March 2015. Accessed 14 December 2015. <https://www.ministerjustice.gov.au/MediaReleases/Pages/2015/FirstQuarter/2-March-2015-Keeping-at-risk-schools-safe.aspx>

²³ United Nations Office on Drugs and Crime, *State Regulation concerning Civilian Private Security Services and their contribution to Crime Prevention and Community Safety*, 2014. Accessed 14 December 2015 at <https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Ebook0.pdf>

²⁴ The Age, *Victoria Police hire private armed guards in response to terror threat*. Accessed 14 December 2015 at <http://www.theage.com.au/victoria/victoria-police-hire-private-armed-guards-in-response-to-terror-threat-20150403-1me64o.html>

Record keeping

While all businesses are required to maintain certain records of business transactions as part of existing legal requirements, the risks outlined above associated with the services provided by private security providers may warrant additional requirements. In the absence of requirements for records to be kept and maintained in a particular form (for example, through requiring updated information to be provided to Victoria Police) there may be associated impacts on the effectiveness and efficiency of monitoring and enforcement activities. For example, where investigators are unable to identify links between a service provider and a security service that was provided harmfully, or where a person with poor character becomes an associate of a business operator after a licence has been granted (with associated risks for public safety).

Information asymmetries

Consumers and employers of private security industry members aim to use the services of only those members with appropriate competence and character. There are various ways in which consumers and employers of private security industry members can check and verify the quality of potential private security providers, and whether they meet competency and character requirements. However, privately conducting probity and competency checks on private security providers can be difficult, expensive and time consuming, and may be less reliable and more costly than when a regulator performs these checks. A regulatory approach may help to reduce search costs by centralising a system of quality verification.

Specific questions for consultation:

- ◆ In the absence of licencing and registration, would it be difficult for employers and consumers to identify private security operators of appropriate character and competence? Why or why not?
- ◆ If you think it would be difficult to identify private security operators of appropriate character and competence, approximately how much time, money and/or effort would it take to do so?
- ◆ Would this vary across entities in the industry? For instance, would a large business contracting private security operators have a different, more effective due diligence process than would an individual?

Scope of the private security industry

While the primary objective of the regulatory framework is to regulate the private security industry so as to mitigate potential risks to community safety arising from the operations and activities of the industry, imposing regulation on the private security industry to meet this goal has potentially undesirable outcomes in terms of decreasing competitiveness in the industry and leading to higher prices for consumers. As such, there is a need to impose regulatory burden on the industry only where it is justifiable through a commensurate impact on the objective of mitigating risks to public safety.

There are a range of professions that undertake activities which are similar to private security services, and the scope of the regulatory framework will determine whether they are covered. As such, consideration must be given to whether each profession potentially covered by the regulatory framework should be covered, including whether providers should be subject to no requirements, requirements for only probity, or requirements for both competency and probity.

The decision of whether to cover the profession as part of the regulatory framework ultimately depends on the source of risk that their activities pose to the community, for example whether they have physical access to property, access to security information, access to personal information, or can pose a risk of physical harm through their activities.

Related mitigating factors – Existing incentives for the private security industry to provide services in a way that ensures community safety

There are a number of existing factors which help to secure the benefits mentioned above in relation to preventing criminal activity and enhancing community safety.

There are some existing incentives for private security companies to work cooperatively with police members. For example, where a security equipment installer/adviser contributes to producing a security system which has a high false alarm rate, the inconvenience caused to the customer is likely to reduce the likelihood of repeat business or referrals. This alignment of incentives is less likely where an industry member, such as a security guard, unnecessarily involves police to resolve a matter given that there is little cost to industry or the client associated with their decision (time only).

With regard to community safety risks, there are a number of general legislative requirements and private incentives that could partially address this problem, for example:

- ◆ Employers have a range of responsibilities under the *Occupational Health & Safety Act 2004*, which provide incentives for them to reduce the likelihood that their employees will be exposed to conflict and safety incidents. These requirements include that they must maintain the workplace in a safe condition, and ensure workers have adequate information, instruction, training and supervision to work in a safe and healthy manner.²⁵ However, such responsibilities do not necessarily provide private security industry members with competency to respond appropriately to risks to other members of the public.
- ◆ A range of criminal sanctions exist which pose disincentives for individuals and businesses to abuse their role as trusted providers of private security providers, and thus may partially address the underlying problem. Where an individual secures or discharges a firearm unsafely or uses inappropriate force, for instance, applicable offences may include firearms offences under the *Firearms Act 1996* or offences relating to assault and causing injury under the *Crimes Act 1958*.
- ◆ Given that the customers of private security businesses value the safety of their patrons, private security businesses have an incentive to ensure the safety of their customers' patrons. In addition to existing competency and training requirements under the Act for licence holders in the manpower sector, businesses may require staff members to undertake additional on-the-job training or possess specific industry experience, with the aim of increasing the likelihood that their staff members will have the knowledge and capacity to respond appropriately to community safety incidents and avoid contributing to an incident.
- ◆ There are other private incentives for individuals in the private security industry to respond appropriately to threats to community safety. For example, to the extent that an individual's employer values the safety of its customers' patrons, if an employee responds appropriately to community safety incidents, they may be more valued by their employer and therefore more likely to retain employment.

The above incentives may partially assist in minimising the risks involved in responding to community safety incidents, by encouraging industry participants to comply with accepted workplace, safety and industry standards and avoid criminal sanctions. A disadvantage of relying on such incentives alone is that they do not provide clear and uniform guidance on the specific character, training and skills of industry participants that are most likely to minimise those risks and maximise the related benefits of crime prevention and enhanced community safety.

3.1.3 Requirements of the Act

Given the crime prevention role the private security industry plays and the magnitude of the risks outlined above, there is ongoing interest in the character and competence of industry participants.

The Act imposes minimum standards on individuals who provide security services, and ensures that all service providers are either licensed or registered. These standards predominantly relate to minimum character checks for all industry participants, and training and experience for licensees (for more information on training and experience requirements of the Act – refer to Appendix 2 on page 96). In addition, businesses must demonstrate that they comply with standards relating to workplace health and safety, financial viability and public liability insurance.

The registration and licensing framework provides police with a role in maintaining minimum levels of quality for participants entering the industry, to monitor the size and characteristics of the industry over time, and to investigate and discipline licence and registration holders. Through this framework, the Act aims to protect public safety by mitigating the range of risks posed through probity, competency, terrorism and information asymmetries.

While businesses are required to hold a variety of documents ensuring their commitment to workplace standards, industry stakeholders have claimed that the lower requirements for sole traders have resulted in an unintended consequence where individuals seeking work in the industry have an incentive to seek contracting work as a sole trader rather than seeking employment.

Industry suggested that the net result is that a large proportion of individuals who would otherwise be classed as employees are contracted as sole traders with unfavourable remuneration and working conditions. Further, businesses that engage in this conduct have lower cost structures and are therefore at a competitive advantage when bidding for work.

²⁵ WorkSafe Victoria, Employer Rights and Responsibilities. Accessed on 17 December [year?] at <http://www.worksafe.vic.gov.au/laws-and-regulations/employer-rights-and-responsibilities>

This concern is more relevant to the Act and thus has not been analysed further in the context of the Regulations in this document, but more information on the issue of sole traders can be found in Section 12 on page 90 .

Australian Skills Quality Authority (ASQA) - Training in security programs in Australia, released January 2016

The recommendations of the ASQA report Training in security programs in Australia deal with proposals to review the Certificates II and III in Security Operations to ensure they meet the skill requirements for security licence activities, achieve agreement between jurisdictions about the qualifications and units that should be applied nationally, address poor levels of language, literacy and numeracy in the industry and improve private security training products and packages. While the report discusses broader issues arising from the findings of coroner's reports and the results of stakeholder consultations, such as the need for potential changes to licensing standards and systems to improve industry performance and competency, the recommendations themselves focus on training standards. As such, they have minimal implications for the Act or Regulations because the precise details of training standards and requirements are not set out in the Act or Regulations, but are determined by the Chief Commissioner under a discretionary power provided by the Act.

One recommendation that could have some effect on the Regulations, were it accepted, is the suggestion under Recommendation 5 that licensing authorities should require all relevant current licensees to refresh their skills and knowledge of safe restraint techniques prior to renewing, or re-applying for, their licence. If this suggestion were adopted by jurisdictions including Victoria, the Regulations might need a relatively small amendment in the future to require licence applicants to furnish documentary evidence of the completion of a refresher course.

At the time of writing, the collective response of Australian industry regulators to the recommendations in ASQA's report is unknown. As the regulator in Victoria, Victoria Police will be involved in national discussions about the findings of the ASQA report and the broader issues it has raised, including suggestions for changes to licensing systems (such as introducing probationary licensing schemes) and measures to address ASQA's concerns about a lack of harmony in job skills requirements across jurisdictions. Victoria Police will keep the department informed about any developments that may have implications for the operation of the Act or Regulations, and it is expected these issues will also be discussed in Victoria at meetings of the VSIAC.

3.2 Residual problems: Issues that could be addressed through remaking the Regulations

As discussed above, the Act establishes general principles and obligations applying to industry participants and the regulator. However, the Act does not prescribe a range of operational matters, leaving these to be addressed through the Regulations.

As such, the Regulations do not establish the fundamental framework of security industry licensing and registration nor do they contain the authority to alter the fundamental structure of the private security regulatory regime. Rather, the Regulations operationalise these general requirements by prescribing in more detail what should be done to fulfil the Act's requirements.

In the sections below, the analysis aims to clearly isolate the residual problems that result in the base case where the Regulations are not remade. It demonstrates how these residual problems can and cannot be addressed through the regulations, as opposed to through changes to the interrelated requirements of the Act and the discretion of the Chief Commissioner.

Outlined below is a summary of where we consider that the source of the regulatory burden faced by industry ultimately lies, and as such, where reductions in regulatory burden may be in-scope for the remaking of the Regulations.

Table 8: Summary of the sources and scale of regulatory burdens related to the Regulations²⁶

	Attributable to the Regulations	Related to the Regulations, but ultimately attributable to the Act
New application costs	-	\$1.2m
Renewal application cost	-	\$2.0m
Record keeping	\$0.7m	\$0.7m
Requiring crowd controller start/finish times and signatures	\$0.4m	-
Fees (2014-15)	\$6.2m	-
Total	\$7.3m	\$3.9m

Source: KPMG Analysis

Each of these sources of burden and a range of other requirements of the Regulations and the Act are detailed below. Where the interrelated requirements of the regulatory framework are particularly complex, these requirements are displayed visually in a table. The green sections demonstrate clearly what can be influenced through changes to the Regulations.

3.2.1 Applications: The documentation of the licence/registration application procedures would not be prescribed

The Act requires that individuals and businesses undertaking security activities must be either licensed (crowd controller, security guard, private investigator, bodyguard and security industry trainer) or registered (security equipment installer and security adviser). The Act also sets out that to be granted a licence and/or registration, an applicant must satisfy the Chief Commissioner of Police of their identity and probity (and for licences, competency). However, the Act does not set out the documentation that would need to be provided to the Chief Commissioner in order to satisfy them that the applicant meets these requirements (refer to Table 9 below).²⁷

Table 9: Licence and registration requirements for applications

Key		Licences (security guard, crowd controller, investigator, bodyguard and trainer)		Registrations (security equipment, installer and security adviser)	
		Individuals	Businesses	Individuals	Businesses
Requirement of the Act		●			
Requirement of the Regulations		●			
Required at the Chief Commissioner's Discretion		●			
Not required					

		Licences (security guard, crowd controller, investigator, bodyguard and trainer)		Registrations (security equipment, installer and security adviser)	
		Individuals	Businesses	Individuals	Businesses
Satisfy Chief Commissioner of identity					
Requirements to be satisfied in application	A full set of fingerprints	●	●	●	●
	Statement of name and addresses of relevant person/s	●	●	●	●
	Passport photograph and date of birth of the applicant/s	●	●	●	●
	Certified copy of business/trading name/ABN*		●		●
	Name and Address of employer (if any)	●		●	
	Certified copies of the applicant's passport (and visa if non-Australian). 100 points of identification (if applicant doesn't hold a Firearms licence). A letter from a medical practitioner if they have adverse medical history)	●		●	

²⁶ Each of the cost categories summarised in this table are outlined in more detail throughout this section 2.2, including their underlying assumptions

²⁷ This table is not intended to be an exhaustive or legal account of the requirements under the Act, Regulations, or Chief Commissioner's requirements.

	<u>Licences</u> (security guard, crowd controller, investigator, bodyguard and trainer)		<u>Registrations</u> (security equipment, installer and security adviser)	
	Individuals	Businesses	Individuals	Businesses
Satisfy Chief Commissioner of probity				
Two written character references	●	●	●	●
Evidence of compliance with workplace obligations and financial viability		●		●
Written statement verifying awareness of workplace obligation and a letter form accountant certifying financial viability		●		●
National Police records check/s	●	●	●	●
Details of any relevant offences	●	●	●	●
Details of any bankruptcy or insolvency		●		●
Certificate of currency of public liability insurance		●		●
Standard operating procedures. A business plan that details nature of work, premises, employee numbers, training and supervision standards, employee licences/registrations checks, uniform details		●		●
Satisfy Chief Commissioner of competency				
Certified copies of qualifications, knowledge, experience or training	●	● OR		
Certified copy of approved industry association membership				
If applying as a trainer, a copy of all training and assessment resources		●		●
Other				
Advertise application in a newspaper		●		●

Given that the Act and Regulations have always operated together, it is difficult to ascertain what would happen if the Chief Commissioner were required to make licensing/registration decisions without having the required documentation set out in the Regulations:

- ◆ If there were no legal instruments to require certain documents to be provided, the Chief Commissioner would likely have less certainty regarding the documentation that applicants will provide him/her in order to satisfy him/her that the applicant was suitable to receive a licence. Applicants might also face uncertainty regarding requirements in the application process. While this uncertainty could be mitigated to some extent by the Chief Commissioner issuing guidelines on preferred requirements, the status of such guidelines would be more ambiguous than those for training requirements, where the Chief Commissioner's discretion to set the requirements is written into the Act. By contrast, in this case the Act contemplates that the requirements will be prescribed in regulations. In the absence of prescribed requirements, this ambiguity about the source of authority to set requirements for the application process could potentially result in increased costs of administering the licensing/registration framework, particularly if an applicant were unable to comply with a requirement and wished to dispute the statutory necessity of meeting it. This uncertainty could also potentially impede the Chief Commissioner's ability to reject unsuitable applications by making it more difficult for the Chief Commissioner, in the absence of any specific legislative authority, to challenge particulars or documents that fell short of requirements.
- ◆ Accordingly, if the Chief Commissioner published a required form that the application should be made in – which would likely occur to ensure administrative ease – it is expected the application process could proceed as currently occurs. However, as noted above, the Chief Commissioner would have no clear legislative basis for rejecting or requesting amendments to applications that did not contain the required particulars or documents. This could potentially require Victoria Police to spend more time reviewing applications and negotiating with applicants regarding incomplete or inadequate applications, which could further increase administration costs. Moreover, the prospect of disputed applications would likely increase over time as applicants became more aware of the legislative gap.
- ◆ Upon admittance of an individual/business to the industry without an application form, monitoring and enforcement would become much more complex. Victoria Police requires basic identity, probity and competency information to allow it to target its activity, and enable a more sophisticated response to cases as they arise.

Specific questions for consultation:

- ◆ Do stakeholders consider that all of the information requirements in submitting an application are necessary? Why or why not?

Approach of the current Regulations

The current Regulations address this problem by outlining a list of certain documents (prescribed particulars) that applicants must supply with their licence or registration application.

Regardless of what is set out in the Regulations, the Chief Commissioner would still have to be satisfied of the applicant's identity, probity and, for the manpower sector, competence. As such, the Regulations only impose a burden to the extent that their requirements are more onerous than the burden that would otherwise be imposed by the Chief Commissioner.

As outlined in Table 9 above, under the current requirements, a new industry entrant must apply for a licence/registration by submitting an application to Victoria Police which includes a range of documentation about identity, competency and probity. This application must include a number of documents, including fingerprints, two written character references, and the required fee. Through consultation, business applicants have advised that, on average, a new application takes around 16.3 hours to complete.²⁸

Existing industry members must submit an application for a licence/registration renewal every three years. This application must include all of the same requirements as for a new application. Through consultation, stakeholders have advised that a renewal is much shorter to complete given that they gather much of the information required from their previous application.²⁹ In consultation, business applicants have advised that a renewal application takes around 5.6 hours to complete. Factors contributing to the reduced time to apply for a renewal relative to a new application include applicant familiarity with the process, and that Victoria Police does not currently request certified copies of training certificates that have previously been provided despite the requirement in the Regulations that these must be provided. It is proposed to amend the Regulations to clarify that only copies of documents not previously provided are required, in line with Victoria Police's practice.

Using data from consultations, the regulatory burden associated with new applications is estimated to be \$1.2m per annum, and associated with renewal applications is estimated to be \$2.0m per annum.³⁰ As discussed above, the Regulations are not the source of all of the regulatory burden associated with licence/registration applications. It could be argued that the Regulations are responsible for some element of this regulatory cost. However, it could also be argued that they are responsible for reducing this regulatory cost given that they provide clarity on what documentation is required to fulfil the Act and the Chief Commissioner's requirements.

The prescribed details and documents that applicants must supply with their licence or registration applications under the Regulations represent the minimum possible information that must be provided to satisfy the requirements of the Act – the Department considers that none are unnecessary or unduly onerous.

This is because each prescribed detail or document that applicants must supply under the Regulations is designed either to meet a specific requirement of the Act or to enable Victoria Police to verify that applicants are eligible for the particular licence or registration category they have applied for and to confirm which prerequisites under the Act apply.

²⁸ This estimate is based on consultation with eight private security industry representatives, including a sample of both licenced and registered professions.

²⁹ Ibid.

³⁰ In the absence of further data, the wage rate used is the hourly industry award wage for a Security Officer Level 3 in 2015 of \$20.3 with additional overheads of 75%. The estimated time taken to complete a new application is based on industry feedback (16.3 hours for a new business application and 5.6 hours for a business renewal – and in the absence of further data, assumes that applications for individuals require 40% of the time taken for business applications given that these applications are less time intensive than business applications, for example individual applications relate to a single individual and do not require information regarding standard operating procedures, public liability insurance, financial viability and compliance with workplace obligations). Industry population, growth and entry and exit rates are estimated using historical figures as calculated in section 3.2. As outlined above, Victoria Police does not currently require, as part of renewal applications, the provision of certified copies of training certificates where these have previously been provided despite the requirement in the Regulations that these be provided. In the absence of further data, it has been assumed that applicants do not do this (as Victoria Police does not request it) and therefore that there are no costs associated with this that are attributable to the Regulations. More generally, the requirement under the Regulations to provide certified copies of specified documents rather than non-certified photocopies would be expected to involve an additional cost for the applicant. Such additional cost would be attributable to the Regulations, but the amount of the cost has not been able to be identified. During consultation, stakeholders did not explicitly mention whether or not part of the time required to prepare an application includes gathering certified copies.

In the Act, specific requirements for applications are categorised in two ways — as information that must be provided with every application or as the circumstances in which the Chief Commissioner must refuse to grant a licence or registration.

Thus the Act specifies, for instance, that licence or registration applicants must provide proof of identity, which includes fingerprints, and two written references from prescribed persons. In the case of business licence or registration applications, the Act requires a statement of the name and address of any close associate, signed by that close associate; the name, address and fingerprints of the nominated person and other body corporate officers if the business is a body corporate; and proof of identity of all persons named in the statement.

The Act further lays out the circumstances in which the Chief Commissioner must refuse to grant a licence or registration. The Chief Commissioner must refuse a licence or registration unless satisfied that the granting of the licence is not against the public interest and that the applicant meets probity requirements (such as being fit and proper, being aged 18 years or more, not having convictions for any offence that requires refusal of the licence or registration) and (for licence applicants only) meeting competency requirements. In the case of business applicants, the Chief Commissioner must also be satisfied that the applicant has not within the last five years been declared bankrupt, is not insolvent or under administration, and has not failed to supply evidence of public liability insurance cover and compliance with statutory workplace obligations.

The Act further specifies that the Chief Commissioner must not issue a licence to a person who is charged with a 'disqualifying offence', which is defined in the Act to include specified drug, assault, firearms and other offences, or to a person who has been convicted of any offence within a certain period that in the Chief Commissioner's opinion would render the person unsuitable to hold a licence. For registration applications, the Act specifies allied requirements, but the concept of 'disqualifying offence' does not apply and instead the Chief Commissioner may exercise discretion regarding indictable offences. Hence the Act specifies that the Chief Commissioner must not issue a registration to a person charged with an indictable offence, or convicted of an indictable offence within a certain period, that in the Chief Commissioner's opinion would render the person unsuitable to hold a registration.

Where the Act specifies those matters on which the Chief Commissioner must be satisfied, the Regulations spell out the particulars and documents that are needed by the Chief Commissioner to help decide those matters. For example, the Regulations require an applicant to state his or her date of birth, enabling verification of the applicant's age. Similarly, business applicants are asked to supply details of any declaration of bankruptcy in the proceeding five years, which enables verification on this issue as required by the Act. Applicants are also asked to provide details relating to any disqualifying or indictable offences as required for the particular licence or registration category.

The Regulations also contain requirements that flow from the licence and registration categories in the Act for individual operators (employees or sole contractors) and businesses (individuals or bodies corporate). Victoria Police must have sufficient information to verify that an application has been made in the appropriate category and to confirm which prerequisites under the Act must be met.

For example, the requirement in the Regulations for individual business applicants to supply details of their Australian Business Number and a certified copy of their business name registration aims to enable police to verify that the business exists and that the application is correctly categorised and must meet all relevant requirements under the Act. Similarly, the requirement for body corporate business applicants to supply a certified copy of their certificate of registration under the Corporations Act aims to confirm the status of the business and the need for the applicant to meet all requirements for bodies corporate under the Act.

These information requirements are considered by Victoria Police to be the minimum necessary to enable them to adequately process, assess and support decision-making on applications in accordance with the Act.

3.2.2 Exemptions: Exemptions from licensing or registration for certain people would cease

The Act establishes that where a business/individual does not hold the relevant licence/registration, it is an offence to undertake or provide private security activities. However, certain specified groups of persons who are required to carry out private security activities (such as crowd control or investigations) as part of their work in other professions, or as part of their training, are exempt from the operation of the Act, either by the Act itself or as prescribed by the Regulations.

The Regulations prescribe a list of classes of persons exempted from the requirements of the Act. In remaking the Regulations, this list of classes of persons could potentially be broadened or narrowed. A

broader list of exemptions would reduce the categories of persons required to gain a licence/registration. A narrower list of exemptions would increase the categories of persons required to gain a licence/registration.

The exemptions established by the Act for police, government employees and certain professions exemplify the key criterion that has been used for setting exemptions under the Regulations — that the person carries out security functions as an incidental part of their duties in other professions, industries, work or study. The Regulations follow this example by only providing exemptions that conform to this approach. The Department has not identified any additional classes of persons within these parameters that should be added to the list of exemptions.

The risk of broadening the exemptions in the Regulations to other categories of persons — for instance by providing risk-based exemptions to certain participants in the private security industry itself — is that this could potentially conflict with the Act, which delineates the scope of the regulated industry. The Act achieves this through its “purposes” clause, which states its intention to regulate the industry, coupled with provisions defining regulated activities. If broader exemptions were considered warranted, these would normally be progressed through the Act rather than the Regulations, in the interests of transparency and fairness.

The risk of narrowing the exemptions in the Regulations is that classes of persons currently exempted to carry out incidental security activities would lose their exemption. As a consequence they would need to apply for a licence or registration under the Act, incurring associated costs and becoming subject to obligations and sanctions under the Act not designed to apply outside the private security industry. The absence of exemptions might also act as a disincentive to persons wishing to enter professions, industries or vocational training programs which required the performance of incidental security duties.

The exemption system deliberately operates within reasonably narrow parameters. Using the Regulations broadly to dis-apply the regulatory regime to particular sectors or groups would be inconsistent with the intention of the Act to cover all relevant sectors of the private security industry.

Approach of the current Regulations

Consistent with the parameters outlined above, the current Regulations include an exemption from the requirement to be registered/licensed for three classes of persons:

- ◆ Employees of public sector bodies or local Councils acting as investigators, or contractors working for these organisations who are investigating matters relating to food hygiene and trade or professional standards.
- ◆ Apprentices and students undertaking Vocational Education and Training (VET) who are acting as security equipment installers in the course of their training.
- ◆ Employees advising on security equipment as part of selling it in the course of their normal employment on a business' premises for an employer who is not operating a private security business (for example, sales staff working at an electrical appliance retailer).

The activities undertaken by these classes of persons exempted by the Regulations do not expose consumers and the public to the same level of risks to community safety and the security of property as do others undertaking these activities.

If the relevant exemptions applying to the above groups ceased, every individual in the previously exempted category would be required to apply for an individual operator's licence or registration, to avoid being in breach of the Act. This would impose an unnecessary and unjustifiable burden on the members of these groups and could act as a disincentive to individuals seeking related employment, engagement or training in these areas.

The department is not aware of any problems that have been identified with their operation over the last 10 years. In addition, no additional professions or industries carrying out incidental private security activities have come to attention in that period.

Specific questions for consultation:

- ◆ Do stakeholders consider that there are any other classes of persons that should be exempted from the requirements of the regulatory framework? Why or why not?

3.2.3 Definitions of security equipment: Registration requirements might need to be expanded to encompass currently unregulated activities

The Act establishes that any individual who is employed to install³¹ or provide advice on³² ‘security equipment’ must be registered. It specifies that ‘security equipment’ means ‘any mechanical, electronic, acoustic or other equipment;

- a. designed, adapted or purporting to provide or to enhance security; or
- b. for the protection or watching of property;

that is prescribed by the regulations.”

As such, the Act defines broadly what is meant by security equipment, while leaving some scope within the Regulations to define the specific activities that would require a registration. This is outlined in Table 10 below.

Table 10: Licence and registration requirements for inclusions

Inclusion	Licences (security guard, crowd controller, investigator, bodyguard and trainer)		Registrations (security equipment, installer and security adviser)	
	Individuals	Businesses	Individuals	Businesses
Define meaning of security equipment			●	●
Prescribe types of security equipment subject to Regulation			●	●

Key

Requirement of the Act	●
Requirement of the Regulations	●
Required at the Chief Commissioner’s Discretion	●
Not required	

The practical effect of expanding the definition of security equipment beyond the current Regulations would be to require more classes of people to be registered, while narrowing the definition of security equipment would require fewer classes of people to be registered. That said, this is subject to the limits of the general requirements of the Act given that it establishes the overarching scope of the persons requiring registration,

Given that the Act and Regulations have always operated together, it is difficult to determine what would happen if the Regulations did not specify which types of equipment were included in the definition of ‘security equipment’. In the absence of the Regulations, it is possible that a broader interpretation of the definition in the Act could be applied, which would require a person to be registered when installing or providing advice on any equipment designed, adapted or purporting to provide or enhance security or to protect or watch property. However, it is difficult to determine exactly how far such a broad interpretation could be applied and what additional equipment or security-related occupations might be captured.

At the very least, a loss of certainty about the limits of the definition could impede the effective operation of the offences in sections 9 to 12 of the Act, which relate to carrying on or proffering the activities of a security equipment installer without a registration. This is because the Act’s definition of “security equipment installer” relies, in part, on the definition of “security equipment”. In the absence of prescribed security equipment items as contemplated by that definition, it would fall to the courts to decide how far that definition could be applied. Pending the issue being tested in the courts, uncertainty about the definition could potentially constrain police decisions to charge and prosecute alleged breaches of relevant offences.

³¹ Also includes to ‘repair, service or maintain’ (See *Private Security Regulations 2005*, p 7).

³² Included in the Regulations as ‘provide advice in relation to security equipment or security methods or principles’ (See *Private Security Regulations 2005*, p 7).

Further, while Victoria Police might decide to maintain the status quo and delay implementing any expanded interpretation of the definition pending legal advice and/or a determination by the courts, any uncertainty about the full scope of registrable activities could adversely affect the operations and confidence of businesses and individuals who are not currently subject to the Act, but who undertake security-related activities that bring about only limited risks for community safety and the security of property.

For example, through consultation, locksmiths have been identified as one of the professions that may incur registration requirements if the 'security equipment' definition were not specifically included in the Regulations. Locksmiths undertake activities similar to those undertaken by security equipment installers in some respects, however there are a number of key differences (see Table 11 below).

Table 11: Summary of regulated professions and associated risks

	Security Equipment Installers	Locksmith
Impact on efficiency and effectiveness of policing	Indirectly – poorly installed equipment can result in false callouts for police	No
Access to privileged security information	Yes – understanding of security location and specific systems	Somewhat – general information about door locations and other easily observable security details
Access to private property	Yes – exterior and interior	Yes – exterior and interior
Security equipment easily updated by customer	No	Yes – secondary locks can be installed at low cost
Identified risk of infiltration by organised crime groups	Yes	No

Given that there are some similarities in the risks posed by security equipment installers and locksmiths, there may be some merit in suggestions that they should require registration. However, anecdotal evidence from Victoria Police suggests that there is little evidence of risks posed by locksmiths, for example, infiltration by organised criminal groups.

Theoretically, it would be possible to bring locksmiths under the control of the Act merely by expanding the definition of "security equipment" in the Regulations to include an additional category of "locks", which would have the flow-on effect of requiring all locksmiths to become registered under the Act. However, the department's view is that any change to the regulatory status of locksmiths in Victoria could only be made via the Act, not the Regulations, for the sake of clarity and transparency. That said, there is no plan at present to bring locksmiths into the regulatory regime for private security, as no evidence of specific security problems arising from the activities of locksmiths has been presented to date that would justify the regulation of locksmiths as a profession.

Approach of the current Regulations

The list of security equipment items in the Regulations ensures that certain people are required to undertake registrations, including people who install or advise on the installation of security systems, alarms, safes and vaults. The choice of items included in the Regulations aims to address concerns about the suitability of the character of people providing security installation or advisory services, by ensuring that they must be registered when installing or advising on particular items of security equipment. On balance, the only other major category of security-related equipment identified to date (locks) is considered to present a lower level of risk overall that does not warrant regulation under the Act.

3.2.4 Licence/registration holder record keeping: Additional record-keeping obligations would not be prescribed

The Act requires registration/licence holders to keep permanent records, for a period of at least five years, of the carrying on of their business and security activities.

While the Act outlines that registration/licence holders maintain general information about their business and the security activities they provide, it does not specify requirements to:

- ◆ Provide these records to investigators from Victoria Police on request; and
- ◆ Record the particulars of names, dates and service descriptions for all security services requested.

These requirements are prescribed by the Regulations.

Table 12: Licensing and registration requirements for record keeping

		Licences (security guard, crowd controller, investigator, bodyguard and trainer)		Registrations (security equipment, installer and security adviser)	
		Individuals	Businesses	Individuals	Businesses
		Record Keeping	Must keep records of any relevant security activities for 5 years	●	●
Must keep records of any relevant security activities permanently	●	●	●	●	
Provide these records to investigators from regulator on request	●	●	●	●	
Record names, dates and service descriptions of all security services requested	●	●	●	●	

Key	
Requirement of the Act	●
Requirement of the Regulations	●
Required at the Chief Commissioner’s Discretion	●
Not required	

Victoria Police undertakes regular monitoring and enforcement activity to maintain compliance with provisions of the regulatory framework, and in doing so, aims to mitigate potential risks to community safety posed by the private security industry. Victoria Police’s ability to undertake this work depends on regulated parties maintaining and providing records of security activities.

In order to effectively undertake investigations, Victoria Police has advised that it requires records of security activities provided and requested to be maintained and provided to them upon request.

That said, imposing additional requirements on regulated parties to maintain and produce records results in additional regulatory burden. As such, an appropriate balance must be achieved.

As advised through consultation, the consequence of allowing these requirements to lapse would be that businesses would likely continue to keep records as part of ‘business as usual’ practices, however Victoria Police would not have specific powers to call on these records as part of monitoring and enforcing potential misconduct by licence/registration holders, or to specify the particulars of the records that must be kept.

Without a legislated inspection power, Victoria Police could not undertake records inspections unless the records were submitted to police voluntarily by the licence or registration holder. Inspection powers are not provided at large across the Victorian statute book; they are enshrined in particular pieces of legislation and are curtailed to strike the right balance between powers necessary for inspectors to enforce the law and the rights of citizens to dignity, privacy and the security and integrity of their person and premises. In the absence of regulations prescribing a requirement that the holder of a licence or registration must make records available for inspection, Victoria Police would have no coercive authority to enable it to access and inspect records, which is likely to impede its ability to undertake investigations into licence and registration holders’ compliance with the requirements of the Act.

Approach of the current Regulations

The current Regulations outline requirements to maintain records of a range of information, including names, dates and service descriptions for any security services requested or provided. The Regulations also specify that licence/registration holders must make these records available for inspection by police at any time during business hours.

Through consultation, stakeholders advised that maintaining records associated with the requirements of the Act and the Regulations incur ‘negligible’ additional regulatory burden. When specifically queried, businesses advised that it took them on average 2.1 hours per month to meet their requirements, which is estimated as an annual regulatory burden of \$0.65m per annum³³ to meet the record keeping requirements of the Regulations.

³³ This is conservatively estimated assuming that 1,452 businesses (743 licensed and 709 registered, noting that may be a small degree of overlap between these two populations, and therefore may be small synergies in meeting regulated requirements) employ an unskilled worker (whose time is costed using the award rate of a Security Officer Level 1 at \$19.42 in 2015 with additional overheads of 75% for 2.1 hours per month. This calculation yields \$1.3m of record keeping burden associated with the Regulations and the Act – in the absence of further data, it is conservatively assumed that 50% of this burden is attributable to the Regulations, noting that the Act is the original source of the record keeping requirements, whereas the Regulations only

3.2.5 Other matters covered by the Regulations

There are a range of other matters covered by the Regulations which have more limited operational impacts, and as such are treated with a commensurately lower level of analysis. These issues are outlined below, with an explanation of the functions of the relevant provisions and the likely scope of impacts should they lapse.

Notice of change of particulars

The Act outlines a number of instances in which individuals and businesses who are licensed/registered must notify Victoria Police of a change in circumstance.

In addition to these requirements, the Regulations require that a registered/licensed individual/business must notify them if they change their personal name, and for a business, change the place in which they do business. In the absence of regulations, these two minor requirements would lapse. This would be a very minor change to the regulatory framework, however it could have ramifications for the ability of Victoria Police to monitor and enforce compliance of registered/licensed parties with the requirements of the framework. Given the infrequency with which businesses change locations and individuals change names, this requirement imposes a negligible regulatory cost.

Registers maintained by Chief Commissioner of Victoria Police

The Regulations specify the particulars that the Chief Commissioner must include in the register of licence, registration and permit holders that he or she must maintain under section 173 of the Act, and the parts of the register (for example, names and business addresses of the holders and their authorised security activities) that may be inspected by members of the public to allow them to verify whether a person is licensed or registered under the Act.

The Regulations also require the Chief Commissioner to publish on the internet approved training requirements and approved industry associations.

The register and public notifications maintained by the Chief Commissioner provide:

- ◆ Clear guidance to industry members on how they can meet their obligations under the Act and in doing so reduce the regulatory costs of the regime;
- ◆ Information to consumers and private security employers on the licence/registration status of industry members, thereby allowing them to minimise search costs and gain assurance that the provider of their trusted security services has achieved minimum standards of probity (and competence for licence holders in the manpower sector); and
- ◆ Information that assists Victoria Police in assessing licence and registration applications and in monitoring and enforcing the Act.

If the Regulations lapsed, Victoria Police would likely continue to maintain all the current particulars of its register of licence, registration and permit holders, even though there was no longer any legislative authority to determine those particulars, due to the practical benefits described above. However, for consumers and clients, there would be a loss of certainty and transparency about the particulars that the Victoria Police include in the register as these details would no longer be listed in the Schedule to the Regulations.

There would also be no clear, legislated guidance for members of the public who wished to verify a licence or registration about the information they were entitled to inspect. The mandating of these requirements is helpful because the register includes personal information such as the names, addresses and dates of birth of body corporate members and the names and addresses of third parties ('close associates'), which could raise privacy concerns if released. Setting out in clear terms, and with legislative authority, the limits of the information the public is entitled to inspect is important to deter requests that might involve revealing personal information and ensure that Victoria Police has clear grounds for imposing these limits.

The requirement to publish on the internet approved industry training requirements and industry associations in no way determines the competency requirements that industry members must fulfil, but ensures that those requirements are notified to registration and licence holders in a readily accessible way. It is likely those details would continue to be published by Victoria Police, regardless of any requirement in the Regulations. However, through consultation, stakeholders indicated that the

impose incremental requirements for additional information. While record keeping requirements apply to both individuals and businesses, in the absence of further data, this costing assumes that a normally efficient business will maintain records on behalf of their employees.

mandating of such requirements in the Regulations gives industry a degree of comfort and certainty that the information will continue to be made available.

Crowd controller particulars

The Act outlines a range of requirements for crowd controllers and people providing the services of crowd controllers. These requirements include that crowd controllers must wear identification on their chests that is legible, with prescribed wording of a prescribed size, and that crowd controllers and their employers must maintain details of their activities in a register.

The consequence of allowing the requirements of the Regulations to lapse would be as follows:

- ◆ Identification – crowd controllers would still have to wear identification, but there would be no certainty regarding the legibility and location of the identification they must wear to fulfil their requirements under the Act and clearly inform clients and the public of their private security role.
- ◆ Crowd controller register – crowd controllers and their employers would still have to maintain a register with the date of the activity, details of the identification worn, the licence number and full name of the crowd controller, the name and usual business address of any business licence holder providing the crowd controller's services, and the details of any incident involving the crowd controller. However, crowd controllers would not be required to specify the time they started and finished their shift, or provide a signature next to each of these details. The estimated cost of requiring crowd controllers to provide start and finish times and provide signatures is around \$0.4m in regulatory costs per annum.³⁴

The requirement for crowd controllers to sign off against their start and finish times aims to ensure that there is a record that a crowd controller has actually worked at an event or venue, and to deter employers or event managers from attempting to change the register for any reason (for example, to conceal any irregularities in the number or authorisations of crowd controllers assigned to an event or venue). Victoria Police has advised that the register may be used in court proceedings to verify that a crowd controller actually worked at an event or venue where an incident took place. This may be helpful to the prosecution when deciding whether to call a crowd controller as a witness, or alternatively provide evidence if the crowd controller has been charged with any offence in relation to the incident.

If crowd controllers ceased signing off their start and finish times because there was no longer a mandated legislative requirement to do so, the evidentiary and deterrent value of the register would be significantly diminished.

Infringements

The Regulations outline a number of infringement penalties which operationalise the enforcement of infringements under the Act. The consequence of allowing the relevant requirements in the Regulations to lapse would be that the infringement penalties for a total of 16 infringement offences under the Act and Regulations would not be specified and thus police could no longer issue infringement notices in relation to these offences. Victoria Police has advised that if infringement penalties were not available, the time needed to prepare briefs of evidence for minor breaches of the Act and Regulations would be likely to have a severe impact on the productivity of Victoria Police officers, and ultimately could limit Victoria Police's capacity to undertake other compliance enforcement activities and adversely affect the resources available to support prosecutions for more serious breaches of the Act.

The current Regulations include relatively small penalties, from a minimum of \$379.20³⁵ for a failure to surrender a cancelled licence to the Chief Commissioner (of which there have been three recorded infringements in the past 10 years³⁶), to a maximum of \$1,516.70 for failure to keep accurate records (of which there have been 25 recorded infringements over the past 10 years³⁷).

³⁴ This is calculated as the award wage of \$20.3 for a Security Officer Level 3 with additional overheads of 75% for the 25,513 currently licensed crowd controllers. The time required is conservatively estimated as 1 minute per week for full time employees, and half a minute for part time employees. In the absence of further data, it is assumed that 50% of crowd controllers work part-time (consistent with the findings of Prenzler, Earle and Sarre, *Trends and Issues in crime and Criminal Justice*, 2009, accessed on 3 February 2016 at http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi374.pdf, which found that when asked of their 'main occupation' 74 per cent of security providers reported that they were employed full-time and 26 per cent part-time, but that this does not capture those who may work in private security as a second job, which led them to conclude that the available evidence supports the assumption that there are a large number of part-time operatives in security work generally.

³⁵ Uses the penalty unit of \$151.67 from 2015-16 as the basis for calculation.

³⁶ Victoria Crime Statistics Agency.

³⁷ Ibid.

All current infringement offences under the Act and Regulations have been reviewed by Victoria Police and all have been assessed as continuing to be offences appropriate to be dealt with by way of infringement notice when warranted in the circumstances.

Infringement offences enable Victoria Police members to efficiently deal with minor infractions of the Act and Regulations. The circumstances in which infringement penalties are issued are based on the holistic circumstances before the police investigator. For instance, if the only identified offence is one which could be dealt with via infringement notice, then that option provides a convenient and efficient method of compliance enforcement.

Infringement notices are issued only when sufficient evidence has been attained to be able to prove the offence beyond reasonable doubt. Where multiple offences are identified in relation to the one licence holder, then the more appropriate 'charge and summons' process is undertaken. Infringement notices can benefit the affected licence holder in that the cost of the infringement penalty associated with an offence is generally not prohibitive and the infringement system provides the option of dealing with a minor infraction quickly via a single payment, as opposed to requiring attendance at the Magistrates' Court.

This would be a significant impediment to the ability of police to enforce the Act and Regulations in situations where bringing formal charges against an alleged offender might not represent the most efficient and effective use of police resources. It might also reduce the incentives for industry members to comply with these provisions of the Act and Regulations.

The infringement penalty for each offence is set at 25 per cent of the penalty specified in the Act or Regulations. Thus different infringement penalties apply to different offences, rising in proportion to the maximum penalty in the Act and reflecting the level of risk the particular offence poses to Victoria Police's ability to access the information it needs to administer the regulatory system effectively. For instance, the highest infringement penalties are reserved for record keeping offences, on the basis that the maintenance of accessible and accurate records by licence and registration holders is a critical regulatory tool to assist police in monitoring compliance with the Act and Regulations and, as such, a key element in police efforts to maintain the strength and integrity of the regulatory scheme.

Permits

Sections 66 and 67 of the Act provide for temporary interstate visitor permits, which enable security industry participants who are licenced and reside interstate to provide security services in Victoria for special events, and for temporary overseas bodyguard visitor permits, which enable overseas residents to act as bodyguards as long as they meet certain requirements set out in the Act.

Section 68 of the Act states that an application for a permit is to be in the form and manner approved by the Chief Commissioner. The Regulations do not prescribe any particular requirements associated with the permit process other than establishing the fee payable.

The following table outlines the information associated with a permit application, required by the Chief Commissioner.

Table 13: Information to accompany a permit application

		Permits for licenced and registration activities	
		Individuals	Businesses
Application Process	Satisfy Chief Commissioner that applicant is authorised in their State or Territory, or (if they're not required to have a licence/registration) that they are suitable	●	●
	Permit application must be in the form and manner approved by the Chief Commissioner; and must include proof of applicant identity	●	●
	Certified copy of any interstate security licence/registration, 140 points identification, and copy of resume and any qualifications (if not licenced/registered in another state/territory)	●	●
	Letter from employer giving event details and dates and certified copy of change of name certificate and full birth certificate	●	
	Letter from the vent manager confirming work details and dates and certified copy of registration of a company and/or business name		●

Key	
Requirement of the Act	●
Requirement of the Regulations	●
Required at the Chief Commissioner's Discretion	●
Not required	

3.2.6 Effectiveness of the Regulations in addressing these problems

The effectiveness of the Regulations has been assessed through the following two lenses:

- ◆ The appropriateness of the Regulations; and
- ◆ The efficiency of the Regulations.

It should be noted that it is difficult to distinguish the effectiveness of the Regulations in isolation. The two key issues in distinguishing the effectiveness of the Regulations are:

- ◆ The Regulations do not impose new substantive requirements by themselves, rather they operationalise the requirements of the Act; and
- ◆ The Regulations and Act came into effect at the same time, meaning there is no material period of time where the Act operated without associated Regulations.

This means that any change in behaviour of the industry is attributable to both the Regulations and the Act. As such, the section below has assumed that any behaviour change should be taken as a combined influence of both pieces of legislation.

Alternative methods of assessing the extent of the problem and effectiveness of measures to address this include:

- ◆ changes in outcomes following changes made to the Regulations in Victoria (e.g. when these Regulations first came into effect in 2005); and
- ◆ experience in other similar jurisdictions in Australia or overseas (e.g. where their requirements differ from those in Victoria).

These methods have not been used in the analysis of effectiveness below given that, respectively:

- ◆ it is difficult to isolate the impact of the Regulations in terms of outcomes, as the outcomes that the Regulations seek to achieve are also influenced by many other contributing factors, for example, population and economic shifts; and
- ◆ given other jurisdictions also face the limitations in the dot point above regarding measuring the effectiveness of regulations in achieving the outcomes sought, comparative information from other jurisdictions is likely to be of fairly limited value. Further, the experience of the COAG Agreement suggests that in the private security sphere, the key areas where a harmonised approach among jurisdictions is considered to be most strategically important (for instance, training standards, licensable activities and disqualifying offences) have already been addressed. In the Department's experience, the remaining differences between the private security regimes of jurisdictions tend either to reflect differences in legislative drafting styles and approaches that on closer analysis do not usually signify any meaningful differences in key regulatory objectives and effects, or to relate to matters where the advice of a law enforcement or regulatory has led to a particular course of action, based on the distinct circumstances in that jurisdiction.

Understanding these limitations, the analysis of effectiveness is below:

Appropriateness of the Regulations

Stakeholders largely felt that the Regulations were functioning appropriately. Particularly, stakeholders reported that all record keeping requirements stated in the Regulations were generally completed as part of business as usual, and that the fees did not impose a disproportionate cost on their business.

Despite this general sentiment, there were several areas identified for improvement. The reasons for this are outlined below.

Stringency of competency requirements

Industry participants noted that competency requirements may not be stringent enough. For instance, a person with no proven expertise can immediately begin providing advice on security arrangements and installing security equipment. This could compromise the quality of the industry's output, and as a consequence, its reputation.

The issue of competency standards was explored during work in the 2008 COAG Agreement. At this point, changes to competency standards were not supported by evidence of any failure of the current system. As such, Victoria continued to operate without such competency standards, and the Department is unaware of any evidence since 2008 that would mount the case for change.

Licence/registration cancellations under the framework

To some extent, rejections of licence applications under the current framework may indicate the effective operation of the Regulations in keeping out undesirable industry participants.

The current probity checks include a number of requirements such as character checks, and aim to minimise the risk of abuse of the trusted role that the industry plays and prevent criminal infiltration. Non-compliance with probity requirements is the major contributing factor in a large number of application rejections (30 per cent of 596 rejected applications over the financial years 2013-14 and 2014-15), indicating that this process is able to identify and eliminate individuals based on probity requirements.

There are very few instances of applications being rejected for non-compliance with competence requirements (three per cent of 596 rejected applications over the financial years 2013-14 and 2014-15).³⁸ Consultation with industry and Victoria Police suggested that training and experience requirements outlined in the Act are well understood by licence applicants, and this was the main explanatory factor for low rejection rates.³⁹

Regulation of locksmiths

Some industry participants consider that domestic locksmiths should be subject to the same administrative requirements as those that work with safes and vaults. Given domestic locksmiths have access to homes and businesses, they hold a similar position of trust to the other regulated security equipment installers.

In 2008, the COAG agreement left the inclusion of locksmiths up to the discretion of states, which Victoria decided not to adopt at the time. Similarly to competency requirements, the Department is unaware of particular issues that have emerged since this agreement.

Refer to Section 3.2 on page 25 for further discussion on the appropriateness of including locksmiths in the regulatory framework.

Training effectiveness

Industry participants raised concerns with the effectiveness of training, and whether existing training requirements have any discernable impact on the competence of security licensees.

In regards to training standards, the Department notes that the Regulations do not set training minimum standards, as these are set by the Chief Commissioner under the Act. The Regulations merely require particulars of the training completed by applicants and therefore adjusting these particulars would not have any impact on the required training standards, which remain a matter for the regulator Victoria Police. At the national level, the Australian Skills Quality Authority (ASQA) released on 28 January 2016 its report *Training in security programs in Australia*, which provides a national strategic review of training for the security industry in Australia. It is expected this report and other sources of data on training standards will be reviewed by Victoria Police in due course, and in consultation with the government, industry and other jurisdictions, to determine the implications for competency standards in Victoria and other states and territories.

The discretion afforded to the Chief Commissioner's under the Act to set training and qualification requirements is necessary due to the changing nature of the training sector's competency components for the private security industry. This discretionary approach ensures that Victoria Police can readily adapt to changes in industry and approve training accordingly, without the need to constantly seek amendments to the Act or Regulations. If the Act or Regulations were to dictate training and qualification requirements, the Department considers that it would impact adversely on Victoria Police's ability to be flexible and alter training to cater for industry needs.

In specifying training and qualification requirements, LRD is conscious of the need to adapt to the evolving nature of security industry training and the operational challenges facing the industry. Victoria Police endeavours to specify requirements that address emerging industry needs such as training components relating to positional asphyxiation and 'one punch' assaults.

Victoria Police has advised that it is committed to a partnership approach with the Victorian Registration and Qualifications Authority (VRQA), the Australian Skills Quality Authority (ASQA), Registered Training Organisations (RTOs) and other relevant industry groups such as the Australian Security Industry Association Limited (ASIAL), to achieve best practice in the provision of quality training and assessment.

³⁸ Victoria Police data.

³⁹ In considering explanations for low rejection rates, two variables were considered:

- Either training and experience requirements are well understood by licence applicants, and as a consequence there are few applications which require rejection; or
- The training and experience requirements are not well enforced, and despite the lack of compliance, Victoria Police is unable to identify cases for rejection.

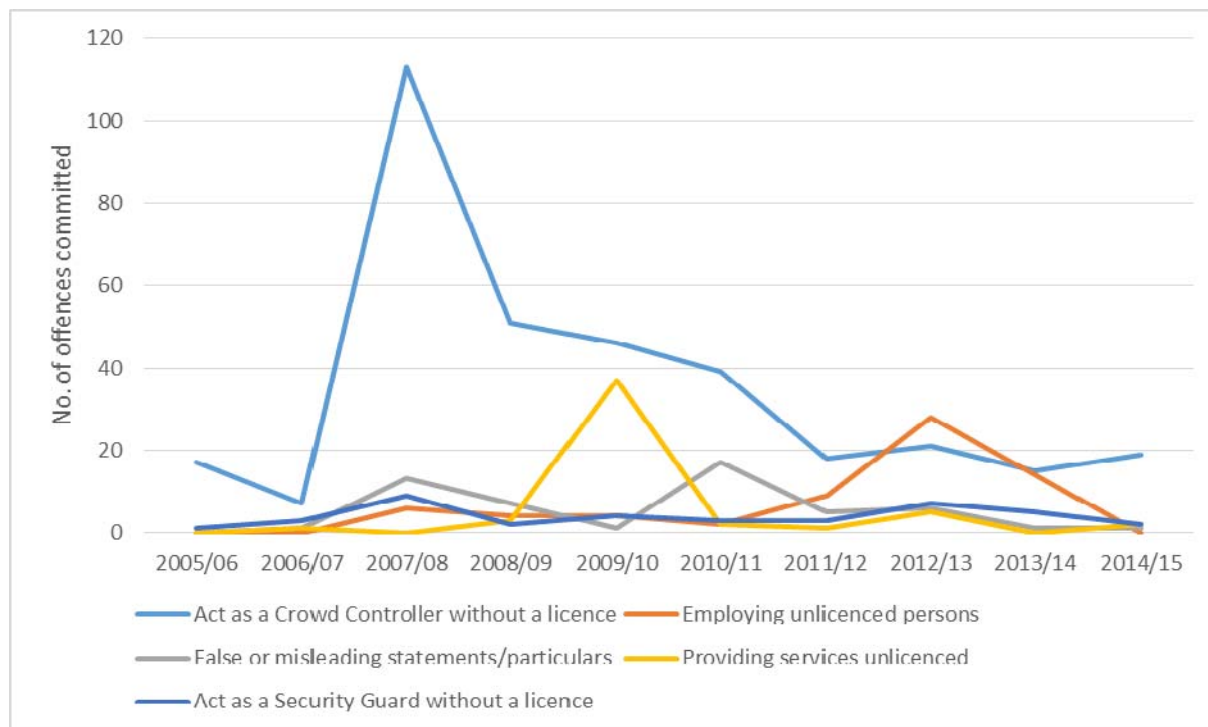
Through consultation, the former option is considered more likely.

Offences under the regulatory framework

Victoria Police records data regarding enforcement of common offences under the Act (top five most common offences are shown below).

Figure 2 below demonstrates that there have been peaks for different offences since 2005, but there has been an overall decrease in the number of offences committed, suggesting improved compliance with the requirements of the Act and Regulations.⁴⁰ Improvements in compliance with the Act could suggest improved regulatory outcomes.

Figure 2: Five most common offences recorded under the Private Security Act 2005-2015



Source: Crime Statistics Agency

Efficiency of the Regulations

Having sampled both licenced and registered stakeholders through consultation, there was a common view that the Regulations imposed an acceptable burden on industry participants and the administrators of the regulatory framework.

With regards to the efficiency of administration of the regulatory framework, over the course of the Regulations thus far, Victoria Police has implemented a range of measures to continue improving their efficiency. Specifically this includes:

- ◆ Refining the enforcement approach of the Licensing and Regulation Division (LRD) – the main area within Victoria Police that administers the regulatory framework. In particular, by developing strong linkages with related law enforcement agencies, being involved in joint task force type operations and developing enhanced intelligence gathering capability. To use its available resources in the most efficient way, LRD has also refined its risk assessment process to assist in the determination of enforcement priorities;⁴¹ and
- ◆ All staff within LRD of Victoria Police (dealing with private security, firearms and weapons) can now deal with all applications, where staff used to be allocated to one stream. This gives additional capacity in LRD to process and resolve applications, increasing efficiency.⁴²

Also of note to the efficiency of the Regulations is a new electronic applications system being implemented at Victoria Police. Private security is expected to be one of the first industries to be shifted to this system, and will reduce the time costs for both applicants and the regulator (e.g. the removal of the need to send hard copies of particulars).

⁴⁰ Victoria Police has advised that the level of their monitoring and enforcement activities has remained broadly consistent over time. As such, any increases in non-compliance with the requirements is likely to reflect improvements in the compliance of regulated parties, rather than being a reflection of temporary spikes of increased/decreased monitoring and enforcement activity.

⁴¹ Victoria Police Licensing and Regulation Division

⁴² Victoria Police Licensing and Regulation Division

For industry, the largest factor in determining efficiency is the time spent complying with the Regulations. By a large degree, the largest time cost is associated with submitting an initial application. On average, stakeholders suggested that the application took over two full working days, which is considerable. However, the majority of those consulted understood the time taken contributed to ensuring the probity of applicants and also the competence of 'manpower sector' licence applicants, and thus they did not feel the burden was undue.

All stakeholders (both licenced and registered) saw the time taken for renewal applications and recording security services as negligible.⁴³

Table 14: Time taken to comply with Regulations

Category	Time (hours)
Time taken for a business to complete a new application	16.3
Time taken for a business to complete a renewal application	5.6
Time taken for a business to maintain appropriate records (per month above BAU)	2.1

It should be noted that the RIS undertaken to support the Regulations in 2005 assumed that the time taken for a business licence would take around 5.5 hours to complete⁴⁴. While this is broadly consistent with the above estimated time required for a renewal application, it is around one third of the cost of a new application. This indicates that the regulatory cost imposed by the scheme is likely to be higher than was first estimated at the time of introducing the Regulations. Data regarding the length of each of the specific activities undertaken as part of completing a business application is not available.

⁴³ Victoria Police Licensing and Regulation Division

⁴⁴ The RIS undertaken to support the Regulations in 2005 assumed that it would take an applicant approximately the same time to prepare an application as it would take Victoria Police's Licensing Services Division to assess an application – this assumption may have underestimated the estimate of costs associated with licence/registration applications. That said, in the 2005 RIS 'application administration time costs' were estimated to be around 1 per cent of the total costs of the regulatory framework, and as such, substantial variation in this assumption would be unlikely to affect overall conclusions about the appropriateness of the regulatory framework.

4 The regulated community

This section seeks to understand how Victoria Police has regulated the industry since the inception of the Regulations, give a sense of industry size and application activity as well as compare Victoria’s approach to other jurisdictions in Australia.

4.1 Scale of the regulated community

As at June 2015, 31,164 individuals and 1,452 businesses were licenced or registered under the Regulations. Specifically, there are:

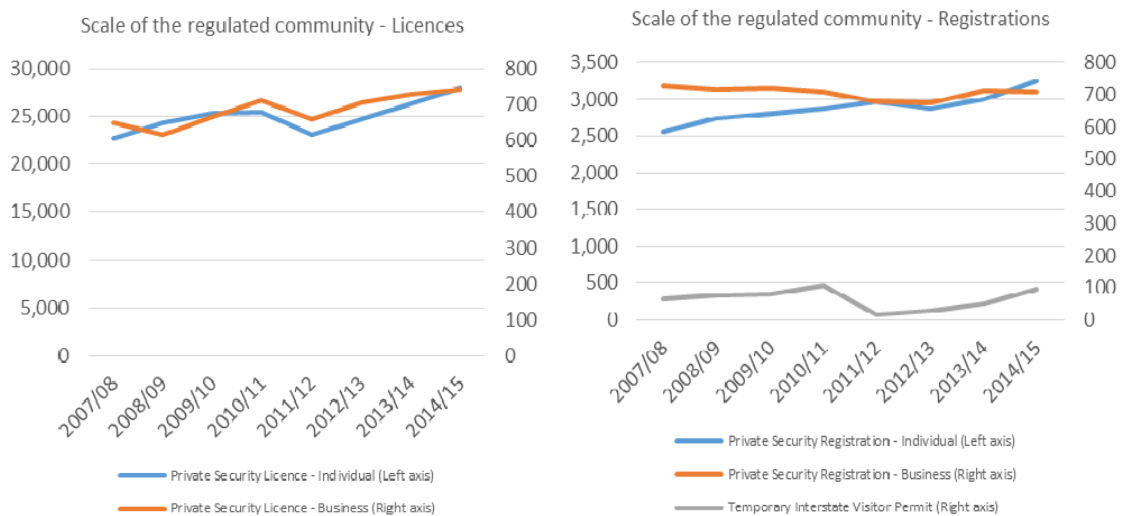
- ◆ 27,916 individual licences;
- ◆ 3,248 individual registrations;
- ◆ 743 business licences; and
- ◆ 709 business registrations.

Overall, the number of individual licence/registration holders grew at a compounded average rate of 3 per cent from 2008 to 2015. Registered individuals and licenced businesses also grew, at a compounded average rate of 3.5 per cent and 2 per cent respectively.

In contrast, registered businesses experienced modest negative growth from 2008 to 2015 (of -0.3 per cent compounded).

Figure 3 show the movements in licence and registration activities between 2008 and 2015.

Figure 3: Scale of the regulated community⁴⁵



Source: Victoria Police

4.2 Number of new applications (2005 to 2015)

Figure 4 shows the number of new applications received by Victoria Police since the Regulations first came into effect in 2005. The figure shows how the number of new applications significantly increased as businesses and individuals transitioned from the arrangements outlined in the Private Agents Act 1966.

From 2008-09 to 2014-15, Victoria Police has received an average of:

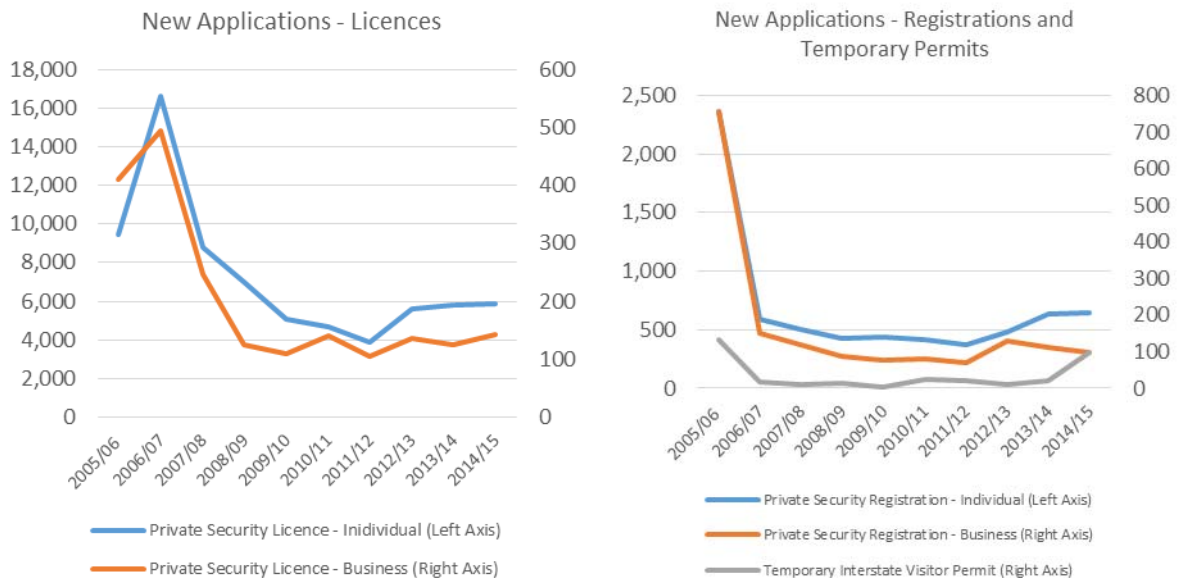
- ◆ 5,405 new individual licence applications;
- ◆ 488 new individual registration applications;
- ◆ 126 new business licence applications;
- ◆ 94 new business registration applications; and

⁴⁵ For the purposes of this section, ‘individual licence’ or ‘individual registration’ includes individual operators.

- ◆ 28 new temporary permit applications.

The number of new applications indicates a degree of turnover in the industry, with new applicants filling vacancies or new positions in the industry.

Figure 4: Number of new applications (2005 to 2015)



Source: Victoria Police

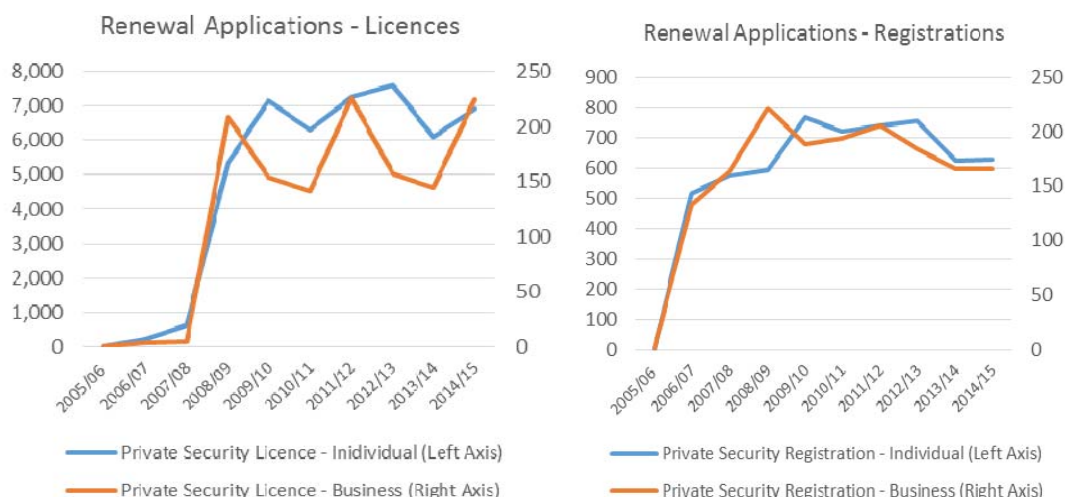
4.3 Number of renewal applications (2005 to 2015)

Licence/registration holders are required to apply for a renewal every three years, which is the maximum period for which a licence or registration may be issued under the Act. Figure 5 shows the number of renewals received by Victoria Police. In the third and fourth year of the Regulations, the number of renewals materially increased as the initial licences/registrations expired (driven particularly by an increase in individual licence applications).

Since 2008-09, Victoria Police has received an average of:

- ◆ 6,678 individual licence renewal applications;
- ◆ 690 individual registration renewal applications;
- ◆ 179 business licence renewal applications; and
- ◆ 189 business registration renewal applications.

Figure 5: Number of renewed application (2005-2015)

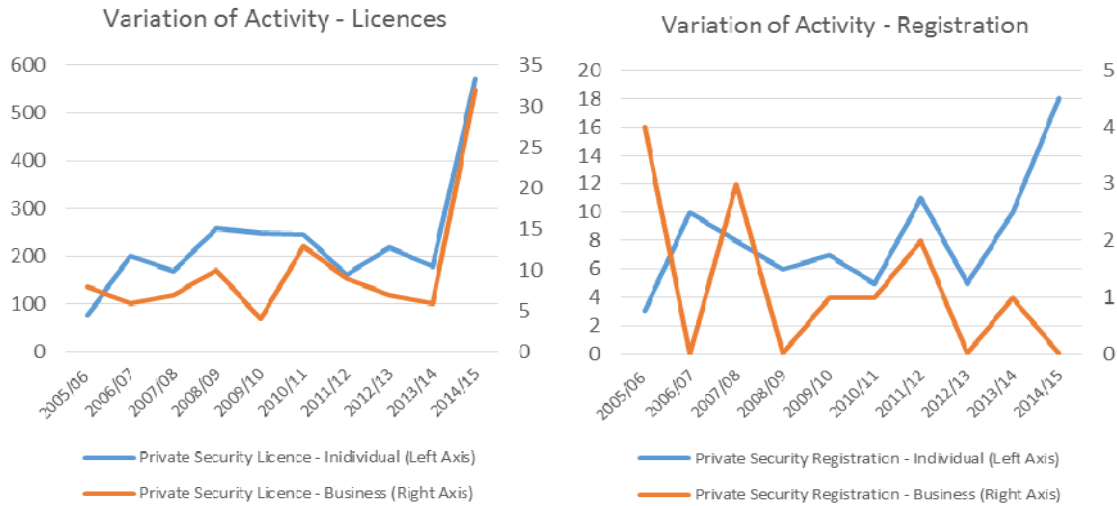


Source: Victoria Police

4.4 Applications to vary an activity or condition (2005 to 2015)

A variation is most commonly the addition (or in some cases removal) of an activity. Victoria Police has received approximately 200 such applications each year from 2005-06 up to 2014-15. In the 2014-15 year, Victoria Police received 621 applications led by a material increase in individual licence applications.⁴⁶

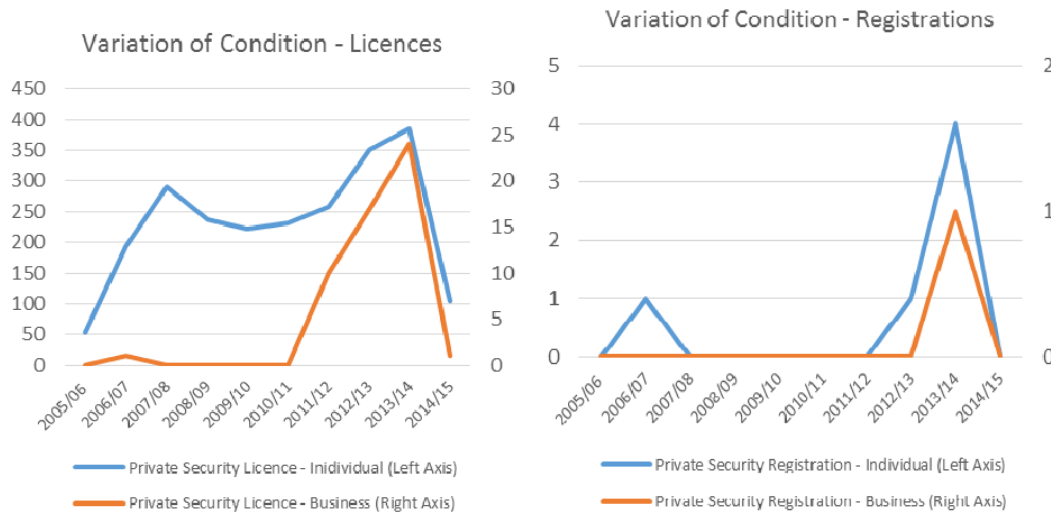
Figure 6: Number of variation applications (activity)



Source: Victoria Police

Inversely, applications to vary a condition (such as cash in transit) have experienced a material decrease in the 2014-15 year. Previously, Victoria Police received an average of 254 applications, however in the most recent year, only 106 were received.

Figure 7: Number of variation applications (condition)



Source: Victoria Police

⁴⁶ Victoria Police considers the spike in applications for 'variation of activity' licences in 2014-15 can be attributed to the decision by LRD in 2014 to remove the requirement for training to be completed for the activity of monitoring centre operator. That decision was made as a result of feedback from the technical sector of the Private Security Industry, which indicated that the training requirements were unnecessary and did not meet their specific industry needs, and was made in consultation with Private Security Industry Regulators at the national level, who also determined to remove the training requirement.

After this change a number of security licence holders added this activity to their licence, and security companies applied on behalf of the employee to add the activity of monitoring centre operator in large volumes.

4.5 Number of cancelled applications (2005-15)

As per sections 45 and 47 of the Act, a cancellation can occur:

- ◆ Upon request from the licence/registration holder;
- ◆ Upon Victoria Police becoming aware that the holder or close associate of the holder is a prohibited person; and
- ◆ Upon Victoria Police becoming aware that the holder does not meet the requirements set out in the Act.

Figure 8 demonstrates the number of cancelled applications received by Victoria Police since the Regulations came into place in 2005. Consistent with the increase in the industry population, there has been a steady increase in the number of cancellations. The only year anomalous to year-on-year was in 2012-13 which saw a decrease from 392 cancellations to 253. This was driven by a material drop in the number of individual licence applications cancelled. The increase in 2015 is attributable to the cancellation of ACG’s licence, which included cancellations for many employees (particularly security guards).

Figure 8: Number of cancelled applications (2005-2015)



Source: Victoria Police

The number of licence/registration applications (or applications for a condition variation) rejected by Victoria Police peaked in 2007-08, where 884 were rejected. Since 2009-10, the average number of rejected applications have been 302. In 2014-15, Victoria Police data suggests that there are four key reasons for rejection:⁴⁷

- ◆ Not in public interest (2 per cent of total applications received in 2014-15);
- ◆ Prohibited person (0.7 per cent);
- ◆ Competency requirement not met (0.2 per cent);
- ◆ Not fit and proper person (0.1 per cent);

4.6 Victoria Police Licensing and Regulation Division activity

4.6.1 Regulatory approach of Victoria Police

LRD, the division of Victoria Police responsible for regulating the private security industry, states that its prime regulatory objective is to prevent unsuitable individuals from entering the industry in the first instance. Achieving that aim prevents such individuals from taking a foot hold in the industry, and can prevent the erosion of public confidence in the industry.

⁴⁷ Victoria Police data identified 950 rejections occurred for ‘No Specified Reason’.

Victoria Police and LRD seek to balance these licensing activities with proactive stakeholder engagement and the setting of industry standards as well as enforcement. LRD states that regulatory activity is risk-based to maximise outcomes with available resources.⁴⁸

4.6.2 Enforcement and compliance activity

LRD identified two main themes in its enforcement and compliance activity:⁴⁹

- ◆ **Private security business focus:** Private security businesses are a major focus of LRD due to their critical role in the provision of private security services. Proactive audits of the businesses are conducted on a consistent basis to ensure compliance with the full range of legislative requirements. On average, 2-3 compliance exercises per week are conducted involving LRD personnel. Issues of particular interest are:
 - A company's employment of appropriately licensed individuals;
 - Whether a company is only providing security services for which it is licensed; and
 - The maintenance of relevant records.
- ◆ **Usual Victoria Police duties:** Enforcement and compliance activities for private security licence/registration holders are conducted by Victoria Police as part of normal duties where required. Various state-wide taskforces across Victoria Police also incorporate compliance activities at licensed premises, a component of which includes checks of private security licence holders. In the instance that a security guard or business is found to be non-compliant, the attending member at the time may decide to proceed with laying charges. LRD is contacted when this interaction results in the need to suspend or cancel the licence. LRD therefore relies on this collaborative relationship in order to ensure compliance with the Act is monitored effectively.

In both instances, LRD can implement a range of sanctions ranging from:

- ◆ Formal warning/reprimand;
- ◆ Issuing of a penalty infringement notice;
- ◆ Initiation of a discipline inquiry; or
- ◆ The laying of charges.

Victoria Police's approach to enforcement and compliance is further discussed in Section 8 on page 61.

4.6.3 Changes in approach in the past 10 years

Two trends have been observed by Victoria Police in the previous 10 years:

- ◆ The scale and scope of the industry has increased considerably, leading to private security companies taking an increasingly prominent role in ensuring public safety at major events such as sporting events and festivals and at other public venues where large numbers of people congregate (for example, large shopping complexes) and
- ◆ Organised crime has a material presence in the industry, which is partly attributable to growth in outlaw motorcycle gangs and is explained further below.⁵⁰

To address the risk of organised criminal groups infiltrating the private security industry, compliance monitoring and enforcement activity is increasingly collaborative. LRD has refined its approach by developing strong linkages with law enforcement agencies, being involved in joint task force type operations, and developing enhanced intelligence gathering capability, for example:

- ◆ During the latter part of 2014, the Trident Taskforce concluded a major operation, which resulted in ACG, one of the largest security companies in the country, losing its licences to operate in the private security industry and the charging of several of its principals with serious commonwealth and state offences. Some of those matters are still before the Court. Several linkages with organised criminal groups were identified during the course * of that investigation.

⁴⁸ Sourced directly from Victoria Police.

⁴⁹ Sourced directly from Victoria Police.

⁵⁰ Victorian Law Reform Commission (2015). Regulatory Regimes and Organised Crime Consultation Paper. Accessed 20 November 2015 at <http://www.lawreform.vic.gov.au/content/3-infiltration-organised-crime-groups-lawful-occupations-and-industries#footnote-217425-4-backlink>.

4.6.4 Prospective changes in approach over the next 10 years

Over the coming 10 years, LRD anticipates that it will:

- ◆ Capitalise on technological advancements, with specific note given to the planned Electronic Lodgement Process (ELP), which will take licence and registration applications online (see Section 8 on page 61 for a broader discussion of the ELP);
- ◆ Maintain adaptive policy settings; and
- ◆ Continue pursuing legislative support as required.
- ◆ Present data indicates that the private industry will continue to expand, commensurate with community demand.

4.7 Jurisdictional comparison

The jurisdictional analysis has included comparison of the different regulatory approaches and fee structures across the states and territories. The section below discusses coverage of the licensing/registration schemes. Differences in approaches to fees are discussed in more detail at Section 8 on page 61 .

4.7.1 Coverage

As shown in Table 15 below, Victoria's regulatory coverage is consistent with the regulatory frameworks in New South Wales, Queensland, South Australia and Western Australia. Differences only appear where other jurisdictions have opted not to regulate certain areas within the industry. The Northern Territory for instance, does not regulate bodyguards, security equipment installers, security advisers or trainers, representing a material departure from the majority of states.

While the table below provides insight into which areas of the industry are regulated, each state achieves these ends through a different combination of legislation and Regulations. As such, the table does not depict coverage of a 'Private Security Regulations' equivalent in each state, but rather the coverage of each regulatory framework in its totality.

Table 15: Coverage of regulatory frameworks in each state jurisdiction

	Vic	ACT	NSW	NT	Qld	SA	Tas	WA
Investigators	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Bodyguards	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Security Guards	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Crowd controllers	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Trainers	Yes	Yes	Yes	No	Yes	Yes	No	No
Security equipment installer	Yes	Yes	Yes	No	Yes	Yes	No	Yes
Security adviser	Yes	Yes	Yes	No	Yes	Yes	No	Yes

Source: KPMG analysis

5 Objectives of proposed regulations

In order to address the problems identified in the private security industry, the current regulatory framework sets out its objectives as follows:

5.1 Objectives of the Private Security Act 2004

The objectives of the Act are to regulate integrity and competency standards for the private security industry and exclude inappropriate persons or businesses from entering the industry, in order to mitigate the potential risk of harm being caused to members of the community by industry service providers. The Act also outlines responsibilities of Victoria Police for offences, inspection and enforcement to monitor compliance with the specifications of the Act, as well as functions for the Victorian Civil and Administrative Tribunal (VCAT) where disputes emerge.

5.2 Objectives of the Private Security Regulations 2005

In assessing whether to remake the Regulations, the relevant objectives are to regulate the private security industry in a manner that:

- ◆ Mitigates potential risks posed by the private security industry to community safety that could arise if inappropriate persons or businesses are allowed to operate in the industry or if industry standards and practices are deficient; and
- ◆ Imposes the minimum efficient level of regulatory burden on the private security industry.
- ◆ The Regulations aim to achieve these objectives to the extent possible within its scope for setting out the operational requirements of the Act.

6 Options

In order to appropriately assess a range of options, this section is divided into two parts:

- 1) Consideration of different broad regulatory approaches and an explanation of the continued need to roll forward the current regulatory system; and
- 2) An outline of three specific regulatory options that can be considered as viable options within the broad regulatory approach.

6.1 Broad alternative approaches

There are a variety of different regulatory approaches that could be implemented in the private security industry. These include:

- ◆ Regulatory approach involving **licensing and registration**;
- ◆ **Negative licensing**, which would remove the current licensing and registration processes for the private security industry, with the regulator only acting to preclude a person or business when they have breached the Act of Regulations; or
- ◆ A **co-regulatory approach**, which would continue a licensing and registration system, however the authority for approving applications would shift to industry associations, who would work with Victoria Police to process the relevant paperwork once a decision has been made.

Of these three, the preferred approach for the remaking of the Regulations would be to continue a licensing and registration system. This is preferred for two reasons:

- ◆ Any substantive changes to the regulatory approach would require amendments to the Act, which lays out the licensing and registration system and the responsibilities of the Chief Commissioner. As a consequence, negative licensing and co-regulation are not viable within the framework established by the Act; and
- ◆ The noted presence of organised crime in the private security industry makes government oversight of particular importance. Outsourcing this responsibility to industry associations or implementing a negative licensing system would limit the ability for government to control organised crime in the industry.

As a result of these constraints, a realistic discussion of adopting an alternative approach is not possible. Consequently, the focus of the options discussion is on different ways to design a licensing and registration approach to meet the policy objectives.

6.2 Regulatory options considered within the preferred regulatory approach

As established, the preferred (and only viable) approach is to continue with regulatory approach based on a licence and registration system.

Options for change are constrained to a significant extent by the requirements of the Act. For instance, and as noted earlier in this RIS, the particulars and documents prescribed in the Regulations that must accompany licence and registration applications correlate directly to requirements under the Act. If some particulars or documents ceased to be prescribed, it is likely Victoria Police would not receive all the information necessary to facilitate decision making under the Act and therefore would need to request the applicant to provide material voluntarily to fill in the gaps. In the department's view, making some particulars or documents mandatory and some discretionary would be inconsistent with the Act, and could impede the Chief Commissioner's ability to make licensing decisions efficiently and effectively. It would also introduce complexities into the application system that would make the system more difficult for Victoria Police to administer.

However, within the broad approach of the framework established by the Act, there are a number of specific changes that could be made to the current Act and Regulations to address the following areas without infringing the Act:

- ◆ **Applications:** including changes to the procedures, particulars and any other required information in applying for a license or registration;
- ◆ **Exemptions:** including changes to the categories of persons exempted from the licence and registration process;
- ◆ **Fees:** including changes to fees associated with applications (including fees that differ based on the nature of the application), duplicate documents, and waivers for these fees;

- ◆ **Infringements:** including changes to the level and nature of infringements associated with inspection of records and a notice of change of particulars; and
- ◆ **Other requirements in addition to those in the Act:** including changes to requirements such as crowd controller register details, as well as the scope of definition of security equipment.

Broadly, this means that the choices available in remaking the Regulations relate to how parties are regulated. There is also consideration of the fees chargeable, however this has been considered in detail in Section 8.1 on page 61.

Reduce the number of particulars required of applicants

A consideration for enhancing the efficiency of the application process could be reducing the particulars required of those in the industry may be one way of improving the efficiency of complying with the Regulations. Despite this opportunity, many particulars required of the industry are outlined in the Act, and thus opportunities to reduce the number of particulars through the Regulations is limited. The Regulations have scope to remove requirements for items such as passport photographs, name, date of birth and record keeping obligations. As a consequence, there may only be marginal time savings. However, it has been considered further below in Section 7 on page 53 as a potential regulatory option for consideration.

Streamlining the process for checking compliance with probity requirements

A potential enhancement to the efficiency of the current Regulations could be to further automate the components of the probity check process conducted by CrimTrac, as has been done by the Department of Justice and Regulation's Working with Children Check, resulting in noticeable reductions in costs to applicants and also in the overall costs of their regulatory activity.

To the extent possible, Victoria Police already processes applicant checks through CrimTrac, as do other Victorian licensing or authorising systems such as the Working with Children Check. Due to the need to obtain fingerprint-based national police checks for private security applications, the police checking process for these applicants is more involved and cannot be readily compared to the more streamlined processes used for systems such as the Working with Children Check, which may only involve checks based on the applicant's name and date of birth.

The current requirement under the Regulations for licence and registration applicants to provide particulars of any convictions with their application continues to be necessary, despite the fact that Victoria Police carries out criminal history checks through CrimTrac. In part, this is because not all convictions will necessarily be identified through a CrimTrac or police check. For example, RSPCA or local council prosecutions may be disclosed by an applicant, but will not be recorded on CrimTrac or in Victoria Police records. Also, the requirements of the manual processing system currently used by Victoria Police make it necessary for Victoria Police to standardise requests for information across all applicants as much as possible.

However, Victoria Police has advised that its intention in the future, when its work on the planned electronic lodgement process (ELP) system is sufficiently developed, is to consider how requests for information that are currently applied generically to all applicants under the manual processing system might be narrowed to questions specific to an applicant under the ELP system. Potentially, this could mean that Australian citizens or residents of 10 years or more might not need to provide some information, including information about certain convictions. These matters will be further considered by Victoria Police as its work on the ELP system progresses.

Exemptions

It is possible that in remaking the Regulations it may be appropriate to exempt other classes of persons from the requirements of the Regulations.

The exemption system deliberately operates within reasonably narrow parameters. Exemptions are limited to classes of persons who carry out private security activities as a subsidiary part of their work in other professions or industries, or for vocational training purposes. The exemptions under the Regulations (which are additional to those specified in the Act) are expected to operate within these parameters and are not intended to be used more broadly to dis-apply the regulatory regime to particular sectors or groups within the private security industry, for example because their activities might incur lower levels of risk (for example, crowd controllers working at events where liquor is not served). Using the Regulations in this way would be inconsistent with the intention of the Act to cover all relevant sectors of the private security industry. Moreover, any risk-based changes to licensing requirements could only be effected through the Act and would require careful policy consideration. For example, it would be necessary to ensure that perceived reductions in certain risks for particular industry roles or activities were not off-set by other risks, and that for industry participants operating

across multiple types of activities and events, any administrative complexities arising from the implementation of exemptions for some activities but not others did not outweigh the benefits.

Consistent with the parameters outlined above, the current Regulations include exemptions from the requirement to be registered/licensed for three classes of persons:

- ◆ Employees of public sector bodies or local Councils acting as investigators, or contractors working for these organisations who are investigating matters relating to food hygiene and trade or professional standards are exempted from requiring a licence/registration under the current Regulations. Public sector or local Council employees or contractors investigating matters relating to food hygiene and trade or professional standards gather information that is essential to determining breaches of public health and safety standards. The risk of that information being misused by those employees and contractors is considered to be low given that they are working for public entities and gathering information that may be needed to support the application of sanctions against others under relevant legislation, including criminal prosecutions for offences. As such, while this class of persons conduct activities defined as private security services, there is no evidence of harm relating to their activities. An alternative to this exemption would be to require such persons to obtain a private security licence/registration which would impose a substantial burden without addressing a demonstrated underlying risk of harm. Exempting this class of persons from the requirements of the Act is also consistent with the majority of public sector employees who perform security functions, who are already exempted under the Act. It should be noted that similar exemptions for private sector employees or agents undertaking investigations are not required under the Regulations, because section 4 of the Act already provides exemptions to members of specified professions – lawyers, accountants, and insurance or trustee company employees and agents not carrying out covert enquiries or surveillance – who may need to undertake private security activities including investigation work. The Act also provides a general exemption to any employee of a business that is not a private security business, who in the course of their employment is required to watch, guard or protect any property or do any inquiry work.
- ◆ Apprentices and students undertaking Vocational Education and Training (VET) who are acting as security equipment installers in the course of their training are exempted from requiring a licence/registration under the current Regulations. An alternative to exempting this class of person would be to prohibit apprentices from installing security equipment. This alternative would unreasonably restrict the ability of an apprentice to learn practical installation skills that are necessary for the completion of training. As apprentices must be accompanied and supervised by a person who holds a security equipment installer registration, there is little risk of an apprentice engaging in illegal activity whilst installing security equipment. As there is a small risk of public harm associated with exempting apprentices from registration and a relatively high level of restriction to training, it would be unreasonable to not provide an exemption for apprentices who install security equipment.
- ◆ Employees advising on security equipment as part of selling it in the course of their normal employment on a business' premises for an employer who is not operating a private security business (for example, sales staff working at an electrical appliance retailer) are exempted from requiring a licence/registration under the current Regulations. Sales staff providing advice on security equipment in the course of their employment at a business that is not a private security business (such as an electronics retailer) are providing general advice on the capability and possible uses of security equipment, and do not know how the equipment will ultimately be used. This is in contrast to security advice professionals, who are in a position of trust and privy to detailed security information and arrangements of another business or individual. As such, risks associated with the activities of sales staff are lower. An alternative approach would be to require all sales staff to be registered, which would impose a substantial burden on employees without addressing a demonstrated risk of harm.

The Department considers that it is not appropriate to narrow or broaden the scope of exemptions under the Regulations.

Approach to infringements

The issue of whether other offences in the Act should also be dealt with through infringements is a broader policy issue that extends beyond the purview of the Regulations. Any proposal to establish new infringement offences would require detailed consultations between the Department and Victoria Police, and could only be achieved through amendments to the Act. While there are no current plans to introduce new infringement offences, the Department is continually consulting with Victoria Police on potential improvements to the Act and will continue to engage with Victoria Police on this issue.

Other options considered

A full list of options developed in consultation with Victoria Police and industry can be found in Appendix 3 on page 97, with additional justification in Section 12 on page 90. In general, common themes for considering that options are not viable include:

- ◆ The option would create inconsistencies with the Act;
- ◆ The option would have a negative/no impact on assisting the Regulations in meeting the objectives; and
- ◆ The option would add complexity to the regulatory framework for marginal benefit.

Options to be assessed in detail

Following from the discussion above of potential regulatory options, the two viable options that are considered for deeper analysis through this RIS are:

- ◆ **Reduce the number of record keeping particulars required of industry:** This has the ability to address the efficiency of the application process through requiring less information to be supplied by the regulated community; and
- ◆ **Change the application system to introduce incentives where industry participants demonstrate compliance:** This has the ability to incentivise good behaviour and address probity issues through making it easier to renew a licence/registration for those with a strong record.

6.2.1 Reduce the number of record keeping particulars required of industry

While many required particulars are outlined in the Act or relate to matters reliant on the discretion of the Chief Commissioner, one set of requirements that potentially could be amended in the Regulations as a means to reduce the regulatory burden on industry relates to record keeping. While record keeping is not cited by industry as a disproportionately time consuming task, it could potentially offer an opportunity to simplify business operations for private security licence and registration holders. The following prescribed particulars of records that must be kept by licence holders and registration holders could be removed from the Regulations:

- ◆ For individuals and businesses, the requirement to record relevant names, dates and service descriptions for all security services provided or requested, and in the case of businesses the names of the persons engaged or employed to provide the service; and
- ◆ For individuals and businesses, the requirement to provide these records to a police officer upon request, and the imposition of a penalty for failing to do so of up to 10 penalty units or an infringement penalty of 2.5 penalty units.

The practical effect of this change would be that licence and registration holders would still be required to keep particulars relating to the carrying on of their business or security activities, as required under the Act, but since those particulars would no longer be prescribed, the precise details of the records to be kept would be left to the discretion of the licence or registration holder. As long as licence and registration holders made sure the records they chose to keep were accurate, legible and in good order, as specified by the Act, their records would comply with the Act and there would be no penalty for non-compliance.

As an option, this change is preferred for assessment to other options that could also remove requirements from the Regulations, because the other options identified by the Department, such as removing requirements for applicants to provide their date of birth or name and address, would be too disruptive to the application assessment process and potentially impede the ability of Victoria Police to identify persons who may be unsuitable for entry to the industry at an early stage. Further requirements that could have been included for assessment, and the reasons these have not been assessed in more detail include the requirements in the Regulations for applicants to provide:

- ◆ **Date of birth:** This is necessary to enable the Chief Commissioner to verify that an applicant is aged 18 years or over, as required by the Act.
- ◆ **A passport-size colour photograph of the applicant:** While this photograph is not the one ultimately used on the plastic security licence or registration (which must be professionally generated at an authorised photo point), Victoria Police uses this throughout the application process as an important reference point for other proof of identity items and the authorised identification photograph.
- ◆ In the individual operator and individual ('natural person') business categories, to **supply their given names, surnames and postal and residential addresses:** This information is considered the minimum information required to enable efficient processing of an application as well as cross

checking the information with the proof of identity supplied by the applicant (which must be provided in a form determined by the Chief Commissioner under the Act). These requirements are similar to those for body corporate applicants, where it is the Act rather than the Regulations that requires the provision of names and business, residential and postal addresses of the body corporate's nominated person and other officers.

6.2.2 Change the application system to introduce incentives where industry participants demonstrate compliance

Changing the application system to introduce incentives for good performance is a means to encourage industry compliance. A range of incentive models have been considered for industry participants who demonstrate good performance, for example:

- ◆ Discounted fees;
- ◆ Increasing the years between renewal periods;
- ◆ Reducing the particulars required for renewals; and
- ◆ Reducing the frequency of monitoring and enforcement activities.

Of these possible options, the only viable option in remaking the Regulations is offering discounted fees based on good behaviour (for further assessment of each of these options, see Appendix 3 on page 97).⁵¹

Implementing incentives through discounted renewal fees involves making decisions about a range of issues, including:

- ◆ the size of the discount provided; and
- ◆ how 'good behaviour' is defined.

One current model of incentives that can be applied to the private security industry is the 'star rating system' implemented by the Victorian Commission for Gambling and Liquor Regulation (VCGLR) on liquor licensed venues. This system offers discounted renewal fees to industry members should there be no evidence of non-compliance. The system grades industry as follows:

- ◆ **One star** - Three or more non-compliance incidents in the previous 12 months;
- ◆ **Two stars** – One to two non-compliance incidents in the previous 12 months;
- ◆ **Three stars** – No non-compliance incidents in the previous 12 months;
- ◆ **Four stars** – No non-compliance incidents in the previous 24 months; and
- ◆ **Five stars** - No non-compliance incidents in the previous 36 months.

A new licence holder starts on three stars. An applicant with a four star rating achieves a five per cent discount, while a five star rating achieves a 10 per cent discount.

Given this scheme is applicable to the private security industry within its legislative limitations, this will be used as the proposed incentive.

Specific questions for consultation:

- ◆ What are the advantages and disadvantages of the incentive model outlined in this RIS? Would it provide enough of an incentive for good behaviour? Why or why not? Are there any possible unintended consequences? Would other approaches be more appropriate?

⁵¹ Section 180 (2)(g) of the Act states that the Regulations may make provision for the reduction of fees, which would include offering discounts for a track record of compliance.

7 Options analysis – assessing the costs and benefits

In order to identify a preferred option for the Regulations, each of the viable options must be compared against one another to evaluate which is most likely to achieve the objectives of Government intervention.

The two options identified in Section 5 as viable changes to the current approach have been included for deeper analysis. For the purposes of comparison, these options are measured against the base case, which assumes that the Regulations will sunset and will not be re-made. The base case is used for the purposes of comparing the costs and benefits of each option relative to the status quo:

As a consequence, the consolidated list of options for analysis are:

- ◆ Option 1: Continuing the **current Regulations** as they have been operating since 2005.
- ◆ Option 2: Continuing the current Regulations, but **reducing the record keeping requirements**
- ◆ Option 3: Continuing the current Regulations, but changing the application system to **introduce incentives where industry participants demonstrate compliance**.

7.1 Multi-criteria analysis

In measuring and comparing options, a multi-criteria analysis (MCA) has been used to assess the relative strength of each option. This framework is particularly useful where extensive quantification and monetisation is not possible as a means of understanding the benefits and costs of each option, and largely only qualitative evidence is available. MCA is outlined in the Victorian Guide to Regulation, which outlines that it is to be used to judge how proposed options will contribute to a series of criteria that are chosen to reflect key benefits and costs.⁵²

The process for assigning a score is:

- ◆ Assign an option a score between -10 and +10 based on a qualitative assessment against each of the criteria;
- ◆ Multiply by a weighting which reflects the relative importance of the criteria; and
- ◆ Generate a weighted score for comparison with other options.

The criteria that will be used to assess each option are directly related to the objectives outlined above (Section 5 on page 47) of *mitigating the potential risks posed by the private security industry to community safety and imposing the minimum efficient regulatory burden*. The criteria are as follows:

- ◆ **Competency and probity of the private security industry:** the primary objective of the regulatory framework is to mitigate potential risks posed by the private security industry to community safety if inappropriate persons or businesses are allowed to operate in the industry or if industry standards and practices are deficient. As such, each option will be scored against this criteria based on the extent to which it is likely to increase or decrease the competency and probity of market participants both when they enter the industry and on an ongoing basis;
- ◆ **Compliance costs for regulated parties:** Consistent with the objective of the regulatory framework to efficiently regulate the private security industry, each option will be assessed against this criteria based on the extent to which it increases or decreases the burden imposed on industry, for example, through imposing record keeping requirements; and
- ◆ **Costs of administering the framework:** Consistent with the objective of the regulatory framework to efficiently regulate the private security industry, each option will be assessed against this criteria based on the extent to which it increases or decreases the costs incurred by the Government in administering the regulatory framework, for example, whether an option makes it more difficult (and therefore more costly) or easier to monitor and enforce the requirements of the regulatory framework.

The Victorian Guide to Regulation states that equal weighting should apply to benefit-related criteria and cost-related criteria, so that anticipated benefits and costs of the particular option can be assessed neutrally.⁵³ The outcome of this is that it is appropriate to use a 50 per cent weighting for both the sum of all benefits and the sum of all costs. As a consequence, the following weightings have been adopted:

⁵² Victorian Guide to Regulation Toolkit 2, p. 14.

⁵³ Ibid.

- ◆ Competency and probity of the private security industry is the key benefit of the Regulations, and is the only one included in the MCA, and thus receives a **50 per cent weighting**.
- ◆ The additional costs to the regulated community and government represent the two key stakeholders that would be impacted by any change to the framework. While the cost impact on both is important, the burden on the regulated community is likely to have a more substantial impact on the successful adoption of the Regulations, and has been assigned a slightly higher weighting of **30 per cent**. Administration costs to government have been assigned a **20 per cent weighting**.

7.2 Base Case

The base case is included for comparison purposes only.

Under the base case, the Regulations would sunset and the regulatory framework would rely entirely upon the Act. This would remove prescribed particulars related to applications, exemptions, definitions of security equipment and record keeping among other minor particulars.

The base case would result in a lapsing of legal instruments that require certain documents to be provided. As such, the Chief Commissioner would likely have less certainty regarding the documentation that applicants will provide him/her in order to satisfy him/her that the applicant was suitable to receive a licence. Applicants might also face uncertainty regarding requirements in the application process. These changes are likely to result in short-term costs for the regulator and industry.

The base case would also see exemptions in the current Regulations ceasing, which would result in individuals in the previously exempted categories being required to apply for an individual operator's licence or registration, to avoid being in breach of the Act. This would impose costs on the members of these groups and could act as a disincentive to individuals seeking related employment, engagement or training in these areas.

7.2.1 Base case assessment

The base case, by which all the other options are measured, is assigned a score of zero for each criteria. This yields an overall score of zero.

Table 16: Base case summary assessment

Criteria	Weighting	Assigned Score	Weighted Score
Competency and probity	0.50	0.00	0.00
Compliance cost for the regulated community	0.30	0.00	0.00
Costs of administering the framework	0.20	0.00	0.00
Total			0.00

7.3 Option 1 – Continuing the current Regulations

As discussed above, this option involves continuing the Regulations as they have been operating since 2005.

Relative to the base case, this option provides a range of requirements that operationalise the Act and provide greater certainty to industry members about how they can be compliant with the requirements of the Act:

- ◆ The particulars to be supplied in a **licence/registration application** would be clearly outlined, by means of a list of the information and documents that applicants would be required to produce if they wished to be granted a licence/registration;
- ◆ **Exemptions** would be in place to ensure the requirements of the licensing/registration system did not impose a burden on a number of classes of persons that pose a low risk to the community. Exempted classes of persons would be the same as currently applies, which includes employees advising on security equipment as part of selling it in the course of their normal employment, students/apprentices acting as security equipment installers as part of their VET training, and employees of public sector bodies or local Councils acting as investigators;

- ◆ **A definition** of “security equipment” would be in place to ensure the regulation of Class B activities was limited to activities carrying recognised probity risks, and did not expand to cover occupations which pose a lower risk to the community, such as locksmiths. This definition would be the same as currently applies, which includes security camera systems, security audio systems, security audio or visual recording systems, security alarms, security alarm monitoring systems, safes, vaults, certain security intrusion detectors, and certain access control devices
- ◆ **Record keeping** requirements for licence/registration holders would ensure that those in the industry could be held accountable for meeting their ongoing probity and/or competency obligations; and
- ◆ **Penalties** for certain offences in the Act and the Regulations could be applied, to deter non-compliance and provide appropriate punishment for breaches.

To the extent possible, the MCA of this option (and the other options) is supplemented with quantified and monetised aspects of regulatory burden as summarised in the table below (taken from Section 3.1.3 on page 24 – excluding the costs relating to fees and the Act) as outlined in Table 17.

It should be noted that the costs incurred in remaking the Regulations as in Option 1 (and Options 2 and 3) represent a small proportion — around 10 per cent — of the overall costs (estimated at around \$11.2m in 2015-16) of the requirements of the Act that are operationalised by the Regulations. The costs of the Regulations would, however, likely comprise a much smaller percentage of the total costs of the Act which include substantial costs, for example, related to training requirements and industry association membership.

Table 17: Summary of the estimated regulatory burden of the current Regulations per annum⁵⁴

	Attributable to the Regulations
New application costs	-
Renewal application cost	-
Record keeping	\$0.7m
Requiring crowd controller start/finish times and signatures	\$0.4m
Total	\$1.1m

Source: KPMG Analysis

Competency and probity

A score of +5 has been allocated for this criterion.

This option imposes requirements for certain records to be kept and provided upon request, whereas under the base case record keeping and provision requirements would be more limited. Record keeping and provision requirements ensure industry members maintain appropriate records, and allow Victoria Police to access this documentation which enables them to more effectively monitor and enforce compliance with the Act.

As advised through consultation, the consequence of allowing these requirements to lapse would be that businesses would likely continue to keep records as part of ‘business as usual’ practices, however Victoria Police would not have specific powers to call on these records as part of monitoring and enforcing potential misconduct by licence/registration holders, or to specify the particulars of the records that must be kept.

Without a legislated inspection power, Victoria Police could not undertake records inspections unless the records were submitted to police voluntarily by the licence or registration holder. In the absence of regulations prescribing a requirement that the holder of a licence or registration must make records available for inspection, Victoria Police would have no coercive authority to enable it to access and inspect records, which is likely to impede its ability to undertake investigations into licence and registration holders’ compliance with the requirements of the Act. This has the practical effect of enabling Victoria Police to more effectively monitor and maintain the competency and probity of industry participants.

⁵⁴ Each of the cost categories summarised in this table are outlined in more detail throughout section 2.2, including their underlying assumptions. Note that this section does not include impacts relating to the fees imposed given that these are assessed separately in Section 7.

Further, by prescribing a list of penalties for offences under the Act, this option increases the incentives for industry participants to comply with the competence and probity requirements of the Act.

The positive score for this option was limited due to a large number of requirements being stated in the Act, which means many competency and probity safeguards would still be in place with the base case.

Compliance cost for the regulated community

A score of +0 has been allocated for this criterion.

The difference in compliance requirements between Option 1 and the base case depends largely on the extent to which the Regulations, as remade under Option 1, would impose a smaller/larger burden than would otherwise be imposed in the base case. In the base case, the Chief Commissioner would be required to determine the requirements for applications at his or her discretion and the definition of security equipment would need to be established through further court determinations. As such, there is considerable uncertainty about the ultimate difference in compliance costs between the base case and Option 1.

That said, relative to the base case, Option 1 would likely result in a number of changes in compliance costs:

- ◆ Increased record keeping requirements and requirements for crowd controllers to maintain a register in a prescribed manner will result in marginally increased compliance costs. As outlined in Section 2.2, these costs are estimated to be respectively \$0.7 million per annum and \$0.4 million per annum. These costs are small given that they are ancillary requirements related to more substantive requirements which are already imposed under the Act.
- ◆ Exemptions of a number of low-risk occupations from requirements under the regulatory framework will reduce compliance costs for these entities, given that they will not be required to apply for applications or comply with other regulatory requirements.
- ◆ Industry would have greater certainty about the requirements to which they are subject, in particular in relation to application requirements and the definition of security equipment. Under the base case, there would be some time inefficiency in the short term as industry members might be forced to repeatedly check whether requirements had been updated, including in relation to applications and record keeping. By comparison, Option 1 would provide certainty about compliance requirements. This reduction in compliance costs is likely to be small.

On balance, it is likely that there would be neither increased nor decreased compliance requirements for regulated entities.

Costs of administering the framework

A score of +5 has been allocated for this criterion.

Relative to the base case, this option would likely impose modestly lower costs of administering the regulatory framework resulting from more certainty around the requirements to which industry members would be subjected. The regulatory requirements would be maintained which would enable lower costs of administering the regulatory framework given the continuity in:

- ◆ Assessing whether an application had filled necessary criteria to be approved;
- ◆ Determining which security equipment installers or advisers should be included as part of regulated Class B activities, and which industry members should be exempted from requirements; and
- ◆ Understanding which records should be kept and provided in order to facilitate appropriate monitoring and enforcement.

Option 1 also imposes a range of record keeping requirements which would substantially improve the efficiency of Victoria Police's monitoring and enforcement activities relative to the base case where such records could not be requested.

Table 18: Option 1 summary assessment

Criteria	Weighting	Assigned Score	Weighted Score
Competency and probity	0.50	+5	+2.50
Compliance cost for the regulated community	0.30	+0	+0.00
Costs of administering the framework	0.20	+5	+1.00
Total			+3.50

7.4 Option 2 – Continuing the current Regulations, but reducing the record keeping requirements

This option involves remaking the current Regulations, but with reduced record keeping requirements. These requirements are within the scope of the Regulations only, and therefore amending them is consistent with the requirements of the Act. Specifically, this option includes removing the following requirements:

- ◆ For individuals and businesses, the requirement to record relevant names, dates and service descriptions for all security services provided or requested, and in the case of businesses the names of the persons engaged or employed to provide the service; and
- ◆ For individuals and businesses, the requirement to provide these records to a police officer upon request, and the imposition of a penalty for failing to do so of up to 10 penalty units or an infringement penalty of 2.5 penalty units.

Competency and probity

A score of +3 has been allocated for this criterion.

Option 2 would have a positive impact on the competency and probity requirements (similar to as in Option 1). This is because the option would prescribe a list of penalties for infringements that provide additional incentives for industry members to comply with the competency and probity requirements.

However, this Option 2 has a lower score than Option 1. This is a result of industry members not being required to keep or provide Victoria Police with records. The failure to maintain record keeping in this way will diminish Victoria Police's ability to maintain compliance with the probity and competency requirements of the regulatory framework. Victoria Police suggests these are integral to understanding whether a business, once admitted to the industry, remains compliant with the requirements of the Act and Regulations.

Compliance cost for the regulated community

A score of +1 has been allocated for this criterion.

Option 2 imposes similar requirements as in Option 1, and as such, as outlined in the assessment of Option 1, the extent to which this option decreases or increases compliance costs depends largely on the interpretation of a number of regulatory requirements.

However, while Option 1 was assessed as a score of '0' for this criteria, Option 2 includes a further change to compliance requirements through reducing record keeping requirements. As such, relative to Option 1, this Option would modestly decrease the compliance cost for the regulated industry by around \$0.7m per annum. The primary reason for these record keeping requirements being relatively minor is that businesses advised through consultation that they would likely carry out this record keeping as part of businesses as usual even without the Regulations.

While the reduction in compliance costs would be modest, it should be noted that options for reducing or removing record-keeping and other administrative requirements in the Regulations are constrained by the Act to a large degree. Accordingly, Option 2 is still considered to provide the most feasible option for reducing compliance costs, given the range of administrative requirements mandated by the Act.

Costs of administering the framework

A score of +1 has been allocated for this criterion.

As with Option 1, relative to the base case, this option would reduce the costs of administering the regulatory framework by providing continuity and certainty with regards to regulatory requirements, in

particular regarding information to be provided as part of applications and by establishing the scope of the regulated industry as determined by exemptions and the definition of security equipment.

While Option 1 was assessed as a score of '+5' for this criteria, Option 2 does not include requirements relating to record keeping which would reduce the efficiency the government's ability to request records of the security services of industry members. Under this option, Victoria Police could not undertake records inspections without a legislative inspection power unless the records were submitted to police voluntarily by the licence or registration holder, or there were grounds for suspecting the commission an offence under the Act or Regulations that would justify a search warrant.

Given that the government aims to maintain public safety with respect to the private security industry, monitoring and enforcement would continue, however it would be considerably less efficient than if records could be requested and penalties could be imposed to incentivise compliance. This decreased efficiency related to monitoring and enforcement could increase the salary and operating costs of effectively administering the regulatory framework.

As such, compared with the base case, there are benefits to government from being more explicit about applications and the definition of security equipment. Despite this, the efficiency of monitoring and enforcement would be somewhat limited as a result of the inability of the monitoring and enforcement activities to be supported through requests for the records maintained by the industry.

Table 19: Option 2 summary assessment

Criteria	Weighting	Assigned Score	Weighted Score
Competency and probity	0.50	+3	+1.50
Compliance cost for the regulated community	0.30	+1	+0.30
Costs of administering the framework	0.20	+1	+0.20
Total			+2.00

7.5 Option 3 – Continuing the current Regulations, but changing the application system to introduce incentives where industry participants demonstrate compliance

Option 3 includes remaking the current regulations with an amended application system which introduces incentives for compliance. The Regulations have the scope to implement a form of incentive – reducing renewal fees for those who have demonstrated good behaviour.⁵⁵

One model of incentives that has been successfully introduced in Victoria is the VCGLR's 'star rating system', which will be the assumed model for this option. As noted above, this model includes a grading system, where industry participants are rated from one star (where they have incurred three or more non-compliance incidents in the previous 12 months) to five (where they have incurred no non-compliance incidents in the previous 36 months). A new licence holder starts on three stars. An applicant with a four star rating achieves a five per cent discount, while an applicant with a five star rating achieves a ten per cent discount.

Competency and probity

A score of +5 has been allocated for this criterion.

As with Option 1, Option 3 would have a number of positive impacts on the competency and probity of industry (as outlined in Option 1). This is because the option would impose record keeping requirements which improve the monitoring and enforcement of the Act's competency and probity requirements, and prescribe a list of infringement penalties which provide incentives for industry members to comply with the competency and probity requirements of the Act.

The addition of incentives through reduced fees for good behaviour could potentially offer further benefits. In addition to having an application and monitoring/enforcement mechanism to ensure competency and probity, this option offers a financial incentive for industry to meet these standards.

⁵⁵ In this Option 3, the purpose of reducing renewal fees is to incentivise compliance with regulatory requirements, rather than to achieve considerations relevant to the Government's policy on cost recovery. The appropriate level and structure of fees is considered separately in Section 7.

However, there are a range of incentives involved in a business/individual's decision to comply with the requirements of the regulatory framework. The financial incentive offered by a discount to fees is very small relative to the benefits and costs of non-compliance, which could include benefits related to fraud, corruption, and proceeds of crime, and costs related to criminal prosecution and infringement penalties. As such, a discount to fees is likely to have a small, but very marginal impact on behavioural responses of industry participants.

While this option provides a small financial incentive for industry members to comply with their regulated requirements, this is likely to have a limited impact on competency and probity. As such, Option 3 is allocated the same score for this criterion as Option 1.

Compliance cost for the regulated community

A score of 0 has been allocated for this criterion.

As with Option 1, the extent to which this option decreases or increases compliance costs depends largely on the interpretation of a number of regulatory requirements. Option 3 imposes the same requirements as in Option 1, that is, record keeping and crowd controller register requirements, but also reduces burden by exempting a number of classes of persons and providing greater continuity and clarity with regards to the definition of security equipment and other regulated requirements.

On balance, it is likely that there would be neither increased nor decreased compliance requirements for regulated entities. As such, Option 3 is allocated a score of 0 for this criterion, which is the same as Option 1.

This may also result in some parties in the industry paying lower fees (although this would be offset by the reduced fee revenue by Victoria Police).

Costs of administering the framework

A score of +4 has been allocated for this criterion.

As with Option 1, this option would likely impose modestly lower costs of administering the regulatory framework resulting from more certainty around the requirements to which industry members would be subjected. The regulatory requirements would be maintained which would enable lower costs of administering the regulatory framework given the continuity in application and record keeping requirements, and scope of the regulated industry.

However, introducing incentives would add to the cost of administering the regulatory system as it would add complexity to the process of assessing applications. Further, additional time would be spent by Victoria Police in understanding and allocating star ratings. These increased costs in the administration of the regulatory framework may be compounded by the manual processing of private security applications.

While the Department anticipates that the additional time taken to apply incentive discounts to the application system would be marginal, it would still be noticeably more costly than Option 1.

Table 20: Option 3 summary assessment

Criteria	Weighting	Assigned Score	Weighted Score
Competency and probity	0.50	+5	+2.50
Compliance cost for the regulated community	0.30	+0	+0.00
Costs of administering the framework	0.20	+4	+0.80
Total			+3.30

7.6 Overall options assessment

The results of the MCA are presented in the table below.

Table 21: Summary assessment of all options considered

Option	Weighted Score
Base case (the Regulations sunset)	0.00
Option 1 – Continuing the current Regulations	+3.50
Option 2 – Continuing the current Regulations, but reducing the record keeping requirements	+2.00
Option 3 – Continuing the current Regulations, but changing the application system to introduce incentives where industry participants demonstrate compliance	+3.30

Based on the relative scores of each of the options, remaking the current Regulations (Option 1) is considered to be the preferred option. That said, there is a very marginal difference in the scores for Option 1 and Option 3. As such, any conclusions about which of these two options is preferred is very sensitive to changes in the assumptions which support the scoring of the options.

Option 1 is preferred because relative to the base case and other options, this option has a marginally greater ability to meet the government's objectives:

- ◆ Mitigating potential risks to public safety by enhancing monitoring and enforcement of the private security industry through requiring records to be kept and allowing requests of records; and
- ◆ Improving the efficiency of the administration of the regulatory framework.

8 Fee analysis

8.1 Cost recovery framework

Summary problem statement

Allowing the Regulations to sunset will result in the schedule of fees that must be paid when submitting an application not being prescribed, and as such there will be no legal basis to compel private security licence/registration applicants to pay fees.

If this were the case, the regulatory framework would be funded entirely by general revenue (i.e. appropriation funding), assuming this funding is increased to meet current activity levels. This would mean that all taxpayers, not just those who benefit from the service or those whose actions give rise to the need for the service, would fund the costs of regulatory activity relating to the private security industry.

These consequences are outlined in further detail below.

Approach to cost recovery

In order to administer the regulatory framework in a way that is consistent with the objectives of the Act and Regulations, Victoria Police undertake a number of activities. For example, Victoria Police aims to mitigate potential risks to community safety posed by the private security industry, by undertaking licensing and registration assessments and a range of monitoring and enforcement activities.

The costs of Government activities driven by the requirements of the regulatory framework are estimated to be \$6.4m in 2015-16 (see Section 8.1.2 on page 64 for more detail).

In the past, it was common for the costs of many government activities to be largely funded from general taxation revenue.⁵⁶ However, in order to improve efficiency and equity of resource allocation within the economy, governments increasingly recover some or all of the costs of various activities more directly through cost recovery arrangements.⁵⁷

Cost recovery is the recuperation of the costs of government-provided activities that provide private benefits to entities or reflect the costs their actions impose.⁵⁸

The Victorian Government's default position with regard to cost recovery is full cost recovery, where 'full cost' represents the value of all the resources used or consumed in the provision of the associated output or activity. This policy aims to achieve two key objectives outlined in the Government's Cost Recovery Guidelines⁵⁹ which should be balanced when considering appropriate levels of cost recovery; efficiency and equity.

Efficiency

Cost recovery aims to achieve allocative efficiency by providing a signal to users about the full costs of the resources involved in the provision of services requiring government involvement

Full cost recovery ensures that the cost of providing private security services incorporates the cost of associated regulatory activity, and therefore provides a price signal to users of those services regarding the efficient price and service levels from a whole-of-economy perspective.

Equity

Cost recovery aims to achieve *horizontal equity* such that costs are incurred by those who realise the benefits of the government activities or contribute to the need for government regulation.⁶⁰

In relation to the private security industry, this means that:

- ◆ cost recovery avoids the situation where all taxpayers have to pay the costs associated with regulating the private security industry regardless of whether or not they benefit from, or give rise to the need for, the Government's activities in this area; and
- ◆ fees reflect any differences in the extent of regulatory activity conducted by Victoria Police in relation to different industry participants.

⁵⁶ Department of Treasury and Finance, Cost Recovery Guidelines, January 2013

⁵⁷ Department of Treasury and Finance, Cost Recovery Guidelines, January 2013

⁵⁸ Department of Treasury and Finance, Cost Recovery Guidelines, January 2013

⁵⁹ Department of Treasury and Finance, Cost Recovery Guidelines, January 2013

⁶⁰ Department of Treasury and Finance, Cost Recovery Guidelines, January 2013

To some extent, all private security industry participants give rise to an ongoing need for Victoria Police's activities in administering the regulatory framework. For example, Victoria Police incurs costs associated with ensuring that all licence applicants meet the requirements of a licence. This assessment process aims to mitigate the risk of harm which could result if, for instance, an industry participant inadvertently failed to meet requirements for first aid training.

That said, it is likely that the actions of a relatively small number of industry participants who pose a greater risk to community safety give rise to the need for more extensive monitoring and enforcement activity. For example, infiltration of the private security industry by a small number of organised crime groups is likely give rise to the need for Victoria Police to conduct increased monitoring and enforcement activity, either in bursts of activity or on a long-term basis, despite these groups likely representing a relatively small proportion of the overall industry. While these costs are driven by a small number of industry participants, all industry participants benefit from regulatory activity that eliminates or reduces the negative impacts of these industry participants.

In relation to private security licence/registration assessments, different types of applicants also require different levels of activity from Victoria Police. For example, assessment of licence applications requires an assessment against both probity and competency requirements, whereas assessing registration applications requires an assessment against only probity requirements. Further, individual applications require assessments of only an individual, whereas body corporate applications could require assessment of a number of people related to the application.

Regulatory activity relating to the private security industry also generates a range of benefits for its customers and industry members, as noted in Section 3 on page 18 .

In addition to horizontal equity, vertical equity can be a further consideration for cost recovery such that those with greater means contribute proportionately more than those with lesser means. This may be a relevant consideration where it is thought that fees might inappropriately create a barrier to people or businesses with lesser means participating in the industry. However, the Department considers that vertical equity issues are not a significant concern, and these issues were not highlighted through consultation.

Related policy objectives

While the cost recovery objectives are important for achieving efficiency and equity in how the costs of administering the regulatory framework are funded, fees must also be set with a view to the objectives of the overarching Act and Regulations. This is because, for example, if fees were set too high, fees could pose a disincentive for industry participants not to be registered or licensed in the first place, thus potentially resulting in a less effective regime for controlling the risks posed by the private security industry. It should be noted that the costs associated with fees is one small component of the costs incurred by industry participants in complying with the substantive requirements of the Act and the Regulations , such as training costs, costs associated with applications, record keeping and notifications.

Circumstances potentially requiring divergence from cost full cost recovery

As noted above, the Government's policy on cost recovery is that "regulatory fees and user charges should be set on a full cost recovery basis".⁶¹ Consistent with the objectives above relating to efficiency and equity of government intervention, the circumstances in which the policy may be forgone and an assessment of the relevance of these circumstances to the private security industry are outlined in Table 22.

Table 22: Relevance of circumstances for not fully cost recovering

Circumstance in which full cost recovery may not be desirable ⁶²	Relevance for the private security industry
Practical implementation issues make cost recovery infeasible	Not relevant Fees can be charged to industry participants at the point at which they apply for licences/registrations. This is unlikely to result in substantially high transaction costs.
There are benefits to unrelated third parties (sometimes referred to as 'positive externalities')	Relevant to a limited extent For example, if one house has installed private security equipment, it may reduce the likelihood that a criminal

⁶¹ Department of Treasury and Finance, Cost Recovery Guidelines, January 2013. Page 7

⁶² Department of Treasury and Finance, Cost Recovery Guidelines, January 2013. Page 7

Circumstance in which full cost recovery may not be desirable ⁶²	Relevance for the private security industry
	would burgle other houses in the area. Further, where a crowd controller or security guard is present at a premises, it may reduce the likelihood of criminal activity occurring for all surrounding premises. However, without further evidence, this is not considered to be significant enough to warrant departure from full cost recovery.
Social policy or vertical equity considerations are considered to outweigh the efficiency objectives associated with full cost recovery	Not relevant There are no relevant social policy or vertical equity issues.
Full cost recovery might adversely affect the achievement of other government policy objectives	Not relevant Given that the fees required to be charged in order to achieve full cost recovery represent a small proportion of the costs related to participation in the industry. It is unlikely that full cost recovery will alter industry behaviour, for example through substantially incentivising industry participants to operate without a licence/registration.

In the absence of further information, this suggests that pursuing less than full cost recovery is not warranted for the private security industry.

Specific questions for consultation:

- ◆ Do stakeholders consider that any of the circumstances in the above table apply to the private security industry? Why, or why not?
- ◆ In particular, are fees at risk of posing a deterrent to obtaining a licence/registration?

Other minor considerations in remaking the fees

As part of remaking the fee schedule in the Regulations, three minor changes related to minor legislative issues must also be considered:

- ◆ Following changes to the Act in 2010 that introduced a new class of private security activity – private security trainer – licences can now be granted for five activities in total (previously, licences could only be granted for four activities in total). However, the current fee schedule only includes prescribed fees for a maximum of four activities. The effect of this is that currently, Victoria Police can grant a licence for all five Class A licence activities, but applicants can only be required to pay a fee for four activities. This issue is relevant to a very small proportion of the regulated industry, with around 19 licensees applying per annum for all five activities.⁶³
- ◆ Under section 8(1) of the *Monetary Units Act 2004*, fees can only be expressed in fee units where the fees are not less than 1 fee unit. Currently, the fees in the Regulations are prescribed on a monthly basis, with the smallest of these fee increments being less than 1 fee unit. In theory, this means that applicants could apply for licences/registrations of durations of any number of months up to a total of 36 months (the maximum allowable duration under the Act is three years). However, in practice Victoria Police does not issue licences for periods of less than a year. Industry participants also have an incentive to apply for a licence/registration for the maximum period available, given that a standard application fee is charged regardless of licence duration. The Department understands that this issue impacts a very small number of industry participants. If this issue is not addressed through remaking the fees in increments greater than or equal to 1 fee unit, the Regulations would be inconsistent with the *Monetary Units Act 2004*. An alternative approach to addressing this issue would be to prescribe fees as a dollar amount, however, this is likely to lead to under-recovery over time as the costs of administering the regulatory framework will increase in line with inflationary pressures.
- ◆ The Regulations are supposed to include similar degrees of fee increase between a registration for one activity and two activities for all registration applicants (individuals, sole traders and body corporates). However, the current Regulations incorrectly prescribe a larger degree of increase for

⁶³ Victoria Police, KPMG analysis
TRIM ID: CD/16/189184

individuals than for sole traders and body corporates. Victoria Police's current practice is to charge the correct amount to individual registration applicants. As such, this minor correction must be made to the Regulation's fee schedule to make it consistent with the intent of the Regulations and Victoria Police's current practice. As Victoria Police's current practice is to charge the correct amount, there will be no impact on stakeholders.

As these issues are minor in nature and impact a very small number of industry participants, they are considered only briefly in Section 8.7 on page 79.

8.1.2 Appropriateness of the current fee levels

Current fee levels under the Regulations were prescribed in 2005, based on private security licensing and registration activities at that time.

At the time of establishing the Regulations, it was concluded that full cost recovery was most appropriate. Full cost recovery was broadly achieved at the time of making the Regulations. At that time, costs associated with administration of the framework were estimated to be \$3.69m⁶⁴ in 2005-06, and during that period actual revenue from fees was \$3.99m⁶⁵.

The composition of the industry and process of administering the regulatory framework has also remained relatively consistent since the making of the Regulations⁶⁶. This could indicate that the broad fee structure established in 2005 remains appropriate.

8.2 Estimating the efficient cost base to be recovered

In order to determine which costs should be recovered through fees, the scope of the efficient cost base associated with administering the regulatory framework must be established.

Limitations of the costing approach and future plans

The most accurate way of allocating the costs of Victoria Police's regulatory activity to regulated entities would be through using a fee structure that was informed by an activity based costing. The activity based costing method would link Victoria Police's output (e.g. in relation to applications assessed) to activities used to produce these outputs, which in turn would link to Victoria Police's costs.

An activity based costing has not been undertaken to support the remaking of the Regulations. This was a result of a range of factors, in particular, uncertainty regarding the future costs to Victoria Police of administering the regulatory framework. The major component of this uncertainty is the impact of substantial improvements to Victoria Police's application assessment process currently being undertaken (through the Electronic Lodgement Process (ELP) IT upgrade).

Given this uncertainty, the Department and Victoria Police will complete an activity based costing and review of the fee structure within five years to ensure the fee structure best reflects the future costs of the regulatory framework, in particular by incorporating efficiencies resulting from the planned rollout of the ELP.

Costing approach

With these limitations in mind, this section estimates the overall costs that Victoria Police incurs in administering the regulatory framework for the private security industry using a top-down costing approach.⁶⁷

In the absence of activity-based data and because there are no units within Victoria Police that are entirely dedicated to administering the private security industry, the costing approach used in this RIS is a pro rated allocation of costs on a proportionate basis by using measures which are easily available – that is, using the proportion of total licences issued by relevant areas of Victoria Police that relate to private security, and best estimates of the proportion of total taskforce staff time spent conducting activities relating to the private security industry. This approach has been adopted for all licence/registration types.

Overview of activities undertaken by Victoria Police

The range of Victoria Police's activities undertaken in administering the framework can be broadly characterised as follows:

⁶⁴ Private Security Regulations 2005: Regulatory Impact Statement

⁶⁵ Victoria Police

⁶⁶ Victoria Police

⁶⁷ Any calculations in this section where there are differences in totals and sub-totals are due to rounding.

- ◆ Licensing and registration assessments
- ◆ Proactive stakeholder engagement
- ◆ Monitoring and enforcement
 - Ongoing
 - Strategic
 - General policing

In broad terms, the costs associated with these activities are incurred across the following Victoria Police areas:

- ◆ **Licencing and Regulation Division (LRD)**
- ◆ **Records Services Division (RSD)**
- ◆ **Various taskforces** – including Taskforce Trident, Taskforce Razon, Taskforce My City/Safe Streets and Echo Taskforce
- ◆ **Other policing** – which are distributed costs and predominantly relate to compliance activities performed by frontline members

These activities and their cost data sources are summarised in Table 23 below and outlined in more detail in the following section.

Table 23: Summary of Victoria Police's activities and their cost data sources

Type of activity		Description	Cost data source
Licensing and registration assessment		Assessing, processing and issuing of licences, temporary visitor permits and renewals	LRD and RSD
Proactive stakeholder engagement		Attendance at security forums and providing advice	LRD
Monitoring and enforcement	<i>Ongoing</i>	Conducting regular compliance activities, conducting hearings, and managing administrative review proceedings at the Victorian Civil and Administrative Tribunal	LRD
	<i>Strategic</i>	State-wide taskforces undertake various private security compliance activities which are incorporated in their investigations into other crimes, such as organised crime or liquor licencing, given the overlap into partner industries	Victoria Police taskforces
	<i>Other policing</i>	Any operation/visit/incident related to liquor licencing duties is likely to involve interaction with security. In addition, there are other interactions with security firms and personnel that cross into the compliance space. Notifications from operations to LRD occur about security personnel who are thought to be of concern from a licencing perspective.	Not recorded

Source: Victoria Police

8.2.1 Costs incurred across Victoria Police and associated activities

The sections below outline the different areas across Victoria Police that incur costs associated with administering the private security regulatory framework, and the activities that they undertake which

incur these costs. The estimated costs outlined below have been developed based on data provided by, and in consultation with, Victoria Police.

Costs and activities of LRD

LRD performs a range of licensing, permit and registration assessment and monitoring and enforcement functions relating to firearms, weapons and the private security industry.

It is estimated that 28 per cent of LRD's total costs relate to regulating the private security industry. This is based on the total number of security applications representing 28 per cent of the 55,101 total applications received in 2014-15. LRD has advised that the proportion of total applications received relating to private security is a reasonable indicator of the resources dedicated to the private security industry. LRD advises that this is reasonable because the resources required to process a firearms licence application or a weapons approval is comparable to the processing times for private security applications. This is a result of the processes for a firearms licence and a weapons approval being similar to a private security licence in that the applicant must provide supporting evidence and undergo the same identification verification processes and probity checks.

In relation to the private security industry, LRD assesses and issues licences, registrations, temporary visitor permits and renewals. This enables LRD to maintain the integrity of the industry by preventing unsuitable individuals/groups from entering the industry in the first instance.

LRD undertakes a range of proactive stakeholder engagement activities, which are consistent with its approach to working with the industry in as co-operative a manner as possible, while ensuring the objectives of the Act are upheld.

LRD also undertakes ongoing monitoring and enforcement through a range of activities. LRD conducts proactive audits of the businesses on a consistent basis to ensure compliance with the full range of legislative requirements. On average two to three compliance exercises per week are conducted involving LRD personnel. Issues of particular interest are the employment by a company of appropriately licensed individuals, that the company is only providing security services for which it is licensed and the maintenance of relevant records. Identified non-compliance is dealt with in terms of the seriousness of the breach, with sanctions ranging from warnings to potential licence suspensions. Compliance audits can be conducted by two sworn members and last an hour, through to the involvement of six to eight LRD members over several days across Victoria.

Consistent with the pro-rated approach above, Victoria Police estimates that in 2014 15 the total cost to LRD associated with administering the private security regulatory framework was \$3.67m based on a pro-rated allocation of resources towards private security activities. LRD's costs associated with these activities fall into the following categories:

- ◆ **Salary and Associated costs** associated with salaries and on-costs of police and public servants.
- ◆ **Operating expenses** associated with corporate activities, supplies and accommodation.

Table 24: Estimated cost of LRD regulatory activities

	LRD Security 2014-15	LRD Security 2015-16 ⁶⁸
Salaries & Associated costs	\$2,403,704	\$2,491,869
Operating expenses	\$1,269,183	\$1,315,736
Overheads	\$1,262,441	\$1,308,746
Capital asset charge and depreciation	\$6,742	\$6,989
Total	\$3,672,887	\$3,807,604

Source: Victoria Police

A more detailed breakdown of the costs incurred by LRD in administering the private security regulatory framework is included in Appendix 4 on page 101.

⁶⁸ Costs for 2015-16 are based on costs in 2014-15, but are multiplied by the increase in the staff wage rate factored into the Victoria Police Enterprise Bargaining Agreement of 2.5% per annum (this is used as a proxy for cost growth given that staff costs are the primary driver of costs), and the growth rate of applications of 1.1% (which represents an increasing load of work required for assessment of applications which is the primary driver of LRD work)

Costs and activities of RSD

RSD undertakes a range of activities associated with records services in Victoria Police. A small component of its work is processing fingerprints relating to private security industry applications.

Victoria Police estimates that in 2014-15 the total cost to RSD associated with administering the private security regulatory framework was \$0.33m based on a pro-rated allocation of resources towards private security activities.⁶⁹ RSD's costs associated with these activities fall into the same categories as LRD, namely **Salary and Associated costs** and **Operating expenses**.

Table 25: Estimated cost of RSD regulatory activities

	RSD Security 2014-15	RSD Security 2015-16 ⁷⁰
Salaries & Associated costs	\$250,865	\$260,067
Operating expenses	\$81,270	\$84,251
Overheads	\$80,757	\$83,719
Capital asset charge and depreciation	\$513	\$532
Total	\$332,135	\$344,318

Source: Victoria Police

A more detailed breakdown of the costs incurred by RSD in administering the private security regulatory framework is included in Appendix 4 on page 101.

Costs and activities of Victoria Police taskforces

In addition to the ongoing monitoring and enforcement activities undertaken by LRD, strategic monitoring and enforcement of the private security industry is also carried out by various taskforces within Victoria Police.

Victoria Police has advised that indirect policing costs for compliance and enforcement activities relating to the private security industry have risen over the 10-year course of the previous regulations due to an increasing understanding of the infiltration of the industry by serious and organised crime and the consequent and necessary steps law enforcement agencies have had to take to address this. This has included the use of State-wide taskforces to carry out targeted monitoring, compliance and enforcement activities in relation to the private security sector, as part of their broader work.

These State-wide taskforces undertake various private security compliance activities, which are incorporated in their investigations into other areas of regulated activity such as liquor licencing and maritime port operations due to the overlap of these industries with the private security industry.

Victoria Police has advised that the following specific taskforce activities form part of their monitoring and enforcement of the private security industry:

- ◆ **Taskforce Razon** is responsible for the regulation of licensed premises and licensed events in Victoria. Its focus is ensuring the responsible service and promotion of liquor within licenced venues and events and that staff and security contractors behave in a lawful and professional manner that reflects community expectations. As an example, when attending licensed venues overtly, taskforce staff will spend 30-40 per cent of their time checking each security officer, conducting Law Enforcement Assistance Program (LEAP) checks and then cross checking this with the security register. Where a suspected offence is identified in overt checks, further resources will be dedicated. When attending licensed venues covertly, taskforce staff will often spend upwards of 80 per cent of their time observing security personnel, and will subsequently either act on their observations or complete an information report detailing their observations.
- ◆ **Taskforce Trident** was established to prevent, detect, deter and defeat organised crime in a maritime setting⁷¹. As a part of its ongoing investigations, Trident dedicated substantial resources

⁶⁹ RSD advised that the proportion of its total costs associated with private security are 2% of Salaries and Associated costs and 6% of Operating Expenses.

⁷⁰ Costs for 2015-16 are based on costs in 2014-15, but are multiplied by the increase in the staff wage rate factored into the Victoria Police Enterprise Bargaining Agreement of 2.5% per annum (this is used as a proxy for cost growth given that staff costs are the primary driver of costs), and the growth rate of applications of 1.1% (which represents an increasing load of work required for assessment of applications which is the primary driver of RSD work)

towards the investigation and prosecution of the security firm ACG. This investigation and prosecution was a major enforcement action that contributed to maintaining the integrity of the private security industry (as previously outlined in more detail in 4.6.3 on page 45). This type of major enforcement activity is not expected to occur on an ongoing basis, but it is somewhat likely to occur in some form in the future. As such, the Department considers that it is appropriate to incorporate a proportion of these costs towards the private security activity on an ongoing basis.

- ◆ **Taskforces My City/Safe Streets** was established to address public order and liquor licensing issues in the Melbourne central entertainment precinct and surrounding areas. One of the activities of this taskforce is private security industry monitoring and enforcement.
- ◆ **Taskforce Echo** was established to scrutinise and monitor security (and firearms) licences via operational activity relative to Outlaw Motorcycle gang members. Infiltration of the private security industry by this type of organised crime is a key source of public concerns about the integrity of the private security industry, as supported by reports by the Australian Crime Commission and the recent Victorian Law Reform Commission consultation paper.

The costs associated with each of these strategic monitoring and enforcement activities are estimated in Table 26. These estimates may be somewhat conservative given that costs associated with Taskforce Echo are not included due to difficulties in estimating and attributing the costs.⁷²

Victoria Police advises that the cost incurred by taskforces in undertaking activities related to the private security industry are not separately cost-recovered from other industries (such as licensed venues), and do not represent costs which should be recovered from other industries.

Table 26: Estimated cost of strategic monitoring and enforcement

	Approximate proportion of staff in 2014-15 allocated on an ongoing basis	Indicative ongoing FTE allocated to private security activities	Estimated cost 2014-15 ⁷³	Estimated cost 2015-16
Taskforce Razon	30%	7.2 ⁷⁴	\$1,263,721	\$1,295,312
Taskforce Trident	20%	2 ⁷⁵	\$351,034	\$359,809
Taskforce My City/Safe Streets	10%	3.5 ⁷⁶	\$614,309	\$629,665
Taskforce Echo	n/a	n/a ⁷⁷	n/a	n/a
Total strategic monitoring and enforcement	-	12.7 FTE	\$2,229,064	\$2,284,786

Source: Victoria Police, KPMG analysis

⁷¹ Australian Government and the Australian Crime Commission. *Crime in the Maritime Sector*, 2013. Accessed 18 February 2016 at <<https://crimecommission.gov.au/publications/intelligence-products/crime-profile-fact-sheets/crime-maritime-sector>>

⁷² Victorian Law Reform Commission, *Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries, Consultation Paper*, June 2015, accessed at <http://www.lawreform.vic.gov.au/projects/regulatory-regimes-preventing-infiltration-organised-crime/use-regulatory-regimes>. Australian Crime Commission, *Organised Crime in Australia*, 2013, accessed at http://www.lawreform.vic.gov.au/sites/default/files/VLRC_Regulatory_Regimes_consultation_paper_%20for_web.pdf

⁷³ Estimated costs in 2014-15 and 2015-16 are based on the salary for a Sergeant at, respectively, 1 July 2014 and 1 July 2015 as outlined in the Victoria Police Enterprise Bargaining Agreement. This is equal to, respectively, \$100,928 in 2014-15 and \$103,451 in 2015-16. Victoria Police on-costs are estimated using the data provided for LRD and RSD, which is equivalent to 73.9% additional costs. This estimate is consistent with the Victorian Guide to Regulations default overhead multiplier of 75%.

⁷⁴ Victoria Police has advised that Taskforce Razon is staffed by 24 FTEs. While Victoria Police does not have data to support exact time attribution, they conservatively estimate that 30% of the Taskforce's time was spent on security issues (or around 7.2 FTE)

⁷⁵ Victoria Police advised that taskforce Trident was staffed by 10 FTE over a year. Whilst this operation is not an annual matter, Victoria Police have advised that some extrapolation is needed to assign a reasonably attributable figure on a per annum basis. Without detailed modelling and estimate of 2 FTE on fixed operations is used.

⁷⁶ Victoria Police advised that taskforce My City/Safe Streets does not record data that would enable attribution of its time specifically to dealing with private security issues. On average, Safe Streets deploys 67 personnel on Friday and Saturday of each week. As this results in expenditure of 200 man hour per shift on Safe Streets, this would indicate a total time attribution of around 35 FTE. The relationship between the functions of Taskforce Razon and the Safe Streets initiative is significant, however Taskforce Razon has a specific mandate to target licenced premises whereas Safe Streets has a broader mandate. As such, Victoria Police consider that Safe Streets is likely to dedicate a lower proportion of its resources to private security

⁷⁷ Echo Taskforce undertakes monitoring and enforcement of security licences through its activities targeted towards Outlaw Motorcycle Gang Members. However, there is insufficient data available to enable estimation and attribution of these costs.

Costs and activities of 'other policing'

In addition to monitoring and enforcement that is undertaken in an ongoing capacity by LRD and a strategic capacity by various Victoria Police taskforces, members across Victoria Police contribute to monitoring and enforcement. These 'other policing activities' are monitoring and enforcement activities that occur as part of general policing duties.

These other policing activities include a diverse range of duties, for example:

- ◆ Enforcement and compliance activities for private security licence/ registration holders, for example inspection of business records, inspection of crowd controller registers or inspection of crowd controller identification tags;
- ◆ In the instance that a security guard or business is found to be non-compliant, the attending member at the time may decide to proceed with laying charges. LRD are contacted when this interaction results in the need to suspend or cancel the licence. LRD therefore rely on this collaborative relationship in order to ensure compliance with the Act is monitored effectively.
- ◆ Notifications are made to LRD from police operations about security personnel who are thought to be of concern from a licencing perspective.

The extent to which these activities occur in addition to, rather in the course of, normal policing duties is unclear. As such, in the absence of further data, these costs are not included as part of the cost base to be recovered through fees.

Total estimated cost base

The table below summarises the total cost base to be recovered through fees. However, it is noted that the exclusion of the costs related to Taskforce Echo may result in the estimate of the cost base being slightly conservative.

Table 27: Summary of costs incurred by Victoria Police

	Estimated costs 2014-15 (\$m)	Estimated costs 2015-16 (\$m)
LRD costs	3.67	3.81
RSD costs	0.33	0.34
Victoria Police taskforce costs	2.23	2.28
Other policing costs	n/a	n/a
TOTAL cost base to be recovered	6.23	6.44

Source: Victoria Police, KPMG analysis

Efficiency of the cost base

For the purposes of efficiency, it is important to ensure that the level and standard of Victoria Police's regulatory activity are the minimum necessary to meet the needs of the community and achieve the Government's private security objectives.

As an example of this, spending many hours assessing each application for a private security licence/registration would provide Victoria Police with a greater level of certainty about the appropriateness of granting a licence/registration, however it would likely be more efficient to spend a short period assessing most applications (if required, a longer time could also be spent assessing higher risk applications).

Through consultation, stakeholders presented mixed views on the level of regulatory activity undertaken by Victoria Police. Key themes from industry consultation included that:

- ◆ Victoria Police is perceived to have a somewhat limited field presence, and that compliance could be improved by undertaking additional regulatory activity such as further monitoring and enforcement.
- ◆ The level of fees was somewhat higher than industry believed it should be, indicating that the cost associated with the current level of regulatory activity is too high.

These key themes reflect the tension between the competing objectives of the regulatory framework; to mitigate the risks to public safety posed by the activities of the private security industry while imposing the minimum necessary burden on the industry. To a limited extent, these themes may indicate that the

level of activity currently undertaken to administer the regulatory framework is not considered by industry to be excessive.

To further assess whether the cost base in undertaking the regulatory activities is efficient, the sections below outline efficiency improvements over the last 10 years and compare fee levels across jurisdictions.

Victoria Police has advised that since the implementation of the Regulations they have made a range of changes to improve the efficiency and effectiveness of how they administer the regulatory framework:

- ◆ Over time, LRD have developed a sound risk assessment process to ensure efficient and effective use of available resources. This has assisted in the determination of enforcement priorities, and has become an essential regulatory practice.
- ◆ There is a current focus on increasing the rate of new private security applications approved within 28 days of receipt. LRD has contributed to a 5.9 per cent improvement in this rate between 2013-14 and 2014-15, with 47.5 per cent of new applications being approved within 28 days of receipt as at 30 June 2015.⁷⁸
- ◆ To address the risk of organised criminal groups infiltrating the private security industry, compliance monitoring and enforcement activity is increasingly collaborative. LRD has refined its approach by developing strong linkages with law enforcement agencies, being involved in joint task force type operations, and developing enhanced intelligence gathering capability.
- ◆ Applications were previously assessed by Victoria Police private security industry specialists, however as a result of efficiency improvements, assessments are now undertaken by staff trained across a range of licence types (including firearms and weapons).

The improvements above may have resulted in improved quality of LRD's regulatory services and/or improved efficiency of existing services. For example, in the absence of LRD refining its risk assessment processes that supports its enforcement activities, the Chief Commissioner may have determined that it was necessary to dedicate additional resources to enforcement of the regulatory framework, with associated increases in the costs of Victoria Police's regulatory activity. However, there is no information available to support this.

LRD is also currently in the process of implementing the Electronic Lodgement Process (ELP) which is aimed at delivering an e-forms platform that will enable online fill and print functionality. The e-forms incorporate data validation systems which are aimed to improve data quality and accuracy, and will ultimately reduce the burden on applicants by reducing the number of iterations required to clarify an application. The e-forms will also ultimately include pre-population of data for renewal applications, which will further reduce the burden on applicants.⁷⁹

As outlined above, the developments regarding the ELP are likely to result in improved efficiency for LRD and associated reductions for costs incurred by Victoria Police, which makes it appropriate to revisit the fee structure once these improvements have been realised.

Jurisdictional comparisons of fees as an indication of the efficiency of the cost base

Victoria Police does not benchmark its activity against other jurisdictions, or undertake internal benchmarking to assess the efficiency of its activities. However, in order to assess the efficiency of the level and standard of regulatory activity, comparisons can be made against the level of fees charged in other jurisdictions.⁸⁰

The annual individual fee for a Victorian licence holder is \$130.90 (and up to \$274.30 if licensed and registered for all activities⁸¹), which is consistent with all other jurisdictions with the exception of South Australia, which is materially higher at \$291.00. The average annual individual fee is \$143.18.

⁷⁸ Victoria Police Annual Report 2014-15, accessed 18 February 2016 at http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=112492

⁷⁹ Victoria Police Annual Report 2014-15, accessed 18 February 2016 at http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=112492

⁸⁰ There are significant differences between approaches to calculating fees in different jurisdictions. For example, differences due to length of licence, number of activities licensed, types of activities licensed, and whether the application is new or a renewal. The fee analysis below was undertaken for all individual and body corporate application fees. These have been calculated using the lowest annualised fee payable for one security sub-class. This uses the 'renewal fee' rather 'joining fee', and averages the cost over the longest available licensing period (e.g. five-year licence fee is divided by five).

⁸¹ Licence/registration fees increase as the number of licensed/registered activities increases. For example, the minimum fee will be paid to just be licensed/registered for one activity (such as crowd controller), and a larger fee will be paid for a licence/registration for two activities (such as crowd controller and security guard). The maximum number of licensed activities

In terms of business licences, Victoria charges \$487.70 per annum (and up to \$1,048.20 if licensed and registered for all activities), which is considerably lower than all jurisdictions other than Western Australia and small business licences in New South Wales (which vary depending on the number of staff provided). The average annual body corporate fee is \$660.11.⁸²

Table 28: Interstate application fees for licence types 2015-16 based on the lowest annualised fee payable for one security sub-class

State	Annual body corporate fee	State	Annual individual fee
WA	\$398.00	WA	\$97.00
Vic	\$487.70	NSW	\$112.00
NSW	\$664.00	ACT	\$114.00
Tas	\$673.40	NT	\$114.00
Qld	\$709.67	Vic	\$130.90
ACT	\$733.00	Qld	\$138.57
SA	\$798.00	Tas	\$148.00
NT	\$821.00	SA	\$291.00
Average	\$660.11	Average	\$143.18

Source: KPMG analysis

Victoria's fees are broadly consistent with other jurisdictions. Depending on the extent of cost recovery in other jurisdictions and the efficiency of their operations, the fees therefore could indicate that the level of activity funded is similar across jurisdictions, and therefore that the efficiency of Victoria's cost base is similar to other jurisdictions and more efficient than some jurisdictions.

8.3 Current fees and revenue

In 2014-15, the revenue generated from private security was \$6.19m.⁸³

The following table summarises the current fees charged under the Regulations and the expected revenue to be generated in 2015-16.⁸⁴ In 2015-16, revenue from fees is forecast to be \$6.43m.

is five, and registered activities is two. In 2014-15, the proportions of individual and business licences that were for either one or two activities were respectively, 95% and 79%.

⁸² This excludes New South Wales given a high variability in annual fees for business in the state.

⁸³ Victoria Police

⁸⁴ Victoria Police. The estimated volumes for each type of application are based on volume data provided by VicPol for 2014-15 aggregate categories. These aggregate categories are broken down into estimated subcategory volumes (i.e. number of activities) using the proportions of each subcategory in the stock of licences/registrations for 2014-15. An application growth rate of 1.1% is used which is based on the compound annual growth rate for total applications (including licences/registrations/permissions/permits) for the years 2008-09 to 2014-15. This six year period is chosen given that it allows for two full cycles of the three year renewal term of a licence/registration. Increased revenue between 2014-15 and 2015-16 is also driven by the increased value of a fee unit from \$13.24 to \$13.60 (an increase of around 2.7%).

Table 29: Forecast revenue from fees 2015-16⁸⁵

	No. Activities	Duration (years)	Forecast volume 2015-16	Total fee 2015-16	Estimated Revenue 2015-16
Private Security Licence					
Private Security Individual Licence	1	3	1,201	\$ 392.70	\$ 428,640
	2	3	11,076	\$ 447.70	\$ 4,506,364
	3	3	554	\$ 478.20	\$ 240,829
	4	3	96	\$ 508.60	\$ 44,583
	5	3	18	\$ 508.60	\$ 8,861
Private Security Business Licence (Natural Person)	1	3	26	\$ 895.40	\$ 21,074
	2	3	39	\$ 957.50	\$ 33,563
	3	3	10	\$ 1,068.60	\$ 9,311
	4	3	8	\$ 1,130.70	\$ 7,814
	5	3	0	\$ 1,130.70	\$ 239
Private Security Business Licence (Body Corporate)	1	3	92	\$ 1,463.00	\$ 122,079
	2	3	137	\$ 1,626.90	\$ 202,189
	3	3	34	\$ 1,771.20	\$ 54,716
	4	3	27	\$ 1,910.70	\$ 46,813
	5	3	1	\$ 1,910.70	\$ 1,456
Private Security Individual Registration					
Private Security Individual Registration	1	3	560	\$ 290.00	\$ 147,575
	2	3	734	\$ 314.20	\$ 209,461
Private Security Business Registration (Sole Trader)	1	3	16	\$ 671.10	\$ 9,494
	2	3	62	\$ 730.10	\$ 41,242
Private Security Business Registration (Body Corporate)	1	3	38	\$ 1,124.40	\$ 38,944
	2	3	152	\$ 1,233.90	\$ 170,646
Permits					
Interstate - Individual & Business Licence			33	\$ 116.20	\$ 3,453
Overseas - Bodyguard Licence			33	\$ 232.60	\$ 6,913
Interstate - Individual & Business Registration			33	\$ 116.20	\$ 3,453
Variation of Licence					
Application to Vary Licence to add a Class A Activity (Individual)			578	\$ 114.60	\$ 60,145
Application to Vary Licence to add a Class A Activity (Sole Trader)			4	\$ 254.30	\$ 926
Application to Vary Licence to add a Class A Activity (Body Corporate)			14	\$ 423.60	\$ 5,466
Application to Vary or Revoke a Licence Condition			54	\$ 30.60	\$ 1,491
Variation of Registration					
Application to Vary Registration to add a Class B Activity (Individual)			32	\$ 86.10	\$ 2,532
Application to Vary Registration to add a Class B Activity (Sole Trader)			-	\$ 190.50	\$ -
Application to Vary Registration to add a Class B Activity (Body Corporate)			-	\$ 318.00	\$ -
Application to Vary or Revoke a Registration Condition			54	\$ 30.60	\$ 1,491
Duplicate Licence/Registration			-	\$ 39.70	\$ -
				Total	\$ 6,431,764

Source: Victoria Police, KPMG analysis

8.4 Level of cost recovery

Based on the forecast costs and revenue associated with the Regulations, the expected level of cost recovery in 2015-16 is estimated to be about 100 per cent. This indicates that the current fees fully recover the cost to Government of administering the regulatory framework.

8.5 Objectives

Consistent with the discussion earlier in this section, the Government's objectives in remaking the sunseting fees are to achieve:

⁸⁵ Note that in this figure, the column labelled 'No. activities' represents the number of activities that an industry participant is licensed/registered to undertake. It provides an indication of the increased cost to an industry participant as they increase the number of activities they apply to undertake. The fee schedule in this table currently presents the same fee for a licence granted for four and five activities – this is because the purpose of this table is to estimate the revenue to be generated in 2015-16, a period over which there was no difference in the fee charged for these categories. The proposed Regulations introduce an increase for the fifth category so that it is consistent with the approach of increasing fees for increased licensed activities. As the volume of five-activity licences is so small, this is unlikely to have any material influence on estimates of revenue in future years. Please also note that in this table, the forecast volumes presented are rounded to the nearest whole number (e.g. where the number shown is '1', it may be calculated as an expected volume of '0.6'). The revenue calculations also include a model correction coefficient of '0.91' which corrects for a small over-estimation of the model when compared to actual revenue raised – this has the effect of reducing the estimated revenue by 9 per cent when compared to the volume multiplied by the fee charged in the period.

- ◆ Efficiency – the price for private security regulation provides a signal to the economy regarding the full cost of providing the service that incorporates the costs of regulatory activity.
- ◆ Equity – the cost of the activity is funded by those who benefit from the service or those whose actions give rise to the need for the service.
- ◆ Effectiveness of related policy objectives – fees do not pose a substantial disincentive for industry participants to be registered or licensed.
- ◆ Disruption to industry – changes should minimise potential short-term disruptions to industry, given the planned detailed activity-based costing and further review within five years, which may result in further changes based on a better understanding of the underlying costs of regulatory activities (refer to Section 8.2 on page 64 for further discussion).

These objectives are used in Section 8.7 on page 79 to assess the merit of each of the possible fee options.

8.6 Fee options

The following options are assessed based on their ability to meet the objectives outlined in Section 8.5 above:

- ◆ Option 1 – Retain current fee structure at current fee levels (full cost recovery)
- ◆ Option 2 – Modified fee structure (full cost recovery)
- ◆ Option 3 – Introduce incentives where industry participants demonstrate compliance

Each of these three viable options also incorporates three minor changes raised in the problem section regarding an addition of a fifth licence category, a minimum licence fee period, and correcting an error in the fee prescribed for individual registration applicants. As discussed above, these changes must be made in order to maintain consistency with legislative requirements and intent:

- ◆ Introducing a licence fee that allows applicants to be charged for a fifth category of a licence. In the absence of addressing this issue, Victoria Police would continue to assess applications for a fifth activity (private security trainer) for example, by assessing training certification, without applicants making a payment for this additional regulatory activity. This would have associated consequences for efficiency and equity, as the industry participants who give rise to the need for regulatory activity would not pay for that activity.
- ◆ Increasing the minimum licence/registration fee increment from one month to two months. In the absence of this change the Regulations would be inconsistent with the *Monetary Units Act 2004*. An alternative approach to addressing this issue would be to prescribe fees as a dollar amount, however, this is likely to lead to under-recovery over time as the costs of administering the regulatory framework will increase in line with inflationary pressures. The practical effect of this change is that a person can no longer be charged, for example, for a 13 month licence without either paying for an extra month that will not be used, or increasing or decreasing the requested the licence period to 14 months or 12 months, respectively. This is a minor change that is expected to affect a very small number of applicants.
- ◆ Correcting an error in the prescribed fee for individual registrants (for two activities). In the absence of addressing this issue, Victoria Police's current practice of charging the correct amount to individual registration applicants (for two activities) will continue to be inconsistent with the Regulations. As such, Victoria Police would be faced with a decision to either continue charging an amount inconsistent with the Regulations, or to increase fees for individual registration applicants (for two activities) by 37 per cent, resulting in a financial impact on these stakeholders. Making the correction will have no impact on the fees paid by stakeholders relative to the current situation.

Each of the three viable options will also continue to offer reduced fees for simultaneous applications as currently included in the Regulations⁸⁶. These reduced fees are offered where an applicant applies for a registration at the same time as they apply for a firearms licence (50 per cent discount to application fee, or around \$30 for a private security individual licence fee for one activity) or a private security licence (50 per cent discount to application fee and 10 per cent discount to the time-based fee, or around \$45 for a private security individual registration fee for one activity for three years). These reduced fees are offered so as to reflect the reduced work that Victoria Police has to undertake in assessing two application from the same applicant (for example, Victoria Police has to verify an applicant's identity once). As was the case more generally for activity based cost data, there was

⁸⁶ Under the Private Security Regulation 2005, Regulations 24 and 46

insufficient information available to demonstrate that this percentage accurately reflects the cost difference for Victoria Police, and as such, the structure of the fee discount as outlined in the current Regulations has been maintained. These reduced fees will be assessed as part of the activity-based costing exercise to be completed within five years.

In identifying potential approaches for achieving the objectives above, a number of broad options were briefly considered but not included for further discussion:

- ◆ Partial cost recovery

As noted above, there do not appear to be strong reasons for diverting from the Government's general policy of full cost recovery.

- ◆ Recovering indirect costs only through higher volume licences

As lower volume licensing/registration activities result in Victoria Police incurring only incremental costs, there may be a case to recover indirect costs only through higher volume licences. This option was not further considered as there was insufficient information to establish an objective threshold below which certain industry participants should not contribute to the indirect costs of regulatory activities.

- ◆ Charging fees using a risk-based approach

This would involve categorising industry participants according to the level of risk they pose and therefore the likelihood that they will drive a need for some of Victoria Police's regulatory activity. This option was not further considered as it is considered too costly to categorise industry participants according to risk, and likely to be very difficult to accurately categorise participants, given current information levels. While this option was not further considered here, it may be appropriate to further consider this approach as part of the detailed activity-based costing to be completed in five years' time.

Specific questions for consultation:

- ◆ Do stakeholders consider that any of the excluded options are potentially viable? Why or why not?
- ◆ Are stakeholders aware of any other potentially viable options that should be considered (both non-fee and fee options)?

The section below outlines the three viable options in more detail.

8.6.1 Fee Option 1 - Retain current fee structure (full cost recovery)

This option maintains the current fee structure⁸⁷ at full cost recovery.

The fee units charged for each of Victoria Police's activities would be maintained in the current form. As outlined above, this will achieve full cost recovery. All of Victoria Police's costs would be funded through fees paid by the regulated industry.

The current fee structure is based on a range of assumptions developed as part of the 2005 RIS. These assumptions were supported to some extent by activity based costing estimates, and aim to reflect the different costs of Victoria Police's activities (e.g. assessing applications, and monitoring and enforcement) for each of the different licence/registration types. In turn, these differences in costs for each licence/registration type determine how fees should be set to recover costs from each of the licence/registration types.

The key assumption which drives the way that costs are proportionally allocated between fee categories is that individual licences/registrations are 27 per cent as costly to assess and maintain as the relative body corporate licence/registration. This is based on an activity based costing estimate. Other assumptions underlying the current fee structure are the cost that Victoria Police incurs:

- ◆ to assess a registration is 75 per cent of that required to assess a licence;
- ◆ to assess an application from a natural person is 60 per cent of that required to assess an application from a body corporate; and
- ◆ to assess applications and conduct monitoring/enforcement activity is increasing by 10 per cent for each additional activity that an industry participant is licensed/registered to undertake.

⁸⁷ Assumptions included in the current fee structure are included as Appendix 5 on page 102

For completeness, Appendix 5 on page 102 outlines the full range of assumptions that support the current fee structure.

As such, Option 1 is summarised as:

- ◆ Maintaining current fee types and structures
- ◆ Full cost recovery
- ◆ Three minor amendments to maintain legislative consistency – adding a fifth licence fee category, increasing the minimum fee increment to two months, and correcting the fee charged to individual registration applicants (for two activities).

8.6.2 Fee Option 2 – Modified fee structure (full cost recovery)

This option seeks to achieve full cost recovery, however it makes a revision to the underlying assumptions in the fee structure in order to more accurately reflect the costs to Victoria Police in administering the regulatory framework.

The current fee model (outlined in full at Appendix 5 on page 102) includes estimates of the relative cost to Victoria Police regarding administering individual and body corporate licences/registrations across two cost categories:

- ◆ Application costs – relates to one-off costs to Victoria Police associated with assessment and issuing of licences/registrations; and
- ◆ Maintenance costs – relates to the ongoing costs to Victoria Police such as updating licence/registration information, and monitoring and enforcing compliance with the Act and Regulations.

One of the base assumptions in the current model, is that body corporate licences/registrations are around four times more costly for Victoria Police to administer than individual licences/registrations in both of these cost categories. This assumption results in body corporates being charged around four times higher fees than individuals.

In 2007 (after the making of the Regulations), a detailed activity-based costing was undertaken which suggested that it may be more accurate to alter this assumption to increase the fees charged to individual licence/registration holders⁸⁸. Using these activity-based cost estimates to increase the accuracy of the fees could remove cross-subsidy between different types of licence/registration holders (and thereby may improve equity).

The key assumptions underlying the current fee structure are summarised below, with the potential modification highlighted.

Table 30: Fee structure assumptions and potential modifications

Assumption	Current structure	Modified structure
Relative cost for assessing a Private Security Licence (Individual - 1 activity) compared to a Private Security Business Licence (Body Corporate - 1 activity) (Application component)	27%	100%
Relative cost for maintaining a Private Security Licence (Individual - 1 activity) compared to a Private Security Business Licence (Body Corporate - 1 activity) (Maintenance component)	27%	64%

Source: Victoria Police, KPMG analysis

The first modification would mean that where previously it was assumed that an individual licence application was 27 per cent as costly for Victoria Police to process when compared to the cost of a body corporate licence application, the new assumption is that they are roughly just as costly.

The second modification would mean that where previously it was assumed that an individual licence application was 27 per cent as costly for Victoria Police to maintain (e.g. through monitoring and enforcement) when compared to the cost of a body corporate licence, the new assumption is that the individual licence would be 64 per cent as costly.

⁸⁸ Further activity-based costing has not been undertaken since 2007.

The implication of these modifications for the fees is that the total fees paid by individuals increase by around 12 per cent, while total fees paid by businesses decrease by around 58 per cent.⁸⁹

As such, Option 2 is summarised as:

- ◆ Maintain current fee types, however modify fee structures
- ◆ Increase fee levels for individuals while decreasing fees for businesses
- ◆ Full cost recovery
- ◆ Three minor amendments to maintain legislative consistency – adding a fifth licence fee category, increasing the minimum fee increment to two months, and correcting the fee charged to individual registration applicants (for two activities).

8.6.3 Fee option 3 – Introduce incentives where industry participants demonstrate compliance

This option aims to more accurately reflect the costs to Victoria Police in administering the regulatory framework.

The costs of administering each member of the private security industry is not the same for all entities. To some extent, this is reflected in the current fee structure through differing fees depending on whether the industry member holds a licence or registration, or is a business or individual.

Different industry members may take up vastly different levels of Victoria Police's resources. For example, the cost associated with a business involved in enforcement action (e.g. if they are found to have provided crowd controllers without appropriate licences) will be substantially higher than the cost associated with a business that complies with all regulatory requirements.

Under this fee option, regulated entities would be provided with an incentive to comply with their regulated requirements by being able to earn discounts on their fees if they have not been charged with an offence under the Act. An appropriate level of discount could be 10 per cent⁹⁰.

Formulated in this way, this fee option would lead to an under-recovery of costs in practice. This is because the base fees are identical to option 1, which would fully recover costs, however almost all industry participants (only 216 or approximately 0.5 per cent, of industry participants were charged with an offence under the Act in the three years between July 2012 and June 2015^{91, 92}) would be eligible for fee discounts of 10 per cent. Assuming that Victoria Police's costs remain the same, and that almost all industry participants are eligible for a 10 per cent fee discount, this option would achieve only 90 per cent cost recovery, with the remaining portion of costs to be funded by general taxpayers.

It should be noted that there may be a behavioural impact for industry participants given that they are being rewarded for good performance (through being eligible for a discount of 10 per cent) relative to industry participants who have committed an offence under the Act. Over time, where discounts improve industry behaviour, this may have the effect of reducing the need for Victoria Police to conduct some cost-incurring activities such as its monitoring and enforcement.

It is possible that other formulations of this option could be more viable, for example, where discount eligibility is based on a measure that is broader than an offence under the Act. However these have not been considered, given that data on industry performance beyond offences against the Act is not readily available. Another alternative of this option which would aim to achieve full cost recovery is explored further at Appendix 3 on page 97. Alternative formulations of this option may be considered through the activity-based costing exercise to be completed within five years' time.

As such, Option 3 is summarised as:

- ◆ Maintaining current fee types and structures
- ◆ Approximately 90 per cent cost recovery

⁸⁹ These increases relate to the total fee paid which is a combination of both the Application and Maintenance components. Please see Table 31 for further detail regarding how Application and Maintenance components would be affected by this change.

⁹⁰ As part of the activity based costing exercise undertaken in 2007, 'enforcement costs' associated with the Act were estimated to be 10% of the total costs of administering the regulatory framework (this is for LRD only and also does not include any monitoring costs). Given that compliant entities do not generate any enforcement action, this could be a reasonable quantum of discount to apply to the fees they pay.

⁹¹ Victorian Crime Statistics Agency

⁹² Victoria Police, KPMG analysis

- ◆ Incentives available for the majority of industry participants (those who have not committed an offence under the Act)
- ◆ Three minor amendments to maintain legislative consistency – adding a fifth licence fee category, increasing the minimum fee increment to two months, and correcting the fee charged to individual registration applicants (for two activities).

8.6.4 Summary of fee options

Outlined below are the proposed fees for each of the major volume categories under each of the options considered.

Table 31: Fee Options

Major fee types	Option 1 – current fee structure full cost recovery					Option 2 – modified fee structure full cost recovery				Option 3 – current fee structure with incentives available ⁹³ full cost recovery			
	No. of activities	App fee	Maint. fee	Total fee	Change	App fee	Maint. fee	Total fee	Change	App fee	Maint. fee	Total fee	Change
Individual Licence	1	\$59.80	\$332.90	\$392.70	-	\$120.12	\$314.31	\$434.43	11%	\$59.80	\$332.90	\$392.70	-
	5	\$83.80	\$455.30	\$539.10	-	\$168.17	\$440.03	\$608.21	13%	\$83.80	\$455.30	\$539.10	-
Business Licence (natural person)	1	\$131.60	\$763.80	\$895.40	-	\$72.06	\$296.06	\$368.12	-59%	\$131.60	\$763.80	\$895.40	-
	5	\$184.30	\$1,008.50	\$1,192.90	-	\$100.88	\$414.49	\$515.37	-57%	\$184.30	\$1,008.50	\$1,192.90	-
Business Licence (Body Corporate)	1	\$219.40	\$1,243.60	\$1,463.00	-	\$120.10	\$493.44	\$613.54	-58%	\$219.40	\$1,243.60	\$1,463.00	-
	5	\$307.10	\$1,743.00	\$2,050.20	-	\$168.14	\$690.81	\$858.95	-58%	\$307.10	\$1,743.00	\$2,050.20	-
Individual Registration	1	\$45.20	\$244.80	\$290.00	-	\$90.09	\$235.73	\$325.82	12%	\$45.20	\$244.80	\$290.00	-
	2	\$49.80	\$264.40	\$314.20	-	\$99.10	\$259.30	\$358.41	14%	\$49.80	\$264.40	\$314.20	-
Business Registration (sole trader)	1	\$98.30	\$572.80	\$671.10	-	\$54.02	\$221.96	\$275.98	-59%	\$98.30	\$572.80	\$671.10	-
	2	\$108.30	\$621.80	\$730.10	-	\$59.43	\$244.16	\$303.58	-58%	\$108.30	\$621.80	\$730.10	-
Business Registration (body corporate)	1	\$164.80	\$959.60	\$1,124.40	-	\$90.04	\$369.94	\$459.97	-59%	\$164.80	\$959.60	\$1,124.40	-
	2	\$181.30	\$1,052.60	\$1,233.90	-	\$99.04	\$406.93	\$505.97	-59%	\$181.30	\$1,052.60	\$1,233.90	-
Incentives available (10 per cent discount)		No						No		Yes (fees above do not include discounts)			

Source: Victoria Police, KPMG analysis

⁹³ Note that the fees presented in this table for Option 3 do not include discounts. That is, under Option 3, approx. 99.5 per cent of industry participants would attract a 10 per cent discount from the fees shown in this table. As discussed above, approx. 0.5 per cent of industry participants would pay the full fees shown).

8.7 Multi-criteria analysis

This section assesses the range of fee options put forward in the previous section. The options are assessed using a multi-criteria analysis (MCA) which rates each option against a series of assessment criteria which are weighted according to their importance.

The criteria and weighting are consistent with the objectives for remaking the fees as outlined in Section 8.5 Objectives on page 72 .

Table 32: Criteria and weightings used to assess fee options

Criterion	Description	Weighting
Efficiency	An assessment of whether the full costs of regulatory activity are incorporated into costs for private security services, and thus provide a price signal as to the efficient level of production of these services	30 per cent
Equity	An assessment of whether the cost of government activities are fully recovered from the beneficiaries of those activities and the industry participants who give rise to the need for those activities, in both the short and long-term	30 per cent
Effectiveness	An assessment of whether the fees are consistent with the government achieving its objectives for the private security industry regarding public safety	20 per cent
Disruption to industry	An assessment of whether the fees approach will result in potentially multiple short-term disruptions to industry, given that a more detailed activity-based cost exercise is to be completed within five years	20 per cent

The MCA uses relative weightings for each of the criteria of 30 per cent for efficiency, 30 per cent for equity, 20 per cent for effectiveness and 20 per cent for disruption to industry. The first two criteria are weighted more heavily to reflect the Government's priority to achieve efficient and equitable cost recovery in remaking the fees. The secondary objectives of effectiveness and disruption to industry are both weighted as 20 per cent, which reflects the Government's aim to minimise the likelihood that the fees will incentivise industry behaviour which increases risks to the community, and to decrease the short-term costs to industry associated with learning and adapting to any fee changes ahead of the activity-based cost exercise to be completed within five years.

Each fee option is scored against each of the criteria on a scale of -10 to +10 with the base case reflecting a score of '0' as it reflects the situation that will occur in the absence of the Regulations.

8.7.1 Base case

In the base case, no fees would be charged from the sunset date. As a result, it is likely that general revenue would be used to fund all costs of administering the private security regulatory framework.

If this were the case, the regulatory framework would be funded entirely by general revenue (i.e. appropriation funding), which would mean that:

- ◆ the price for private security services would not incorporate the costs of regulatory activities associated with those services
- ◆ the cost of the activity would not be funded by those who benefitted from the service or those whose actions gave rise to the need for the service.

This would, therefore, perform poorly on efficiency and equity grounds. It could, however, slightly increase the rates of registration/licensing in the industry, and thereby slightly increase the effectiveness of the regulatory framework. It is likely to result in a level of short-term disruption to

industry participants given that fees would sunset in 2016, but would likely be reinstated in some form given that a more detailed activity-based cost exercise is to be completed in five years' time.

This option is presented in this section for the purposes of establishing a baseline for comparing the merits of each of the alternative options.

Table 33: Assessment of fees base case

Criterion	Assessment	Score	Weighted score
Efficiency	By definition, the base case scores zero against each criteria in order to establish a benchmark against which each other option should be assessed.	0	0
Equity		0	0
Effectiveness		0	0
Disruption to industry		0	0
Total score			0

8.7.2 Fee Option 1 – Retain current fee structure (full cost recovery)

Under this option, the current fee structure would be maintained and costs would be fully recovered. Factors important to the assessment of this option include

- ◆ Full cost recovery, improving efficiency; and
- ◆ Maintaining the current fee structure, which may improve equity.

Table 34: Assessment of fees Option 1

Criterion	Assessment	Score	Weighted score
Efficiency	Achieves full cost recovery, and in doing so ensures that the costs of regulatory activities are incorporated into the price of private security services. This is likely to result in private security services being produced at a level that better reflects the efficient level of production from a whole-of-economy perspective. Therefore, this is a substantially more efficient outcome than the base case. This option is not given a score of 10 because there is a lack of clarity regarding the extent to which it recovers costs from industry participants according to whether they give rise to the need for Victoria Police's regulatory activities.	5	1.5
Equity	Relative to the base case, this option better ensures that the cost of the regulatory activity is funded by those who benefit from the service or those whose actions give rise to the need for the service. The option also makes an attempt to ensure that those whose actions give rise to the need for the regulatory activity fund that activity. However, this will only be true to the extent that the fee structure developed in 2005 still accurately reflects the way that different industry participants give rise to the need for Victoria Police's regulatory activities. For example, this fee structure charges individual operators and individuals a lower level of fees than are charged to body corporates to reflect the different demands that these entities place on Victoria Police, however it is unclear the extent to which these relative contributions accurately reflect how these industry participants give rise to the need for Victoria Police's current costs.	5	1.5

Criterion	Assessment	Score	Weighted score
Effectiveness	Compared to the base case, this option introduces small fees which may act as a small deterrent to industry members gaining a licence/registration, thereby reducing the efficacy of the regulatory regime. However, it should be noted that these fees are small relative to the other costs of participating in this industry such as training and administrative costs.	-1	-0.2
Disruption to industry	Relative to the base case, this option represents the minimum possible transition costs to industry and Victoria Police as there are no changes to the current fee structure	10	2.0
Total score			4.8

8.7.3 Fee Option 2 – Modified fee structure (full cost recovery)

Under this option, the fee structure would be changed so as to attempt to better reflect the costs of regulating each type of entity in the regulatory framework. Fees would be set to achieve full cost recovery. Factors important to the assessment of this option include:

- ◆ full cost recovery; and
- ◆ changes to the current fee structure that may better reflect the costs of administering the regulatory framework, potentially improving efficiency relative to the base case.

Table 35: Assessment of fees Option 2

Criterion	Assessment	Score	Weighted score
Efficiency	Achieves full cost recovery, and in doing so ensures that the costs of regulatory activities are incorporated into the price of private security services. This is likely to result in private security services being produced at a level that better reflects the efficient level of production from a whole-of-economy perspective. Therefore, this is a substantially more efficient outcome than the base case. Relative to Option 1, the activity-based costing undertaken in 2007 is likely to more accurately reflect the way that industry participants give rise to the need for Victoria Police's regulatory activities given that it involved a more rigorous costing methodology. However, given that the activity-based costing was undertaken in 2007 (as opposed to more recently), this option is not given a score of 10 because there is a lack of clarity regarding the extent to which it recovers costs from industry participants according to whether they currently give rise to the need for Victoria Police's regulatory activities.	6	1.8
Equity	Relative to the base case, this option better ensures that the cost of the regulatory activity are funded by those who benefit from the service or those whose actions give rise to the need for the service. As was the case in Option 1, the option makes an attempt to ensure that those whose actions give rise to the need for the regulatory activity fund that activity. The fee structure in Option 2 is based on the outcomes of an activity-based costing exercise undertaken in 2007, and as such may be better reflective of the costs incurred by Victoria Police in administering the	6	1.8

Criterion	Assessment	Score	Weighted score
	regulatory framework than the current fee structure used in Option 1. However, this will only be true to the extent that the 2007 activity based costing more accurately reflects the way that different industry participants give rise to the need for Victoria Police's regulatory activities currently. Given that the costing was undertaken at a similar period to when the activity-based costing in the 2005 RIS was conducted, the extent to which this approach is more reflective of costs is unclear. That said, it is assumed that given the 2007 activity-based costing was more rigorous than the 2005 activity-based costing, it is slightly more cost-reflective than the existing fee schedule.		
Effectiveness	<p>Compared to the base case, this option introduces small fees which may act as a small deterrent to industry members gaining a licence/registration, thereby reducing the efficacy of the regulatory regime. However, it should be noted that these fees are small relative to the other costs of participating in this industry such as training and administrative costs.</p> <p>Relative to Option 1, the changes in fees in this option (approximately 10 per cent total fee increase for individuals and approximately 58 per cent total fee decrease for businesses), may result in marginally lower entry for individuals and marginally higher entry for businesses. These effects could be exacerbated for smaller industry participants, for example, a 58 per cent decrease in fees charged to small businesses may have a proportionately higher beneficial impact for smaller businesses than it would for larger businesses. However, given that these fee changes are small relative to other costs faced by industry participants (such as training costs and administrative costs), there is unlikely to be any significant change in participant behaviour. Further, given that fees are decreased for businesses (resulting in greater market participation) and increased for individuals (resulting in lower market participation), the net impact on effectiveness is unclear. As such, it is assumed that the net impact on effectiveness will be the same as in Option 1.</p>	-1	-0.2
Disruption to industry	Relative to the base case, this option maintains a number of the features of the current fee structure. Despite this, it also makes changes to the fee structure, which would have an impact on industry participants and Victoria Police, most notably an increase in the fees charged to individuals.	3	0.6
Total score			4.0

8.7.4 Fee Option 3 – Introduce incentives where industry participants demonstrate compliance

Under this option, the current fee structure would be maintained. Incentives in the form of fee discounts would be provided to industry participants who did not incur instances of non-compliance with the Regulations or the Act. As discussed above, 99.5 per cent of industry participants would be eligible for discounts. Availability of 10 per cent discounts results in a small under-recovery, meaning that

taxpayers fund around 10 per cent of the costs of administering the regulatory framework. Factors important to the assessment of this option include:

- ◆ 90 per cent cost-recovery;
- ◆ Better reflecting the costs incurred by Victoria Police in administering the regulatory framework and incentivising compliance from industry members, but also resulting in transitional costs for industry and Victoria Police prior to consideration of further changes being completed in five years' time.

Table 36: Assessment of fees Option 3

Criterion	Assessment	Score	Weighted score
Efficiency	<p>Achieves 90 per cent cost recovery, and in doing so, ensures that almost all of the costs of regulatory activities are incorporated into the price of private security services. This is likely to result in private security services being produced at a level that better reflects the efficient level of production from a whole-of-economy perspective. Therefore, this is a substantially more efficient outcome than the base case.</p> <p>Relative to Option 1, this option is marginally more reflective of the way that industry participants give rise to the need for Victoria Police's regulatory activities. That is, those participants who have required Victoria Police's regulatory intervention (in the form of substantiating an offence under the Act) pay greater fees.</p> <p>However, relative to Option 1, this option also results in a small under-recovery, meaning that taxpayers fund around 10 per cent of the costs of administering the regulatory framework. In this respect, Option 3 is marginally less efficient.</p>	5	1.5
Equity	<p>Relative to the base case, this option better ensures that the cost of the regulatory activity is funded by those who benefit from the service or those whose actions give rise to the need for the service.</p> <p>The option also uses the fee structure from Option 1, and in doing so, makes an attempt to ensure that those whose actions give rise to the need for the regulatory activity fund that activity. As with Option 1, the extent to which this is achieved depends on how accurately the fee structure reflects the way that different industry participants give rise to the need for Victoria Police's current and future regulatory activities, which is currently unclear.</p> <p>In addition to Option 1, this Option also introduces incentives where industry participants who are not found to be non-compliant with the requirements of the Regulations and the Act are rewarded with small discounts to their fees. These small discounts may more equitably reflect that a material proportion of Victoria Police's costs associated with monitoring and enforcement are likely driven by the unlawful behaviour of a small number of industry participants.</p>	6	1.8
Effectiveness	<p>Compared to the base case, this option introduces small fees which may act as a small deterrent to industry members gaining a licence/registration, thereby reducing the</p>	0	0

Criterion	Assessment	Score	Weighted score
	<p>efficacy of the regulatory regime. However, it should be noted that these fees are small relative to the other costs of participating in this industry such as training and administrative costs.</p> <p>While the effective change in fee rates for the majority of the industry is very small compared to Option 1 (a decrease of 0.06 per cent), there may be a behavioural change for industry participants given that they are being rewarded for good performance (through being eligible for a discount of 10 per cent) relative to industry participants who have committed an offence under the Act. To some extent, this may result in outcomes more in line with the objectives of the Act, however this impact is likely to be marginal given the size of fees relative to the overall costs of industry participation.</p>		
Disruption to industry	<p>Relative to the base case, this option maintains all of the features of the current fee structure. In addition, the option introduces incentives to reward compliance. This change is likely to have a cost for industry participants and Victoria Police relative to Option 1, as all relevant parties will have to learn about the changes, and Victoria Police may have to update systems to accommodate the change.</p> <p>Relative to Option 2, this option is likely to be slightly less disruptive given that the existing fee structure is largely maintained.</p>	5	1.0
Total score			4.3

A summary of the weighted scores of each option is below in Table 37 .

Table 37: Summary assessment of all fee options

Option	Weighted score
Base case	0
Option 1 – Retain current fee structure at current fee levels (full cost recovery)	4.8
Option 2 – Modified fee structure (full cost recovery)	4.0
Option 3 – Introduce incentives where industry participants demonstrate compliance	4.3

8.8 Preferred option

Based on the relative scores of each of the options, Option 1 - Retaining current fee structure at current fee levels (full cost recovery) is considered to be the preferred option. Option 1 is preferred because relative to the base case and other options, this option has a marginally greater ability to meet the government's objectives.

That said, there is a very marginal difference in the scores for Option 1 and Option 3. As such, any conclusions about which of these two options is preferred is very sensitive to changes in the assumptions which support the scoring of the options.

Given the close scores between Options 1 and 3, it is noted that the detailed activity-based costing exercise to be completed within five years will consider the relative merits of all options in more detail.

9 Impact on small business and competition

9.1 Small business

Regulatory change can have a disproportionate impact on small businesses as they have less resources to meet the cost burden enforced by government. As a result, as part of the process of implementing new or recurring Regulations, understanding the impact of the burden on small business is of importance.

The private contract security sector is made up of a large number of small businesses and a small number of very large businesses.⁹⁴

The structure of the preferred option, continuing the current Regulations, means that businesses with multiple activities pay a larger fee. Typically, a business with more activities is likely to be large in scale due to the range of capabilities required across the different private security categories. To some extent, this feature of the fee structure may result in the impact on small businesses being proportionate to their size.

In smaller business, compliance requirements associated with applications, record keeping and provision of information are more likely to be undertaken a more senior staff member than would be the case for a larger business which is likely to have more junior staff dedicated to fulfilling these requirements. As such, to the extent that the remade Regulations impose a burden that is greater than the Chief Commissioner would otherwise impose, there is likely to be a slightly greater proportionate impact on small business than for larger businesses, although this is likely to be marginal.

9.2 Competition

Consistent with the objectives of the Act and the Regulations, the regulatory framework imposes restrictions on competitive entry through a number of features including:

- ◆ Restricting entry of individuals and businesses deemed to not meet probity or identity requirements;
- ◆ Imposing training and other competency requirements; and
- ◆ Imposing costs on businesses associated with compliance and payment of fees.

While the majority of the regulatory framework is laid out in the Act, the Regulations also have a minor impact on competition. The marginal additional cost of the preferred option of \$6.2m related to fees, \$0.7m related to record keeping and \$0.4m related to crowd controller records may restrict competitive entry at the margin, and may also incentivise a very limited number of operators to attempt to operate without complying with the Regulations.

Given these costs imposed on market participants, the number of individuals and businesses participating in the market is likely to be lower than would be the case if the market was free from the burden imposed by the Regulations. Further, increased competition within markets is generally driven by smaller operators, and assuming that fees and compliance costs have a disproportionate impact on smaller operators, there may be a small impact on competition in the private security industry given that these costs may discourage some entrepreneurial entry. The Department considers that this impact on competition is likely to be small given that fees are a small component of the costs faced by market participants. This lower level of market participation and competitor entry is likely to result in higher prices paid by consumers of private security services than would otherwise be the case.

That said, as outlined in previous sections of the RIS, there is limited scope for the Regulations to minimise these impacts on competition while maintaining their effectiveness in achieving the objectives of the regulatory framework. Further, the largest cost to industry associated with the Regulations is private security fees which must be structured in a way that is consistent with the Government's policy on cost recovery.

One of the key guiding principles for regulating a community is that it should not unduly restrict competition unless there are benefits from doing so, and the benefits can only be achieved through regulation.

⁹⁴ Australian Government and the Australian Crime Commission. *Criminal Infiltration in the Private Security Industry*, 2013. Accessed 3 March 2016 at <<https://www.crimecommission.gov.au/sites/default/files/CRIMINAL%20INFILTRATION%20IN%20THE%20PRIVATE%20SECURITY%20INDUSTRY%20JULY%202013.pdf>>

As outlined in the previous sections of this RIS, the Department considers that there are significant benefits to society associated with imposing the burden of the Regulations. The main benefit being mitigating the risks posed by the activities of private security operators, and by improving the efficiency of the operation of the Act.

10 Implementation strategy

Continuing the current Regulations would require no change in terms of implementation.

Victoria Police would continue to be the regulator, and would be responsible for:

- ◆ Evaluating applications for licences, registrations and permits;
- ◆ Responding and dealing appropriately with emerging issues in the private security industry;
- ◆ Responding to enquiries and complaints from the public and industry; and
- ◆ Monitoring and enforcing compliance.

Given that there would be no change in operations, there would be no set-up costs for Victoria Police.

The Department in consultation with Victoria Police will complete an activity based costing and review of the fee structure in five years' time to ensure the fee structure best reflects the future costs of the regulatory framework, in particular by incorporating efficiencies resulting from the planned rollout of the ELP.

Excluding the activity based costing exercise and any resulting changes, no implementation issues are expected to arise over the period given that the Regulations will incorporate the minor amendments to add a fifth licence fee category and address inconsistencies with the *Monetary Units Act 2004*.

In regard to Victoria Police's responsibility for enforcement, penalties established by the Regulations would continue to provide a central mechanism for enforcing the Act and Regulations. Penalties for offences under the Act and Regulations are intended to deter persons from breaching regulatory requirements, protect the community from the consequences of regulatory breaches and punish offenders to an extent and in a manner that is appropriate and just in the circumstances. Infringement penalties enable less serious criminal matters to be disposed of without a hearing, thereby reducing the workload of the courts, saving Victoria Police the cost of prosecuting large volumes of cases and allowing a sanction to be tailored to the seriousness and circumstances of the offence. Infringement penalties can also provide an incentive for compliance as they increase the enforcement capacity of Victoria Police to deal quickly and efficiently with more minor offences. There would be no change to the operation of the penalty regime.

11 Evaluation strategy

The Department will carry out post implementation review in a number of ways over the life of the proposed Regulations.

The Department will regularly consult with the VSIAC on the impacts of the proposed Regulations through discussions at the quarterly meetings of the VSIAC.

The Department will also use data and information obtained from the Licensing Regulation Division (LRD) of Victoria Police to monitor trends in the licensing and registration of private security operations and compliance enforcement. LRD prepares monthly update reports that include statistics on private security licences and registrations, as well as descriptions of enforcement activities and compliance incidents relating to private security. The Department will work with Victoria Police to access this information on a regular basis, monitor trends and assess whether there are any implications for the operation and form of the proposed Regulations.

The Department will also monitor statistics from the Crime Statistics Agency annually to analyse the number and nature of criminal breaches of the Act and proposed Regulations, in order to determine any trends, identify if breaches of the Act are occurring in areas influenced by the supplementary controls imposed by the proposed Regulations, and consider whether those controls need to be adjusted.

The Department will supplement this analysis with reviews of relevant Australian Crime Commission reports, the Victorian Law Reform Commission's review *'Use of regulatory regimes in preventing the infiltration of organised crime to lawful occupations and industries'* and other sources of data and information on crime. This will help the Department to assess, in consultation with Victoria Police, whether private security regulation is continuing to have the desired benefits in Victoria and if the proposed Regulations remain effective in supporting high standards of industry probity and competence to achieve those benefits.

To ensure that the quantum of fees remains appropriate in future years, the Department will seek advice from Victoria Police about potential efficiency gains arising from process reforms or technological advancements in LRD, including the planned Electronic Lodgement Process (ELP), which will take licence and registration applications online.

Victoria Police tracks all applications, renewals and compliance activities including infringements, tribunal and court outcomes as well as processing times, to assist in meeting improved outcomes for the customer. Victoria Police has a strong commitment to reducing red tape and sets performance objectives and targets to improve the efficiency and effectiveness of its administrative and regulatory processes, which are incorporated into Victoria Police's Corporate Plan. Similar measures and indicators will continue to be used.

Victoria Police also monitors independent reviews, such as ASQA's *Training in security programs in Australia* report, which included an assessment of the operation of the Mutual Recognition scheme in relation to private security licensing in all Australian jurisdictions. Such reports enable Victoria Police to better assess how its work as industry regulator is progressing relative to other jurisdictions, and whether adjustments should be made. Victoria Police's work with stakeholders including ASIAL helps it also to access information and education to assist licence holders. These activities will continue.

Likewise, Victoria Police monitors the development and outcomes of the various taskforces in which it participates, to track outcomes for the regulation of the private security industry. As an example, Victoria Police's work with the Australian Federal Police in the Trident Taskforce, as noted earlier in this RIS, resulted in the removal of Australia's largest security firm, ACG, from the private security industry. In this case the investigative work of Victoria Police was central to an outcome that had benefits for all states in which the company operated in the private security industry, and highlighted the considerable time and effort Victoria Police places on enforcing the regulatory regime for the private security industry. Victoria Police will continue to monitor the outcomes of its preferred policing approach of utilising taskforces and targeted compliance activity, to assess the continuing utility of this approach over the life of the proposed Regulations.

An activity based costing has not been undertaken to support the proposed remaking of the Regulations. This was a result of a range of factors, in particular uncertainty regarding the future costs to Victoria Police of administering the regulatory framework. The major component of this uncertainty is the potential impact of substantial improvements to Victoria Police's application assessment process currently being undertaken (through the Electronic Lodgement Process (ELP) IT upgrade).

Given this uncertainty, the Department in consultation with Victoria Police will complete an activity based costing and review of the fee structure within five years to ensure the fee structure best reflects

the future costs of the regulatory framework, in particular by incorporating efficiencies resulting from the planned rollout of the ELP.

12 Summary of stakeholder feedback

Through consultation, there were several consistent themes of industry concern relating to the current operation of the industry. These included:

12.1 Competency and probity requirements

Currently, for all Class A activities, businesses and individuals must meet competency requirements through training or equivalent experience (and for businesses, industry association membership). For Class B activities, there is no competency requirement. Industry participants have noted that this means that a person with no proven expertise can immediately begin providing advice on security arrangements and installing security equipment.

Industry participants have also raised concerns with the effectiveness of training, and whether training requirements have any discernable impact on the competence of security licensees. To some extent, these concerns may be addressed by reforms to the Act which require security training providers to be licensed.

The current definition of 'security equipment' means that locksmiths do not require registration. Some industry participants consider that locksmiths should be subject to the same administrative requirements, noting that locksmiths are in a similar position of trust as they gain entry to premises and have the potential to misuse security information and keys.

Government response

In Victoria, the registration of the technical sector involves the satisfaction of probity requirements only. The Department's view is that on balance, and for reasons outlined further below, the activities undertaken by the technical sector do not warrant the introduction of mandated competency standards for that sector. Strict probity requirements are considered the most appropriate way to ensure that clients and the broader community are not exposed to unacceptable risk, without placing undue regulatory burden on technical sector participants.

By way of background, in 2008, the COAG agreed (the COAG Agreement) that all Australian States and Territories should bring their private security law into line with minimum prescribed standards.

Under Stage 2 of the COAG Agreement, jurisdictions agreed in 2009 that, where a jurisdiction regulated the technical sector, the probity and background checking requirements for the sector should be identical to the requirements for the manpower sector.

The COAG Agreement did not make reference to competency standards in its Stage 2 decision. The Department understands the issue of whether minimum competency standards should be endorsed for the technical sector was comprehensively explored during work on the COAG Agreement, but the case for doing so was not supported by evidence of any failure of standards in those jurisdictions (including Victoria) that did not mandate competency for the technical sector.

Moreover, jurisdictions recognised that the diverse and evolving activities undertaken by the technical sector – especially those involving electronic security technologies – often required trade qualifications, such as cabling qualifications, that could potentially be higher than those that might be mandated as a minimum requirement by a jurisdiction. Arbitrarily mandating minimum training requirements (for example at Certificate II level) might not recognise the breadth of qualifications that could provide appropriate skills for the technical sector, particularly given the evolving nature of security technologies.

Victoria supported the outcome of Stage 2 of the COAG Agreement in relation to setting probity standards for the technical sector, and continues to support this approach. In relation to competency standards, the Department does not have any evidence of problems with competency in the technical sector leading to an unacceptable risk of harm to clients and the broader community in Victoria, such as would justify increasing the regulatory burden on this sector through mandated competency standards.

The Department understands that the issue of whether the locksmith activities should be consistently regulated by jurisdictions as part of the technical sector was also considered during work on Stage 2. Only New South Wales (NSW) regulates locksmiths as a distinct licensable activity, while several other jurisdictions regulate certain locksmith activities through their definitions of "security equipment".

As with competency standards, it was decided this matter should be left to the discretion of jurisdictions. This was because the inclusion of locksmith activities in a national approach would have required significant justification and expansion of regulatory regimes in many jurisdictions, and there was little consensus among jurisdictions or industry on this issue at the time.

The Department continues to support the flexible approach adopted under Stage 2 of the COAG Agreement and is not aware of any evidence of problems that have emerged since 2009 that would justify introducing a barrier to entry to the locksmith industry in Victoria and the imposition on that industry of new, ongoing costs for registration and probity assessments.

It is important to note that any broadening of regulatory controls applying to the technical sector in Victoria would require amendments to the Private Security Act and could not be achieved solely through changes to the Regulations. In particular, the Act would need to be amended to include a power for the Chief Commissioner of Police to approve training requirements for Class B security activities. Further, the approach of some jurisdictions in regulating locksmith activities incidentally via prescribed definitions of security equipment would not be acceptable in Victoria because the locksmith industry is sufficiently distinct that the definition of “Class B security activity” in the Act would need to be expanded to recognise “locksmith” as a separate registrable activity.

The Department is not proposing to recommend changes to the Private Security Act along these lines, but recognises that these issues have a long history and involve a diverse range of views. The Department considers the best forum in which these issues can continue to be raised and explored in Victoria is the Victorian Security Industry Advisory Committee (VSIAC), which advises the Minister for Police on the regulatory framework for the Victorian private security industry, with a view to improving the standards of the industry.

12.2 National harmonisation and interstate mutual recognition

Industry has concerns about inconsistencies between regulatory frameworks across different states and territories. In particular, the barriers to operating across jurisdictions imposed by multiple compliance activities and fee requirements.

Government response

Victoria was an active participant in the COAG harmonisation project and led some of the work used to support COAG decision making. With the finalisation of the three stages of the COAG Agreement, the question of what further opportunities exist to consider fresh proposals for national regulatory harmonisation, and how these should be progressed, lies outside the immediate scope of the current regulations. The Department suggests that these issues should continue to be raised at meetings of the VSIAC.

The issue of labour mobility, including mutual recognition of private security licences between jurisdictions, continues to be examined in a number of contexts.

The Productivity Commission, in its *Mutual Recognition Scheme – Research Report* released on 25 September 2015, noted that ‘shopping and hopping’ in the private security sphere (the practice of avoiding more rigorous training requirements in one jurisdiction by obtaining qualifications interstate and then using mutual recognition to obtain employment in that jurisdiction) was prevalent in a number of Australian jurisdictions and raised broader concerns about the quality of training delivery in the vocational education and training (VET) sector.

These concerns have recently been considered by the Australian Skills Quality Authority (ASQA) in its report *Training in security programs in Australia*, which was released on 28 January 2016, and which provides a national strategic review of training for the security industry in Australia.

In addition, the Victorian Law Reform Commission (VLRC) is currently undertaking a reference ‘Use of regulatory regimes in preventing the infiltration of organised crime to lawful occupations and industries’ and has specifically referred to the private security industry, in its consultation paper of 19 June 2015, as one that has been entered, or is vulnerable to entry by, organised crime groups. It is possible the findings of the VLRC review may raise issues that have implications for labour mobility in the private security industry, which will need to be further considered by the Department and industry.

The Department anticipates that ASQA’s strategic review report, the VLRC review and related issues affecting labour mobility in the private security industry, will be discussed at meetings of the VSIAC.

12.3 Sole traders

Industry stakeholders have raised concerns that the Act incentivises individuals to be contracted as ‘sham sole traders’ rather than on an employment basis.

The licensing and registration systems established in the Act each have two categories:

- ◆ **Private security business licence/registration** – which is required to carry on the business of providing the services of other persons to carry on the relevant security activities; and

- ◆ **Private security individual operator licence/registration** – which is required for anyone to carry on the relevant security activities.

The formulation of these categories means that a sole trader (which is a business, but not a business that provides the services of other persons) does not require a private security business licence/registration. As such, sole traders are not required to provide the same level of documentation as other businesses, such as evidence of compliance with workplace obligations.

This differential treatment of sole traders was originally intended to minimise the compliance costs they incur associated with licences/registrations, in order to enable them to continue to provide security services.

Industry stakeholders have claimed that the low requirements for sole traders have resulted in an unintended consequence where individuals seeking work in the industry have an incentive to seek contracting work as a sole trader rather than seeking employment.

Industry suggested that the net result is that a large proportion of individuals who would otherwise be classed as employees are contracted as sole traders with unfavourable remuneration and working conditions. Further, businesses that engage in this conduct have lower cost structures and are therefore at a competitive advantage when bidding for work.

Government response

The licence or registration category of ‘private security individual operator’ under the Victorian private security regulatory regime allows individuals to work in the private security industry either as employees or as independent contractors. This licence category is deliberately designed to give the individual the flexibility to work in either capacity and, as industry stakeholders have correctly identified, to minimise compliance costs and ensure that the barrier to entering the private security industry for these individuals is not prohibitive. Under this licensing category, the licence or registration holder cannot employ others to provide private security services and hence is not required to demonstrate compliance with workplace obligations, since he or she is not responsible for the workplace conditions of others.

By contrast, an individual, or ‘natural person’, can also apply to be licensed or registered as an individual business operator, which allows the person to employ others to provide private security services. In this case, under sections 26 and 83 of the Act, the Chief Commissioner may reject an application for a licence or registration if the applicant has not produced, to the satisfaction of the Chief Commissioner, evidence of compliance with existing statutory workplace obligations.

In the Department’s view, the conduct described by industry stakeholders could potentially involve the practice of ‘sham contracting’, whereby an employer tries to disguise an employment relationship as an independent contracting relationship. If this occurs, an employee may not receive a number of employment entitlements such as superannuation and workers compensation. This conduct is regulated by the Commonwealth under the *Fair Work Act 2009* (Cth), and serious penalties apply to employers for contraventions of the sham contracting provisions in that Act. For instance, an employer cannot misrepresent an employment relationship as an independent contracting arrangement.

According to the website of the Fair Work Ombudsman, Fair Work Inspectors can seek the imposition of penalties for contraventions of sham contracting arrangements, and the courts may impose a maximum penalty of \$54,000 per contravention. Employees and independent contractors can request assistance from the Fair Work Ombudsman if they feel their rights have been contravened.

However, the assessment of what amounts to sham contracting is a complex matter. According to the website of the Fair Work Ombudsman, no single indicator can determine if a person is a contractor or an employee. Each determination is based on the individual merits of the work arrangement in place, and the courts always look at the totality of the relationship between the parties when determining the status of a person’s employment.

Given the above, there is a risk that increasing compliance requirements in Victoria on ‘individual operator’ licence holders — who cannot employ other private security staff and are not responsible for the workplace conditions of others — in order to discourage perceived sham contracting practices would shift the compliance burden in this area away from employers to sole independent contractors, in a manner at odds with the Commonwealth’s workplace relations laws. It would also be difficult to justify without more evidence the nature and extent of prohibited contracting arrangements. This is especially so in light of the complexity of individual work arrangements, the careful approach taken by the courts to determining the status of a person’s employment, and the fact that in Victoria the Chief Commissioner already has the power to reject business licence or registration applications, including from individuals (‘natural persons’), if the applicant has not provided sufficient evidence of compliance with statutory workplace obligations. It should also be noted that any changes to compliance

requirements for licence or registration holders could only be made by amendments to the *Private Security Act* and could not be effected through the Regulations.

Given the complexity of the issues raised by industry stakeholders, the Department suggests that the best forum in which to continue to raise and examine these issues in Victoria is meetings of the VSIAC.

Appendix 1 History of Private Security Regulations

The industry's early stages

Private security emerged in the 1960s and 1970s as a prominent and distinct industry, and grew rapidly through this period as well as into the 1980s.⁹⁵ State governments began regulating the industry at a similar time, with Victoria implementing the Private Agents Act 1966, which regulated participants broadly within the debt collection and private security industries. As with current regulations, there were provisions covering investigators, security guards and crowd controllers, however no prescriptions were made in terms of security advisors, security equipment installers or bodyguards.⁹⁶

Victoria, along with all other Australian states, faced a variety of issues with the industry throughout this time period. This was largely associated with misconduct, including 'violence and negligence by security staff at entertainment venues' as well as issues associated with misuse of firearms and guard dogs.⁹⁷ In the 1980s, state governments, including Victoria, began to respond to these issues, implementing licensing regimes which would give a stronger ability to monitor the personnel in the industry through character checks.

1990s

Despite these changes, issues of misconduct continued to damage the reputation of the industry, particularly as a result of a 1990 report released by the Victorian Community Council Against Violence and widespread media coverage raising the profile of harassment and assaults around licenced premises.⁹⁸ The issue was not limited to Victoria, with Queensland, New South Wales and the Australian Capital Territory (ACT) all citing examples of substantial issues related to physical violence in the sector. The presence of organised crime in the industry was also noted during this period.⁹⁹

Victoria responded to issues within its jurisdiction by implementing a series of training requirements for crowd controllers and further licence requirements through the *Private Agents (Amendment) Act 1990*.¹⁰⁰

2000s

Following further conduct issues, including the highly publicised death of cricket coach David Hookes, as well as issues associated with misuse of firearms nationally, there was another attempt at wholesale reform. Victoria introduced the *Private Security Act 2004* (the Act), which was operationalised through the *Private Security Regulations 2005* (the Regulations), while the ACT and Tasmania also enacted new legislation. Other jurisdictions made amendments to existing legislation. The themes of the changes were to again heighten the level of regulation, this time including fingerprinting, the requirement for those in the industry to display identification, and an increase in inspections of security firms.¹⁰¹

The new Victorian Act and Regulations increased regulatory oversight to include security advisors, security equipment installers and bodyguards. Also, the Victorian Security Industry Advisory Council (VSIAC) was established in April 2005 to advise the responsible Minister (the Minister for Police) on the regulatory framework for the Victorian private security industry, with a view to improving the standards of the industry.

An additional issue identified in the 2000s related to a lack of national consistency in regulation, resulting in increased red tape for those industry personnel working across state borders. This was recognised by the Council of Australian Governments (COAG) in 2008, which agreed (the COAG Agreement) on equivalent training standards and probity checks across jurisdictions among other reforms. Relevant reforms were enacted in Victoria through the *2010 Private Security (Amendment) Act*, which came into force on 4 July 2011 and fully satisfied Stage 1 of the COAG Agreement. The key amendments comprised:

- ◆ **New licensable activities:** guarding with a dog, guarding with a firearm, monitoring centre operations, and providing manpower sector training (along with new definitions of these and existing expressions to assist in preventing people from avoiding licensing obligations);

⁹⁵ Prenzler and Sarre, *Regulating Private Security in Australia*, 1998. Accessed 3 September 2015 at <http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi098.pdf>

⁹⁶ Department of Justice, *Private Security Regulations 2005: Regulatory Impact Statement*, 2005.

⁹⁷ Prenzler and Sarre, *The Evolution of Security and Industry Regulation in Australia: A Critique*, International Journal for Crime and Justice, 2012.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

- ◆ **Additional disqualifying offences** – such as offences involving assault, dishonesty, firearms, robbery, drugs and terrorism – and thresholds resulting in mandatory disqualification from licensing for five or 10 years if such an offence is committed by a licence holder or licence applicant (a person who has committed one of these offences within a stated timeframe becomes a prohibited person);
- ◆ Mandatory **fingerprinting** of licence applicants for identity verification and ongoing probity monitoring;
- ◆ **Additional powers** for the Chief Commissioner of Police to cancel a licence if its holder, or any officer of the body corporate who is a holder, or any close associate of the holder, becomes a prohibited person (previously, the Chief Commissioner's power to cancel a licence related only to the licence holder becoming a prohibited person); and
- ◆ New rules for handling of **criminal intelligence**, making the existence and nature of criminal intelligence used in decision-making non-disclosable to an applicant, in order to protect the integrity of police investigations and the identity of those who carry them out (this is subject to a closed review process in VCAT).

In addition, under the Chief Commissioner's existing statutory power to approve training requirements, the industry regulator Victoria Police implemented nationally-agreed, minimum training standards for the manpower sector.

Following these reforms in Victoria in the 2000s, many stakeholders continued to observe issues with probity in the industry, specifically related to organised crime infiltration. The Australian Crime Commission released a 2013 report suggesting that the identification of organised crime is of material concern to the Australian Government, and that outlawed motorcycle gangs were understood to have penetrated the industry.¹⁰²

¹⁰² Australian Government and the Australian Crime Commission. *Criminal Infiltration in the Private Security Industry*, 2013. Accessed 3 September 2015 at <<https://www.crimecommission.gov.au/sites/default/files/CRIMINAL%20INFILTRATION%20IN%20THE%20PRIVATE%20SECURITY%20INDUSTRY%20JULY%202013.pdf>>

Appendix 2 Competency requirements

Section 25 of the Act outlines that a private security individual operator licence will be refused if certain competency requirements are not met. These competency requirements are approved by the Chief Commissioner in relation to each activity authorised under the licence.

Training requirements and industry associations are not requirements of the Regulations.

The Regulations require that the Chief Commissioner publicise which training courses satisfy the requirements of the Act. Therefore, the Chief Commissioner (as opposed to the Regulations) has some influence on the training costs incurred by businesses and individuals in the private security industry. The following table outlines the various courses currently published on the Victorian Police website.

Table 38: Published training courses

Published courses		
Certificate II	Certificate III	Certificate IV
Unarmed guard	Armed security guard	Security and risk management*
Crowd control	Cash-in-transit	
Combined unarmed guard and crowd control	Combined armed security guard and cash-in-transit	
Control room operator	Guarding with a dog	
	Investigators	
	Bodyguards	

Source: Victoria Police website (accessed 2 September, 2015)

* One method to demonstrate competency for a business licence

All courses (with the exception of Investigators and Security and risk management) contain first aid units. Once a person has completed these courses, it will be necessary to complete refresher training.

Industry Organisation Membership

An applicant for a private security business licence must meet competency requirements either by producing (or completing) a Certificate IV in security and risk management (as shown above) or by being a member of an approved Security Industry Organisation.

As with training courses, the Regulations require the Chief Commissioner to publish security industry organisations approved under the Act.

Table 39: Security industry organisations

Published security industry organisations
Australian Security Industry Association Limited
Association of Investigators and Security Professionals
Australian Institute of Professional Investigators
Security Providers Association of Australia Limited
Victorian Security Institute Inc.

Source: Victoria Police website (accessed 2 September, 2015)

Appendix 3 Other options considered

Other options considered as part of the analysis undertaken are outlined in the table below.

Table 40: Summary of options considered

Option	Detailed analysis warranted? ¹⁰³	Rationale
Reduction in particulars		
Reduce particulars relevant to record keeping	Yes	See Section 5.2.2.
Reduce particulars relevant to identity	No – not consistent with the Act	The Act specifies that the Chief Commissioner must only grant licences/registration where they are satisfied of an applicant's identity. This option was dismissed as removing requirements for applicants to prove identity are inconsistent with the Act. Where the requirement for applicants to provide information is contained in the Regulations, in each instance these requirements continue to be necessary for operational reasons as outlined in Section 5.2.2. In the absence of the identity requirements in the Regulations, the Chief Commissioner would also likely make a decision to request these identity details.
Reduce particulars relevant to competency	No – not consistent with the Act	The Act specifies that the Chief Commissioner must only grant licences where they are satisfied of an applicant's competence. This option was dismissed as removing the requirement for an applicant to provide documentation that demonstrates that they have met competency requirements would not be consistent with the Act. In the absence of the requirement in the Regulations to prove competency, the Chief Commissioner would also likely make a decision to request documentation of meeting competency requirements.
Incentives to reward good performance by industry participants		
Reduction of fees required based on good behaviour	Yes	See Section 5.2.3.
Increase in years between renewal periods based on good behaviour	No – not consistent with the Act	This option was dismissed as the Act requires that a licence/registration must be renewed after 3 years.
Reduction in particulars required for renewals based on good behaviour	No – not consistent with the Act	This option was dismissed as the current application particulars are basic in nature. Reducing the

¹⁰³ Responses in this column are either 'Yes' which indicates that the option is included for more detailed analysis in Section 6, 'No – not consistent with the Act' which indicates that the option has not been included for more detailed analysis based on it not being possible given the legislative framework, and 'No' which indicates that the option is technically viable but has been deemed undesirable.

Option	Detailed analysis warranted? ¹⁰³	Rationale
		<p>number of particulars could compromise monitoring and enforcement.</p> <p>As outlined in Section 2.2.1, the prescribed details and documents that applicants must supply with their licence or registration applications under the Regulations represent the minimum possible information that must be provided to satisfy the requirements of the Act</p>
Reduction in the frequency of monitoring and enforcement	No	<p>This option was dismissed as it is not currently dealt with within the Regulations. The frequency of inspections are dealt with at an operational level by Victoria Police. This provides the flexibility for Victoria Police to make monitoring and enforcement decisions consistent with their risk-based framework.</p>
Other		
Increase in particulars	No	<p>This option was dismissed as there were no additional particulars that Victoria Police would seek to collect. In addition, it would add a cost burden to industry and government.</p>
Introduce competency requirements for registrations	No – not consistent with the Act	<p>This option was dismissed as the need for competency requirements are outlined in the Act.</p>
Expand/reduce the definition of security equipment	No	<p>This option was dismissed as neither the Department nor Victoria Police identified a discernible trend in harms to the community which would suggest that the definition of security equipment should change.</p>
Reduce particulars required for temporary visitor permits	No – not consistent with the Act	<p>This option was dismissed as all particulars relating to temporary visitor permits are contained within the Act.</p>
Introducing an exemption from applying for a registration if an individual/business already holds a licence	No	<p>This option was dismissed as it would likely apply to a small proportion of the regulated community, and may add complexity to the administration of the regulatory framework. The skills required for 'manpower' and 'technical' sector are diverse, and therefore any overlap through the regulated community is not likely (except for larger security organisations which are likely to require a licence and registration).</p>
Streamlining applications for applicants seeking both licences and registrations, with one application and one fee.	No	<p>The preliminary advice from Victoria Police's LRD was that a move to a single, streamlined application would take considerable time to achieve under existing</p>

Option	Detailed analysis warranted? ¹⁰³	Rationale
Require proof of qualifications as a licence condition, rather than requiring this proof at the point of making an application	No	<p>manual processes, and that the feasibility of this suggestion would be better considered in the context of the proposed Electronic Lodgement Process (ELP). However, LRD's initial view was that a single discounted fee would not be possible as the work required to process the application would still involve separate assessments and determinations for each class of activity. Accordingly, two separate fees would continue to be required. This issue will be examined in more detail by the Department and Victoria Police once the proposed ELP system is further advanced.</p> <p>The purpose of requiring proof of the completion of approved training at the application stage is to ensure the person has reached a certain level of competency before the licence is issued (or that they have other relevant experience or training as approved by the Chief Commissioner). If training was conducted after being granted a licence, there would be a risk of untrained licence holders engaging in unsafe work practices early in their employment due to a lack of training.</p>

Other fee options considered

As currently formulated, fee option 3 would lead to an under-recovery of costs in practice. This is because the base fees are identical to those in fee option 1, which would fully recover costs, however some participants will also receive a fee discount of 10 per cent under option 3, resulting in an under-recovery of costs for these participants. If overall costs remain the same, the 'standard' (non-discounted) fee would need to increase to achieve full cost recovery. The exact amount would need to be based on assumptions about the likely numbers of entities receiving discounts. As there are currently very few infringement against the Act (a total of 216 in the three years between July 2012 and June 2015¹⁰⁴, or approximately 0.5 per cent of the regulated population¹⁰⁵), if full cost recovery was to be achieved where a discount of 10 per cent was available, this would require an increase in the first instance for all applicants of 11 per cent (given that almost all applicants would be eligible for the discount).

Considering these factors (the increase in standard rates and the availability of discounts), the changes for fees under this option are as follows:

- ◆ **Industry participants not eligible for discounts** (0.05 per cent of the industry) would face increases of 11 per cent. For the median individual licensee (licensed to undertake two private security activities), this would be an increase of \$49.50 from the current total fee of \$447.00.
- ◆ **Industry participants eligible for discounts** (99.5 per cent of the industry) would be eligible for an effective negligible reduction in fees (a 0.06 per cent reduction). For the median individual licensee (licensed to undertake two private security activities), this would be a decrease of \$0.25 from the current total fee of \$447.00.

While the effective change in fee rates for the majority of the industry is very small, there may be a behavioural impact for industry participants given that they are being rewarded for good performance

¹⁰⁴ Victorian Crime Statistics Agency

¹⁰⁵ Victoria Police, KPMG analysis

(through being eligible for a discount of 10 per cent) relative to industry participants who have committed an offence under the Act.

Appendix 4 Detailed cost breakdown for LRD and RSD

The table below outlines the detailed costs incurred by LRD and RSD in administering the private security industry in 2014-15.

	LRD Security	RSD Security	Total cost
Salaries & Associated costs			
Sworn Salaries	855,665	5,090	860,756
Sworn Overtime	1,138	0	1,138
Executive Salary ¹⁰⁶	21,831	3,720	25,550
Unsworn Salaries	1,103,179	193,776	1,296,955
Unsworn Overtime	2,089	1,875	3,965
Long Service Leave ¹⁰⁷	48,971	4,972	53,943
Leave Loading ¹⁰⁸	26,444	2,685	29,129
Employee on Costs Sworn (Inc Super & PRT) ¹⁰⁹	93,096	945	94,041
Employee on Costs Unsworn (Inc Super & PRT) ¹¹⁰	165,100	29,053	194,153
Workcover ¹¹¹	86,189	8,750	94,939
Sub-total	2,403,704	250,865	2,654,569
Operating expenses			
Employee Related	1,508	315	1,823
Transport ¹¹²	167,669	4	167,674
Travel & Accommodation	5,897	471	6,368
Other Policing Costs	24,829	2,100	26,928
HR Support Costs ¹¹³	9,668	3,041	12,709
Communications	25,420	1,000	26,420
Computer Costs ¹¹⁴	564,604	883	565,487
Accommodation/Leasing Costs ¹¹⁵	120,790	61,746	182,536
Building & Property Costs	1,680	1,301	2,981
Supplies and Services	339,499	9,057	348,557
Corporate Costs ¹¹⁶	877	838	1,715
Sub-total Operating Expenses excluding Capital Asset Charges	1,262,441	80,757	1,343,198
Capital Assets Charge ¹¹⁷	2,306	160	2,466
Depreciation	4,436	353	4,789
Sub-total Operating Expenses including Capital Asset Charges	1,269,183	81,270	1,350,454
Total expenditure	3,672,887	332,135	4,005,022

¹⁰⁶ Executive Salary is the average funded level for EO2 & EO3 apportioned to each division per FTE

¹⁰⁷ Long service leave is calculated at 2.50% of Sworn & Unsworn Salaries

¹⁰⁸ Leave Loading is calculated at 1.35% of Sworn & Unsworn Salaries

¹⁰⁹ Payroll Tax Sworn is calculated at 5.56% of Sworn Salaries

¹¹⁰ Payroll Tax Unsworn is calculated at actual and 5.56% of Executive Salaries

¹¹¹ Workcover is calculated at 4.40% of Sworn & Unsworn Salaries

¹¹² Transport Costs include carparking for two vehicles & 23 Regional Firearms Officers Motor Vehicle Leasing and Maintenance Costs in LRD. LRD advises that is appropriate to apportion these costs on the same pro-rated basis as the other cost categories.

¹¹³ HR Support Costs is calculated at \$16 per pay per FTE

¹¹⁴ Computer Costs Includes PBA Capacity Upgrade (Ready Recknor 2013/14) \$253.4k

¹¹⁵ Accommodation/Leasing costs based on space square allowance per FTE

¹¹⁶ Corporate Costs include VMIA Insurance based on FTE

¹¹⁷ Capital Assets Charge has been applied at 8% of the written down (net book) value of total assets held. Victoria Police considers this approach to be the most appropriate cost allocation approach.

Appendix 5 Assumptions underlying the structure of the current fee model

Outlined below are the range of assumptions that underpin the current fee structure, as outlined in the Regulatory Impact Statement undertaken to support the making of the Regulations in 2005. These assumptions reflect the different costs of Victoria Police's activities (e.g. assessing applications, and monitoring and enforcement) for each of the different licence/registration types. In turn, these differences in costs for each licence/registration type determine how fees should be set to recover costs from each of the licence/registration types.

Despite a range of incremental efficiency improvements in Victoria Police's approach to administering the regulatory framework since the making of the Regulations that benefit all entities regulated under the framework, it is assumed that these assumptions still reasonably represent the proportionate costs of each of regulating each type of entity from which costs are recovered.

The key assumptions are outlined in the table below.

It should be noted that these assumptions will be updated and refined in order to better reflect Victoria Police's current and future costs incurred in administering the regulatory framework. This will be completed within five years as part of a detailed activity-based costing exercise.

Table 41: Key assumptions underpinning the current fee structure

Assumption		Details of assumptions from the 2005 RIS ¹¹⁸
Relative cost for assessing an individual licence compared to a business licence	27%	Victoria Police <i>Individual assessment cost</i> - Estimated as part of the 2005 RIS process, based on Victoria Police's activities involved in assessing applications and the wages of Victoria Police Staff. Assessments take 22 minutes for 90% of applications and 42 minutes for 10% of applications. <i>Body Corporate assessment cost</i> - Estimated as part of the 2005 RIS process, based on Victoria Police's activities involved in assessing applications and the wages of Victoria Police Staff. Assessments take 242 minutes for 10% of applications and 302 minutes for 90% of applications.
Relative cost for maintaining an individual licence compared to a body corporate business licence	27%	Victoria Police <i>Individual maintenance cost</i> - Estimated as part of the 2005 RIS process, based on Victoria Police's activities involved in assessing applications and the wages of Victoria Police Staff. Ongoing maintenance takes 17 minutes per year for all applications. <i>Body corporate maintenance cost</i> - Estimated as part of the 2005 RIS process, based on Victoria Police's activities involved in assessing applications and the wages of Victoria Police Staff. Ongoing maintenance takes 138 minutes per year for 50% of applications and 243 minutes per year for 50% of applications.
Additional application/maintenance cost incurred for each activity	10%	Victoria Police - The time commitment to assess an initial application for a licence or registration to permit multiple security activities beyond the first activity will be 10% of that to assess a full initial application. An assessment will be required to determine whether the applicant meets the probity and competence criteria relevant in relation to each additional security activity

¹¹⁸ All assumptions are based on the assumptions underpinning the current fee structure – these are outlined in pages 48-52 of the *Private Security Regulations 2005* Regulation Impact Statement accessed on 20 December 2015 at <http://www.vcec.vic.gov.au/files/30dbdcd4-8b75-4e33-b56a-a3a3008af4bd/RIS-Private-security-Regulations-2005.pdf>

Assumption		Details of assumptions from the 2005 RIS ¹¹⁸
Cost of natural person / sole trader application/maintenance as a percentage of body corporate costs	60%	Victoria Police - A natural business licence or registration will usually only require the assessment and monitoring of one person (except in the case of partnerships). A natural person business licence or registration will require approximately 60% of the work involved in assessing and monitoring of a body corporate licence or registration.
Cost of registration application/maintenance as a percentage of licence costs	75%	Victoria Police - Application and licence functions are estimated to be 75% of licence application and monitoring requirements as no training or competence component requires assessment or monitoring in respect of registrations.

A range of secondary assumptions that underpin the current fee structure are also outlined below:

Table 42: Secondary assumptions underpinning the current fee structure

Assumption		Data source ¹¹⁹
Application cost (relative to the normal application cost) when applying to add an activity	50%	Source: Victoria Police - The time commitment to assess an application for variation of a licence or registration to add another security activity after the initial application will be 50% of that to assess the initial application. This time commitment is greater than that incurred in assessing an application for multiple activities at the initial grant of a licence or registration, as the assessment required for a variation will require an updated probity check and a further competence assessment (if applicable)
Maintenance cost (relative to the normal maintenance cost) when applying to add an activity	25%	Source: Victoria Police - The amount of time spent monitoring a licence or registration after it has been varied to allow an additional activity is 50% of that spent monitoring the initial activity. The licence or registration holder's engagement in the additional activity will be monitored after the granting of the additional authorisation. The authority to engage in an additional activity will expire on the same date as other previously authorised activities. This could be anywhere up to 3 years away, therefore a 1.5 year average monitoring time commitment has been utilised.
Application cost (relative to the normal application cost) when applying to vary a licence/registration condition	50%	Source: Victoria Police - The time commitment to assess an application for variation to licence or registration conditions will be 50% of the time commitment to assess the initial licence or registration, as the assessment will require review of the original licence or registration application and the reasoning behind conditions being placed on the licence or registration.
Maintenance cost (relative to the normal maintenance cost) when applying to vary a licence/registration condition	0.2%	Source: Victoria Police (as outlined in current fee structure - http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=110494)
Permit application cost	100%	Source: Victoria Police - A temporary interstate permit application will require a time commitment equivalent to that required for a regular licence
Permit maintenance cost	17%	Source: Victoria Police - The monitoring fee for a temporary permit is 50% of the annual monitoring fee for a regular licence as a permit will require maintenance but only in the short term

¹¹⁹ All assumptions are based on the assumptions underpinning the current fee structure – these are outlined in pages 48-52 of *the Private Security Regulations 2005 Regulation Impact Statement* accessed on 20 December 2015 at <http://www.vcec.vic.gov.au/files/30dbdcd4-8b75-4e33-b56a-a3a3008af4bd/RIS-Private-security-Regulations-2005.pdf>

Assumption		Data source ¹¹⁹
Application fee for overseas bodyguards	200%	Source: Victoria Police (as outlined in current fee structure - http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=110494)