

Discussion Paper - Queensland Private Security Legislation

Preamble

The Security industry in Queensland is governed by the Queensland Security Providers Act 1993 and Queensland Security Providers Regulation 2008 administered by the Queensland Office of Fair Trading (OFT) through the Queensland Industry Licensing Unit (ILU).

Locksmiths are generally covered by the legislation to the extent that their activities include electronic access control, alarms, safes and commercial locksmith activities.

Similar legislation (although with some important differences) is currently operating in New South Wales, Australian Capital Territory, Victoria and Western Australia. Tasmania, South Australia and Northern Territory currently do not have any form of licensing for Security System Advisers and Installers.

It is understood that there is a desire to eventually establish uniformity of security legislation between Australian states and territories by the Council of Australian Governments (COAG).

Currently there are three major bodies representing Locksmiths in Australia, namely the **Locksmiths Guild of Australia Inc. (LGA)**, the **Master Locksmiths Association of Australasia (MLAA)** and the **Australia and New Zealand Locksmiths Association (ANZLA)**. All three of these bodies are Approved Security Industry Association's (ASIA's) in Queensland. Management and control of these organisations is primarily by elected office bearers from their membership who serve on a pro bono (unpaid) basis.

Not all locksmiths and/or locksmith businesses in Australia are members of the LGA, MLAA or ANZLA.

The vast majority of locksmith businesses are micro businesses (fewer than 5 persons). Those with 10 or more employees are the exception.

The LGA, MLAA and ANZLA exist to support their members in areas such as general promotion of probity and professionalism as well as representation to external parties, the provision of education and training and the supply of restricted product. Total membership of these locksmith organisations approximates 2,000 throughout Australia.

Since the introduction of the Queensland legislation to control the Private Security Industry in Queensland, a number of matters have arisen that have a direct impact on our membership.

In a spirit of co-operation and with the common desire for probity in the field of supply of security services in Queensland, on behalf of the membership of the LGA, MLAA and the ANZLA, the following discussion points have been based on a collection of matters raised by our members over past months.

Generally our members are supportive of the legislation provided that is enforced fairly.

There is also a desire to understand possible future directions for the legislation and any matters the Industry Licensing Unit may wish to raise with our organisations and membership.

Commercial In Confidence

Discussion Points

Our members are seeking that the OFT and ILU continue to support the implementation of the legislation in a spirit of co-operation with our licence holder members and so ensure that the legislation operates as the Government has intended.

It is understood that, over time, there may be changes required to refine the legislative requirements and some of the matters raised below may be pointers to future changes.

Although some of the items included may have originated from and may only be supported by hearsay, they are included as they have been raised by some of our members and serve to promote discussion on areas considered by them to be important.

Following our meeting we trust that we may be able to dispel any misconceptions that may exist with the application of the legislation as it applies to our membership.

1. Requirement to be licensed

Under the Act, a person is required to hold a licence as a security equipment installer if the person, for reward, installs, repairs, services or maintains security equipment. Security equipment being defined as acoustic, electronic, mechanical or other equipment designed or adapted to enhance property security or for protecting or watching property.

It is in the area of exemptions associated with basic household security that there seems to be some confusion amongst our members and others because, in many instances, locks that are considered to be 'commercial' are also installed in domestic situations e.g. a 'heavy duty' deadlock or mortice lock may be installed on a domestic door to 'upgrade' or enhance the security of the premises. Conversely a 'domestic' grade deadlock may be installed on a door at 'commercial' premises.

As we understand it, the legislation is more about the classification of the premises which determines whether the installer must be licensed, i.e. it is irrelevant whether it is a domestic or commercial grade lock but a licensed installer is required if it is to be installed/repaired on commercial premises.

Another area of 'contention' is in the construction and/or renovation of commercial premises where locks are installed by non-licensed builders and carpenters. It is our understanding that while in the stages of 'construction' the builder/carpenter installer is not required to be licensed. However, when the building is 'handed over' to the owner for occupation then any future work needs to be undertaken by a licensed person.

As far as the existing exemption for 'domestic' work is concerned, some of our members who are currently required to be licensed would prefer of course that licensing be extended to the supply and installation of basic domestic locks as well to enable the public to have confidence in the probity of tradesmen they engage and to minimise the current interpretation problems. This is not to 'protect' the business of locksmiths from others per se', but to ensure a level playing field where locksmiths can compete with other licensed

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persons and businesses without a degree of confusion about what is a domestic and/or commercial lock and whether a licensed person or firm needs to be engaged or not.

However those of our members who only do domestic and automotive work of course would certainly resist any requirement for them to be licensed.

A number of our members believe that any person should be required to be licensed that:-

- purports to be a locksmith or use locksmith specific equipment on the basis that security services provided to a householder are just as important as those to a commercial premises, e.g. if a 'Mrs Jones' who is 90 years old and lives alone has a right to ensure that she is protected by the security licensing system when she engages a person or business to do work on her domestic locks.
- has the ability to create, install and/or repair restricted keying systems (this is the situation under the current NSW Security legislation)
- for reward opens a lock or container other than the usual key or combination (i.e. breaks in or gains entry by abnormal means)
- advertises themselves as providing locksmith and/or safe technician/engineer and/or access control services.

A member has a security firm licence in his own name, employs personnel who have individual security licenses but he himself only does workshop work such as sales, organising his employees, re-keying locks and automotive work at his shop. He will give advice in relation to safes that he sells (similar to advice that may be given by a general retail or wholesale outlet) but any safe delivery and/or installation is done by his licenced employees. The question arises whether this member actually needs an individual security firm licence as well as the security firm licence?

Other matters:

- The current on-line security licence register only holds details of individual licence holders and security firms – it does not necessarily contain information re business names of the business when different from the security firm or individual security licence holder (in Victoria the licensing process collects details of all business names of licence holders and includes them on the on-line licence register under the licence number of the main business). It would be better if the on-line register also recorded the business names that licensed persons operate under so that the public and others could verify that a business was operated by a licensed person.
- Builders and carpenters don't need to be licensed when they are constructing a building and fitting commercial locks. However when the building is 'handed over' to the 'owner' then any future work needs to be done by a person or firm with an appropriate security licence? – What about 'warranty' work after the building has been handed over to the owners? Is this work still able to be performed by non-licensed persons?

2. Security firm licences

The legislative definition of a security firm would seem to be relatively straightforward, i.e.

- a security firm is a person, partnership or corporation that provides security firm services.
- If you carry on a business as a sole trader and personally provide the security services, you do not need a security firm licence, while you are the only person providing security services.
- If you are trading as a corporation or in a partnership and providing security services, you need a security firm licence and
- If you subcontract security services to others, you need a security firm licence.

An area of contention is where a locksmith considers themselves to be a sole trader as they personally provide all the security services but in partnership with another (usually a spouse) who is not actively involved in the business.

One of our members in the earlier days of the legislation was advised on a visit by the OFT that as he had an employee he had to have a security Firm licence even though the staff member was only doing domestic and automotive work.

Members are having difficulty understanding why a business needs a security firm licence as well as an individual licence solely because of the business structure where a spouse may be a silent partner or director and not actually performing any security activities and they also are required to be licensed and fingerprinted.

3. Licence Fees in General

Some of our smaller members have requested that a system of licence fees be implemented giving credence to the size and type of business and number of employees.

There also disquiet amongst some members with the expense when, because they operate in a partnership or company structure, they are required to hold an individual licence as well as a firm licence, even though they are operating for all intents and purposes a 'one man' business.

4. Licence activities

We receive constant representation from our members that there are 'security' activities not currently covered by the current legislation i.e.

- Automotive locksmith activities

Modern vehicles are equipped with a variety of transponder security systems to prevent theft. The availability of relatively cheap facilities and equipment to all comers enabling any person to 'duplicate' these transponder keys concerns our members. There have been documented cases where a vehicle has been serviced

and keys copied without the knowledge of the owner for the purpose of stealing the vehicle at a later date.

- Provision of advice and the sale of security products as defined by the act by retail and wholesale outlets without being a licensed security adviser.
- A more definitive definition of domestic work that is exempt is perhaps needed as there is confusion when applied to work being done for real estate agents and body corporate managers.
- Our members claim they are losing business because shopfitters and other building and maintenance businesses are even re-locating and installing commercial safes as well as working on locks in commercial installations without being licensed.
- Commercial businesses (e.g. real estate agents and body corporates) should be required to keep a register of licenced tradesmen employed to do security activities.

5. Enforcement and penalties

- There appears to be a general absence of on-going publicity given to the requirement of persons to be licensed to perform specified work:
- Difficulties associated with delineation of duties where a mixture of licenced and non-licensed persons involved in an activity e.g. personnel involved in transporting and/or re-locating heavy safes may not need to be licensed, only the person actually operating the safe opening mechanisms? Another example being the laying of cable and/or installing electric strikes for a security system by non-licensed persons with the actual connection and installation of the system being by a licensed person.
- Members report that when they have reported firms ignoring licence requirements they still apparently continue to offend.

6. Communication with ILU and OFT

- Our members are reluctant to report non licensed persons performing security work requiring licences due to possible adverse business repercussions i.e.
 - a locksmith reported a handyman to the OFT who wanted to purchase from him a 'commercial lock' for a repair job for an estate agent. We are advised that the OFT contacted the handyman who in turn told the real estate agent that he had been 'dobbed' in by the locksmith and subsequently the locksmith has lost all their work with that real estate company.
 - we are also advised that there is a locksmith business currently employing a locksmith with a recent criminal record. The Company knows about his past but is still having him work apparently while not being licensed.
- Another member apparently was advised by OFT that a self-employed safe technician was exempt from the legislation?
- It would seem that a process of warnings is continuing over a protracted period of time (years) without imposition of fines.

7. *Qualifications and competence*

A major point of contention by our membership with the legislation (and also registered training organisations i.e. TAFE colleges) is the absence of any form of requirement for trade qualification and/or competency requirement in the licensing process for Class 2 licences.

This is also a contentious point with the current licensing regime in NSW, ACT and Victoria.

It is understood that the primary emphasis is on probity, but, in our trade, technical aspects of competency and training are considered to be particularly important in delivering security services to our customers and the general public.

Whilst it is true that some locksmiths may not possess formal trade qualifications as they entered the trade before their existence, a requirement for membership of an ASIA for individual licence holders who are operating as sole traders and who are not security firms would at least require membership qualifications of training and competency to be assessed to qualify for membership of the ASIA, with employee licence holders' qualifications and/or competency to be assessed by their employer without the need for them to be individual members of an ASIA.

Appropriate training requirements exist for Class 1 licence holders but not Class 2

8. *Publicity for requirement to use licensed security operators*

There is also a general feeling amongst our membership that there is an inadequate level of publicity directed to the general public and persons responsible for engaging persons and firms to perform security activities where such activities are required to be performed by security licence holders.

Much of the disquiet of our members could be alleviated by promotion of the need to employ licensed persons and firms to perform security activities by and to Government and others.

Our organisations would be happy to assist in the dissemination of this information to our membership and external parties.

Some of our members report that their businesses have been under pressure of recent times by customers preferring to use unlicensed handymen to work on locks in commercial situations, viz.

- Our members report that Q-Build apparently are issuing work orders to unlicensed contractors for lock work in contravention of the legislation. Even after a member might refer to the legislative requirement to use licensed tradesmen, the practice apparently continues. There needs to be direction given within Queensland government organisations of the need to only employ licensed persons and/or firms.

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- There should be a legislative requirement that the security licence information appear on all advertising material for the business (as currently exists in Victoria).
- Some Queensland councils are employing non licensed persons and/or firms to work on their locks in contravention of the legislation.
- Confusion exists over what is a 'commercial' door in a multi apartment building – apparently 'common property' doors etc are 'commercial' but the individual unit doors are 'domestic'.
- Apparent absence of general publicity puts our licenced members at a disadvantage in the marketplace competing with non- licensed persons performing commercial security activities.

9. Fingerprinting

- Licence holders in regional areas of Queensland are faced with substantial costs associated with travel to have fingerprints recorded, e.g. licence holders in Bundaberg must apparently travel to Maryborough to have the finger prints taken, this is a 230km round trip, a 4 hour exercise.

According to the local police in Bundaberg there are approximately 300 security licence holders in Bundaberg. One member, when he couldn't attend the Maryborough police station within the required timeframe, was advised by the OFT that it was necessary to travel to Gladstone, a 370km round trip.

Apparently there is a problem that fingerprints can only be taken in Bundaberg in the watch House and we have been advised that the OFT vetoed security licence holders having their fingerprints taken in the watch house?

Access to fingerprinting at locations within reasonable distance from members would appear to be an issue in regional areas.

As a point of interest, fingerprinting is not a requirement for Class 2 licence holders in Victoria.

- There was a case recently when, shortly after being fingerprinted, a member was questioned by the police in relation to a robbery some years ago where his fingerprints were recorded at the crime scene.

As it so happened the member was able to satisfy the police that his fingerprints were 'legitimately' at the site as he had been called after a robbery to work to secure the premises.

The question arises as to the consequences where a similar situation arises after an extended period of say, 10 years, and the member is unable to 'prove' that his fingerprints were 'bone fide' present with documentation that could not be provided (document retention only generally required for a period of 7 years).

10. Recommendations

- a. In the light of the many matters noted above it would be helpful if the OFT could develop and issue some official guidelines to tackle some of the issues of interpretation in some important areas noted above.
- b. Communication of complaints to be channelled through the appropriate ASIA to protect the anonymity of the complainant and enable 'filtering' of the complaint by the ASIA to ensure its legitimacy?
- c. Access to fingerprinting at locations within reasonable distance from members would appear to be an issue in regional areas.
- d. The on-line register to include all business names associated with individual and security firm licence holders
- e. Increased communication to the public and others when licensed security personnel must be engaged,
- f. Consideration be given to incorporating some degree of training/competence/ASIA membership in the legislation as a condition of Class 2 licences
- g. Licence details to be required on all advertising.