

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 260, 2013**

Subject - *Court Security Act 2013*

*Court Security Regulation 2013*

The *Court Security Act 2013* (the Act) creates a new framework for court security arrangements for the High Court of Australia, Federal Court of Australia, Family Court of Australia, Federal Circuit Court of Australia, Family Court of Western Australia and the Administrative Appeal Tribunal. Unless otherwise specified, the use of the term 'courts' in this document includes all federal courts, the Family Court of Western Australia and the Administrative Appeals Tribunal.

The Act meets the security needs of the modern court environment by providing a range of powers for security officers, and limited powers for authorised court officers, to ensure that court premises are safe and secure for court users, court staff, judicial officers and other persons on federal court and tribunal premises. The Act replaces the current security framework for federal courts and tribunals under Part IIA of the *Public Order (Protection of Persons and Property) Act 1971* (Public Order Act), which is out of date and no longer meets the needs of the modern court environment.

Section 52 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Court Security Regulation 2013* (the Regulation) is to provide the necessary detail so that the framework envisaged by the Act can operate as intended. The Regulation is intended to meet the anticipated security needs of the courts, and, to the extent possible, be consistent with existing operational arrangements relating to court security.

The Regulation has two parts and a Schedule. Part 1 deals with preliminary matters, including the commencement date and definitions that are not otherwise defined in the Act.

Part 2 provides directives about the following requirements associated with security officers, who are appointed under section 9 of the Act, and authorised court officers, who are appointed under section 10 of the Act. It would detail:

- qualification and training requirements for security officers;
- training requirements for authorised court officers;
- the form of the identity card to be held by security officers and authorised court officers; and
- procedures for handling complaints.

Security officers are able to exercise a broader range of powers under the Act than authorised court officers. For this reason, authorised court officers are not required to meet the additional qualification requirement which applies to security officers. This two-tier appointment model gives the courts flexibility around the types of officers they are able to appoint.

The Schedule deals with consequential amendments to the *Ombudsman Regulations 1977* and the *Public Order (Protection of Persons and Property) Regulations 1999*.

Consequential amendments are made to the *Ombudsman Regulations 1977* so that the Commonwealth Ombudsman has jurisdiction under the *Ombudsman Act 1976* to investigate complaints about security officers.

Consequential amendments are made to the *Public Order (Protection of Persons and Property) Regulations 1999* to complete the removal of the courts from the application of the Public Order Act. This would be consistent with amendments made by the *Court Security (Consequential Amendments) Act 2013* to remove all references to the courts in the Public Order Act.

Details of the proposed Regulation are set out in the Attachment.

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

This explanatory statement contains a Statement of Compatibility with Human Rights prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Commencement**

The Regulation commences on 1 January 2014 to coincide with the commencement of the Act.

### **Consultation**

The High Court of Australia, Federal Court of Australia, Family Court of Australia, Federal Circuit Court of Australia, Family Court of Western Australia and the Administrative Appeal Tribunal were consulted in the development and finalisation of the Regulation.

The Prime Minister was consulted on the amendments to the *Ombudsman Regulations 1977*.

The Attorney General of New South Wales and the Attorney-General of the Northern Territory were consulted on NSW sheriffs and NT deputy sheriffs being prescribed for the purposes of paragraph 33(b)(ii) of the Act. Paragraph 33(b)(ii) of the Act provides that a person prescribed by the regulations may be appointed as a security officer to exercise the powers and perform the duties of a security officer in relation to court premises.

Authority: Section 52 of the  
*Court Security Act 2013*

# STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

## Court Security Regulation 2013

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

### Overview of the Legislative Instrument

The *Court Security Act 2013* (the Act) allows courts to appoint security officers or other court officers to exercise a range of security powers, including to:

- make specific requests of persons seeking to enter, or are on, court premises—such as requests to undergo a screening procedure or to leave dangerous items for safekeeping
- give directions to persons on court premises
- seize dangerous items from persons
- refuse or prevent entry to court premises or direct a person to leave or remove a person from court premises, and
- for security officers, exercise force such as is necessary and reasonable in the circumstances.

The Act contains safeguards and accountability measures around the exercise of these powers, including licensing and training requirements for appointed officers, identification requirements, complaints handling mechanisms and oversight by the Commonwealth Ombudsman. The Act specifically provides for these matters to be prescribed by regulation:

- qualification requirements for security officers (section 9)
- training requirements for authorised court officers (section 10)
- form of the identity card to be held by security officers and authorised officers (section 12)
- prescribing particular persons to exercise security powers, in particular, to accommodate co-location arrangements with State and Territory jurisdictions (section 33), and
- outline of mechanisms for handling complaints about security officers and authorised court officers (sections 35 and 37) and reports to the Commonwealth Ombudsman (section 36).

The *Court Security Regulation 2013* has been made accordingly.

The matters dealing with qualification and training requirements ensure that security officers or authorised court officers are appropriately qualified. It is important that these matters are regulated to provide certainty about the legitimate exercise of these powers. This is particularly so given the extent of the powers that security officers or authorised court officers may exercise.

Similarly, the matters dealing with complaints handling ensure that complaints are dealt with effectively and is an important accountability mechanism for the exercise of these powers under the Act.

### Human rights implications

This instrument engages the following human rights:

Right to work

Sections 6 and 7 of the Regulation engage the right to work under Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This right includes technical and vocational guidance and training programs, policies and techniques to achieve development and employment under conditions safeguarding individual freedom.

This right is consistent with the prescription of training and qualification requirements for appointed security officers (section 6) and the prescription of training requirements for authorised court officers (section 7). This requires that security officers and court officers are familiar with the legislative scheme which sets out the powers they may be called upon to exercise, and competence in the exercise of those powers. Security officers may exercise a greater range of powers than court officers under the Act and are further required to hold qualifications consistent with national accreditation standards for the unarmed guarding industry. These requirements ensure that all officers are professionally skilled and capable of responding effectively to security incidents on court premises, and with due regard to the rights-based interests of all parties.

For example, security officers may be called upon to exercise coercive powers so it is critical that the training they receive is appropriately tailored and directed to ensuring such powers are exercised in a proportionate and reasonable manner. Familiarity with the court security legislative framework will ensure that officers understand their legal obligations with respect to the safety of judicial officers, court staff and court users and to exercise their powers appropriately when responding to security incidents.

To the extent that the right to work is limited by setting out preconditions on who can be appointed as a security officer or a court officer, this limitation is reasonable, necessary and proportionate. The training and qualification requirements are designed to ensure that appointed officers exercise their powers appropriately and do not trespass unduly on personal rights and liberties while performing security functions on court premises.

The right to work also includes the right to just and favourable conditions of work in articles 6(1), 7(b) and 8(1)(a) of the ICESCR. Article 7(b) requires that working conditions meet minimum standards of occupational health and safety and laws and policies establish basic labour standards to protect health and safety. The qualification and training requirements in sections 6 and 7 are consistent with this right because it ensures that security officers are properly equipped to perform their role in a manner which protects their own safety and the safety of court staff and court users.

#### Right to an effective remedy

Section 10 and Item 1 of Schedule 1 to the Regulation engage the right to an effective remedy under Article 2(3) of the International Covenant on Civil and Political Rights. This right ensures that persons claiming remedial relief shall have their rights determined by competent judicial, administrative or legislative authorities or by any other competent authority, and to ensure that the competent authorities enforce such remedies when granted.

Section 10 prescribes how a complaint must be dealt with where a complaint is made to the administrative head of a court about the conduct of an Australian Federal Police (AFP) member purporting to exercise a power or perform a duty in relation to court premises. Regulation 10 is consistent with the right to an effective remedy as it ensures that complaints are dealt with in accordance with AFP complaints handling policies. This will ensure that the complaint is dealt with effectively.

Item 1 of Schedule 1 amends the *Ombudsman Regulations 1977* so that persons appointed as security officers under the *Court Security Act 2013* are deemed to be members of court staff for the purposes of the *Ombudsman Act 1976*. While the conduct of court staff are already subject to review by the Ombudsman, security officers, who are generally contractors from private security firms, are not. This item is consistent with the right to an effective remedy as it ensures that the

conduct of security officers in exercising their powers under the *Court Security Act 2013* are subject to the Ombudsman review process.

### Right to privacy

Section 8 engages the right to privacy contained in Article 17 of the ICCPR. Article 17 prohibits unlawful or arbitrary interferences with a person's privacy.

The right to privacy protects personal information that might be gathered by authorities. The Human Rights Commission's General Comment states that:<sup>1</sup>

[t]he gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant.

The right is engaged to the extent that personal information is collected and displayed to the public for the purposes of producing identity cards for security officers and authorised court officers. To the extent that Section 8 limits the right to privacy, it is necessary in the interests of public order and the protection of the rights and freedoms of others. The limit on the right to privacy is also proportionate in that the nature and quantity of information collected is limited—the person's full name is not required on the identity card.

The display of personal information for this purpose is neither unlawful nor arbitrary. It is important that appointed security officers and authorised court officers are easily identifiable by court staff and court users if assistance is required.

### **Conclusion**

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

### **George Brandis QC**

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<sup>1</sup> Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation), General Comment No. 16, Office of the High Commissioner for Human Rights, UN Doc HRI/GEN/1/Rev.9 (Vol. I) (8 April 1988).

## **Details of the Court Security Regulation 2013**

### **Part 1—Preliminary**

#### **Section 1—Name of regulation**

Section 1 provides for the Regulation to be named the *Court Security Regulation 2013*.

#### **Section 2—Commencement**

Section 2 provides that the Regulation commences on 1 January 2014.

#### **Section 3—Authority**

Section 3 provides that the Regulation is made under the authority of the *Court Security Act 2013*.

#### **Section 4—Schedule(s)**

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

#### **Section 5—Definitions**

Section 5 provides that *Act*, for the purpose of the Regulation, means the *Court Security Act 2013*, that *AFP Commissioner* means the Commissioner under the *Australian Federal Police Act 1979*, that *NSW sheriff's officer* means the Sheriff or a sheriff's officer within the meaning of the *Sheriff Act 2005* (NSW) and that *NT deputy sheriff* means a deputy sheriff within the meaning of the *Sheriff Act* (NT).

### **Part 2—Security officers and authorised court officers**

#### **Section 6—Qualifications and training of security officers**

Subsection 6(1) specifies the qualifications which must be held by security officers appointed under section 9 of the Act. A Certificate II in Security Operations (or equivalent) is the minimum requirement because it is the qualification required to obtain entry level licensing as a crowd controller or security guard. The onus is on the applicant to satisfy the administrative head of the court of the equivalence of any alternative qualification, but the administrative head is required to make reasonable inquiries to determine equivalence between the Certificate II and the qualification presented by the applicant.

Authorised court officers appointed under section 10 of the Act are not required to meet the qualification requirement for security officers under subsection 6(1). This is appropriate as security officers are able to exercise a broader range of powers under the Act than authorised court officers. These broader powers include the power to conduct a security screening procedure using electronic screening equipment or a frisk search, and powers supported by the use of reasonable and necessary force. This two-tier appointment model gives the courts flexibility around the types of officers they are able to appoint. This is desirable given that not all courts face the same security risks and not all have the same security needs. Under this model, courts will be able to ensure that, at relevant court premises, there is the appropriate number, and type, of officers to deal with the types of security incidents that are likely to arise at those premises.

Subsection 6(2) requires that security officers appointed under section 9 of the Act must have successfully completed training designed to provide familiarity with the Act, this Regulation, court security policies and protocols so that officers can competently exercise their powers under the Act and Regulation. Training must be approved in writing by the administrative head of the court, and is expected to include training in key competencies in relation to persons entering or leaving court

premises, screening procedures, and protection using basic defensive techniques. This covers any gap that may exist between the qualifications referred to in subsection 6(1) and specific competencies that may be required to exercise the powers under the Act and Regulation.

Subsections 6(1) and (2) are modelled on existing clauses in the *Maritime Transport and Offshore Facilities Security Regulations 2003* (regulation 8.20A) and the *Aviation Transport Security Regulations 2005* (regulation 5.06).

Subsection 6(3) exempts security officers from the requirement in subsection 6(2) to have successfully completed training if there is a sudden and urgent need for a security officer at court premises. This includes cases where there are insufficient security officers within the pool of local contractors to meet the security needs of the particular court for a finite period. This may occur in new or regional locations, or where there is an escalated security incident within the court requiring additional security officers at short notice. The exemption is strictly circumscribed in its application. It will only apply in emergency circumstances and where reasonable attempts have been made, within the situational constraints, to appoint security officers who meet the requisite training and qualification requirements. The courts anticipate that the exemption would be used rarely. Even where the exemption applies, the qualifications required by subsection 6(1) remain compulsory.

#### Section 7—Training of authorised court officers

Subsection 7(1) provides that the training required of authorised court officers appointed under section 10 of the Act must be approved in writing by the administrative head of the court and provide familiarity with the Act, this Regulation, court security policies and protocols so that officers can competently exercise their powers under the Act and Regulation.

The training of authorised court officers is intended to be set at a basic level, reflecting the lower level of responsibility afforded to authorised court officers compared with security officers. Training may include key competencies in giving directions to and making requests of people on court premises, basic screening procedures, and managing difficult interactions with clients.

Subsection 7(1) is modelled in part on existing clauses in the *Maritime Transport and Offshore Facilities Security Regulations 2003* (regulation 8.20A) and the *Aviation Transport Security Regulations 2005* (regulation 5.06).

Authorised court officers are not required to meet the qualification requirement for security officers under subsection 6(1) of this Regulation. This is appropriate as authorised court officers exercise a narrower range of powers under the Act than security officers. This two-tier appointment model gives the courts flexibility around the types of officers they are able to appoint. This is desirable given that not all courts face the same security risks and not all have the same security needs. Under this model, courts will be able to ensure that, at relevant court premises, there is the appropriate number, and type, of officers to deal with the types of security incidents that are likely to arise at those premises.

Subsection 7(2) exempts authorised court officers from the requirement in subsection 7(1) to have successfully completed training if there is a sudden and urgent need for an authorised court officer at court premises. This includes cases where there are insufficient authorised court officers to meet the security needs of the particular court for a finite period. This may occur in new or regional locations, or where there is an escalated security incident within the court requiring additional authorised court officers at short notice. The exemption is strictly circumscribed in its application. It will only apply in emergency circumstances and where reasonable attempts have been made, within the situational constraints, to appoint authorised court officers who meet the requisite training requirements. The courts anticipate that the exemption would be used rarely.

## Section 8—Identity cards

Subsection 8(1) of this Regulation provides that if the administrative head of a court issues an identity card to a person who is appointed as a security officer or authorised court officer, the identity card must contain the name of the officer, whether the officer is a security officer or an authorised court officer, and the dates on which the card was issued and expires.

Subsection 8(1) is made under section 12 of the Act, which requires the administrative head of the court to issue an identity card in the form prescribed by the regulations to each appointed security officer and authorised court officer.

Subsection 8(2) prescribes the court in which a security officer or authorised court officer is to exercise powers as a security officer or authorised court officer for the purposes of paragraph 13(a)(ii) of the Act.

Paragraph 13(a)(ii) of the Act provides an exception to the requirement for an administrative head of a court to issue an identity card to a person under section 12 of the Act if the person holds an identity card issued to the person by a person or body prescribed by the regulations.

The effect of subsection 8(2) is that if a person already holds an identity card issued to the person by the court in which the person is to exercise powers as a security officer or authorised court officer, then the administrative head of the court is not required to issue an additional identity card to that person. The intention of subsection 8(2) is that existing photo identification held by security officers and authorised court officers suffices for the purposes of the identity requirements of the Act. This exception reduces the administrative burden on courts of having to issue additional identity cards.

The exception under paragraph 13(a)(ii) of the Act is permissive in that it does not require that the administrative head of a court withhold from issuing an identity card if the exception in paragraph 13(a)(ii) applies. It allows the administrative head of a court to choose to issue another identity card even if the exception applies. For example, if the administrative head of a court is of the opinion that a person's existing identity card is in some way deficient, then subsection 8(2) of this Regulation does not prevent the administrative head from issuing an (additional) identity card to the person under section 12 of the Act.



### Section 9—Where powers may be exercised—prescribed persons

Section 9 provides that NSW sheriff's officers, within the meaning of the *Sheriff Act* (NSW), and NT deputy sheriffs, within the meaning of the *Sheriff Act* (NT), are prescribed for the purposes of paragraph 33(b)(ii) of the Act.

Paragraph 33(b)(ii) of the Act provides that a person prescribed by the regulations may be appointed as a security officer to exercise the powers and perform the duties of a security officer in relation to court premises.

The effect of this section is to prescribe NSW sheriff's officers and NT deputy sheriffs as a class of people who may be appointed as security officers on court premises.

This ensures that NSW sheriff's officers and NT deputy sheriffs, who already hold qualifications and training equivalent in nature to those held by Commonwealth security officers, may be appointed as security officers without undergoing further training and qualification requirements under the Act.

The Sydney registry of the Federal Court of Australia is co-located with the Supreme Court of New South Wales and the Darwin registry of the Federal Court of Australia is co-located with the Supreme Court of the Northern Territory. Given that security incidents can arise without warning and are serious threats to both Commonwealth and NSW/NT court officials and court users, it is important that Commonwealth and NSW/NT courts are able to cooperate to ensure an optimal security arrangement for any shared premises, through the dual appointment of security officers as necessary.

### Section 10—Complaints about AFP members

Section 10 provides that if an administrative head of a court receives a complaint under subsection 35(1) or 37(2) of the Act that relates to a security officer who is not appointed under section 9 of the Act, the administrative head must refer the complaint to either the AFP Commissioner or a delegate of the AFP Commissioner.

A ***security officer*** is defined in section 5 of the Act to be a person appointed under section 9 of the Act, Australian Federal Police (AFP) members, protective service officers or special protective service officers.

This section therefore deals with complaints in relation to AFP members, protective service officers or special protective service officers.

This will ensure that complaints relating to AFP security officers are dealt with appropriately, under existing AFP complaint handling policies and procedures.

It is intended that complaints about security officers or authorised court officers other than AFP security officers would be dealt with in accordance with the relevant court's existing complaints handling policy. This is an administrative approach rather than a legislative approach.

## Schedule 1—Amendments

### ***Ombudsman Regulations 1977***

#### Item 1—Regulation 3A

Item 1 inserts new regulation 3A which declares that each security officer is a member of the staff of the chief executive of the court, for the purposes of paragraph 3(14)(d) of the *Ombudsman Act 1976* (Ombudsman Act). Regulation 3A also defines *court* and *security officer* consistently with the respective definitions in the Act.

Paragraph 3(14)(d) of the Ombudsman Act provides that for the purposes of the Ombudsman Act, persons declared by the regulations to the Ombudsman Act to be members of the staff of a court or tribunal are taken to be members of the staff of the chief executive officer of the court or tribunal.

Subsection 3(1) of the Ombudsman Act defines a *prescribed authority* to include a chief executive officer of a court or tribunal. Subsection 3(1) also defines an *officer* of a prescribed authority as including a person who is employed in the service of, or a member of the staff of, the authority.

Subsection 3(6) of the Ombudsman Act provides that for the purposes of the Ombudsman Act, action that is taken by an *officer* of a *prescribed authority* shall be deemed to be taken by the authority.

Section 5 of the Ombudsman Act provides that the Commonwealth Ombudsman's function is to investigate the administrative actions of a prescribed authority.

Regulation 3A, when read in the context of the Ombudsman Act, will deem the actions of security officers as actions of the chief executive officer of a court or tribunal and therefore within the Commonwealth Ombudsman's investigatory jurisdiction.

This amendment is necessary as the conduct of security officers would not otherwise be subject to review by the Commonwealth Ombudsman. The majority of security officers are contractors from private security firms and are not employed by the courts.

The amendment is intended to provide an efficient and timely channel for complaints handling that is independent of the relevant court. The review of complaints by the Commonwealth Ombudsman would be in addition to existing complaints handling procedures directly managed by the relevant court.

### ***Public Order (Protection of Persons and Property) Regulation 1999***

#### Item 2—Regulation 4

This item repeals existing regulation 4, which prescribes the courts, the Australian Crime Commission and the Integrity Commissioner for Part IIA of the *Public Order (Protection of Persons and Property) Act 1971* (Public Order Act). The item replaces it with a regulation that only prescribes the Australian Crime Commission and the Integrity Commissioner for Part IIA of the Public Order Act.

The security framework for the courts, the Australian Crime Commission and the Integrity Commissioner is currently provided for under Part IIA of the Public Order Act. However, the amendments to be made upon the commencement of the *Court Security (Consequential Amendments) Act 2013* will remove all references to the courts in Part IIA of the Public Order Act.

The removal of references to the courts from this regulation is consequential to amendments made by the *Court Security (Consequential Amendments) Act 2013* and would have the effect of completing the removal of the courts from the application of the security framework under the

Public Order Act. It is intended that court security is dealt with solely by the new framework under the *Court Security Act 2013*.

Items 3 and 4—Regulation 8

These items make consequential amendments to remove references to the courts from subregulations 8(2)-(4), (5A) and the Note to regulation 8, as the Public Order Act is not intended to apply to the courts.

This is consistent with amendments made by the *Court Security (Consequential Amendments) Act 2013* to remove all references to the courts in Part IIA of the Public Order Act.