# **Court Security Regulations 2023**

# **EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

under section 52 of the *Court* *Security Act 2013*

**Purpose and operation of the Instrument**

The *Court Security Act 2013* (the Act) sets out the framework for court security arrangements in the High Court of Australia, Federal Court of Australia, Federal Circuit and Family Court of Australia, Family Court of Western Australia and the Administrative Appeals Tribunal.

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.

Under section 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make regulations, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend or vary any such instrument.

The purpose of the *Court Security Regulations 2023* (the Regulations) is to repeal and replace the *Court Security Regulation 2013* (the 2013 Regulation) which was due to sunset on 1 April 2024. The 2013 Regulation prescribed matters necessary to support the operation of the Act. The Regulations are in substantially the same form as the 2013 Regulation.

The Regulations prescribe:

* qualification requirements for security officers;
* training requirements for authorised court officers;
* the form of identity card to be held by security officers and authorised court officers;
* the NSW Sheriff, a NSW sheriff’s officer and a NT deputy sheriff as persons who, subject to being appointed as a security officer, may exercise powers, and perform the duties of a security officer in relation to court premises, under the Act; and
* procedures for handling complaints in relation to a security officer not appointed under the Act (that is, Australian Federal Police security officers).

The matters the Regulations prescribe are materially the same as the 2013 Regulation save for amendments including:

* changes to align with modern drafting practices;
* the inclusion of provisions to clarify the regulation making power for certain sections;
* the removal of provisions which provided exemptions to prescribed training requirements in particular circumstances;
* the removal of a provision which had the effect of providing that the administrative head of a court was not required to issue an identity card to a person holding an identity card issued by that court;
* a new section that has the effect of providing that the administrative head of a court is not required to issue an identity card to a person holding an identity card issued by the NSW Sheriff.

Details of the Regulations are set out in **Attachment A**.

**Consultation**

Consultation was undertaken with the Federal Court of Australia, Federal Circuit and Family Court of Australia, High Court of Australia, Administrative Appeals Tribunal, Family Court of Western Australia, Western Australia Department of Justice, Australian Federal Police, New South Wales Department of Communities and Justice, and Northern Territory Department of the Attorney‑General and Justice. This consultation occurred between January and August 2023. Each of these bodies were asked to comment on the operation of the 2013 Regulation and were invited to propose changes for the remade instrument. Stakeholders proposed changes that were considered in the drafting process. Changes to identity card provisions proposed by the New South Wales Department of Communities and Justice have been incorporated into the Regulations. Stakeholders were invited to comment on an exposure draft of the proposed Regulations and did not raise any concerns.

The Attorney General of New South Wales and the Attorney-General of the Northern Territory were consulted on NSW sheriff’s officers and NT deputy sheriffs being prescribed for the purposes of the Act as persons who may exercise the powers and perform the duties of a security officer in relation to court premises, subject to being appointed as a security officer.

**Regulation Impact Statement**

The Regulations are not expected to have any impact on businesses, individuals or community organisations. The Office of Impact Analysis has advised that an Impact Analysis is not required for the Regulations (reference OIA23-04705).

**Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights has been completed for the Regulations in accordance with the*Human Rights (Parliamentary Scrutiny) Act 2011*. A copy of the statement is at **Attachment B**.

**Attachment A**

**NOTES ON SECTIONS**

**Part 1 – Preliminary**

**Section 1 – Name**

This section provides for the Regulations to be named the *Court Security Regulations 2023*.

**Section 2 – Commencement**

This section provides that the Regulations commence on the day after the instrument is registered.

**Section 3 – Authority**

This section provides that the Regulations are made under the authority of the *Court Security Act 2013*.

**Section 4 – Schedules**

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

**Section 5 – Definitions**

This section provides definitions for expressions used in the Regulations that are not otherwise defined in the Act.

***Act*** means the *Court Security Act 2013*.

***AFP Commissioner*** means the Commissioner within the meaning of the *Australian Federal Police Act 1979*.

***NSW Sheriff*** means the Sheriff within the meaning of the *Sheriff Act 2005* (NSW).

***NSW sheriff’s officer*** means a sheriff’s officer within the meaning of the *Sheriff Act 2005* (NSW).

***NT deputy sheriff*** means a person appointed to be a deputy sheriff under the *Sheriff Act 1962* (NT).

**Part 2 – Security officers and authorised court officers**

**Section 6 – Appointment of security officers - prescribed qualifications**

This section operates in the same way as the equivalent provision in the 2013 Regulation save that it does not provide an exemption to the requirement to successfully complete training.

Section 6 prescribes the qualifications a person must have to be appointed by the administrative head of a court as a security officer.

Paragraph 6(2)(a) provides that the first qualification is either a Certificate II in Security Operations or another qualification that the administrative head of the court considers is at least equivalent to a Certificate II in Security Operations. A Certificate II in Security Operations is typically the minimum required qualification to gain a licence as a crowd controller or security guard.

Paragraph 6(2)(b) provides that the second qualification is the successful completion of training.

Subsection 6(3) defines training for the purpose of subsection 6(2)(b) as training that is designed to make the person familiar with the Act, the Regulations, and the court’s security policies and protocols so that officers can competently exercise their powers under the Act. Training must be approved in writing by the administrative head of the court.

A provision in the 2013 Regulation which exempted security officers from the requirement to have successfully completed training if there was a sudden and urgent need for a security officer at court premises has not been remade. The qualifications, including the successful completion of training, are compulsory for the appointment of a security officer.

**Section 7 – Appointment of authorised court officers - prescribed training**

This section operates in the same way as the equivalent provision in the 2013 Regulation save that it does not provide an exemption to the requirement to complete training. Section 7 prescribes the training a person must have to be appointed by the administrative head of a court as an authorised court officer.

Subsection 7(2) provides that the training must be designed to make the person familiar with the Act, the Regulations, and the court’s security policies and protocols so that officers can competently exercise their powers under the Act. Training must be approved in writing by the administrative head of the court.

Authorised court officers are not required to hold a Certificate II in Security Operations (or equivalent qualification). This is appropriate because authorised court officers exercise a narrower range of powers under the Act than security officers.

A provision in the 2013 Regulation which exempted authorised court officers from the requirement to have completed training if there was a sudden and urgent need for an authorised court officer at court premises has not been remade. The completion of training is compulsory for the appointment of an authorised court officer.

**Section 8 – Identity cards - prescribed form**

This section operates in the same way as the equivalent provision in the 2013 Regulation. Section 8 prescribes the form of an identity card issued to a security officer or authorised court officer.

Subsection 8(2) provides that 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.

**Section 9 – Identity cards - exceptions to requirement to issue identity card**

Section 9 prescribes the NSW Sheriff 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 the 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 this section is that if a person already holds an identity card issued to the person by the NSW Sheriff, then the administrative head of the court is not required to issue an additional identity card to that person.

The intention of this section is that existing photo identification held by NSW sheriff’s officers appointed as security officers suffices for the purposes of the identity requirements of the Act. This reduces the administrative burden on courts of having to issue additional identity cards. This is appropriate because the *Sheriff Act 2005* (NSW) already requires NSW sheriff’s officers to carry photographic identity.

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. The administrative head of a court may still issue an identity card.

**Section 10 – Where powers may be exercised – prescribed persons**

This section operates in the same way as the equivalent provision in the 2013 Regulation. Section 10 provides that the NSW Sheriff and NSW sheriff’s officers, within the meaning of the *Sheriff Act* *2005* (NSW), and NT deputy sheriffs, appointed under the *Sheriff Act 1962* (NT), are prescribed for the purposes of paragraph 33(b)(ii) of the Act.

Paragraph 33(b) of the Act provides the conditions under which an appointed security officer or authorised court officer may exercise the powers and perform the duties of a security officer in relation to court premises. Where the person is a security officer, these conditions include that the person is licensed under a law of a State or Territory to guard property, or the person is prescribed by the regulations.

The effect of this section is to prescribe the NSW Sheriff, NSW sheriff’s officers and NT deputy sheriffs as persons who may be appointed as security officers on court premises. This means that NSW sheriff’s officers and NT deputy sheriffs may be appointed as security officers and exercise powers under the Act without requiring a licence to guard property.

**Section 11 – Complaints about AFP security officers**

This section operates in the same way as the equivalent provision in the 2013 Regulation save that the meaning of a delegate of the Australian Federal Police (AFP) Commissioner has been clarified. Section 11 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 Australian Federal Police (AFP) Commissioner or a person who has been delegated the AFP commissioner’s powers, functions and duties under Part V of the *Australian* *Federal Police Act 1979*.

A ***security officer*** is defined in section 5 of the Act to be a person appointed under section 9 of the Act, 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 are 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 – Repeals**

***Court Security Regulation 2013***

**Item 1 – The whole of the instrument**

This Schedule repeals the whole of the 2013 Regulation.

**Attachment B**

**Statement of Compatibility with Human Rights**

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

**Court Security Regulations 2023**

This Disallowable Legislative 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 Disallowable Legislative Instrument**

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

* make specific requests of persons seeking to enter, or who 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 the following 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 where powers may be exercised (section 33), and
* the mechanisms for handling complaints about security officers and authorised court officers (sections 35 and 37).

The *Court Security Regulations 2023* (the Regulations) have been made to replace the*Court Security Regulation 2013* (the 2013 Regulation)*,* which was due to sunset on 1 April 2024, in similar terms.

The matters dealing with qualification and training requirements ensure that security officers and authorised court officers are appropriately qualified or trained. 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.

The Regulations differ from the 2013 Regulation in the following ways:

* the exemption to the training requirements of security officers and authorised court officers has been removed
* regulation 9 of the Regulations has been included to provide that the administrative head of a court is not required to issue an identity card to a person who already holds an identity card issued by the NSW Sheriff.

**Human rights implications**

This Disallowable Legislative Instrument engages the following human rights:

* the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the right to just and favourable work conditions in Article 7 of the ICESCR
* the right to an effective remedy in Article 2(3) of the *International Covenant on Civil and Political Rights* (ICCPR)
* the right to privacy in Article 17 of the ICCPR.

Right to work

Regulations 6 and 7 of the Regulations engage the right to work under Article 6 of the 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 qualification requirements (including training requirements) for appointed security officers (regulation 6) and the prescription of training requirements for authorised court officers (regulation 7). Training requires that security officers and authorised 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 required to hold qualifications consistent with national accreditation standards for the security 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 qualification and training 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. This is particularly important because security officers or authorised court officers exercise powers under the Act that impact multiple human rights, including the right to liberty and security of person (Article 9 of the ICCPR), the right to liberty of movement (Article 12 of the ICCPR) and the right to a fair and public hearing (Article 14 of the ICCPR).

The right to work also includes the right to just and favourable conditions of work in article 7 of the ICESCR. Specifically, article 7(b) requires that working conditions meet minimum standards of occupational health and safety. The qualification and training requirements in regulations 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

Regulation 11 engages the right to an effective remedy under Article 2(3) of the ICCPR. This right ensures that persons claiming remedial relief shall have their rights determined by a competent authority.

Regulation 11 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 11 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.

Right to privacy

Regulation 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 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 regulation 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 Disallowable Legislative 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, necessary and proportionate.