

Granting of licences under the Security and Investigations Agents Act 2002

The Security and Investigations Agents Act 2002

The Security and Investigations Agents Act 2002 (the Act) regulates security and investigations agents in Tasmania. The Department of Justice, Division of Consumer Affairs and Fair Trading administer this Act.

The Act provides that persons who perform the activities covered by the Act, must do so only if in possession of a relevant licence.

Authority to grant or to refuse to grant a licence under the Act is vested in the Commissioner for Corporate Affairs (CCA).

The Act establishes a number of licence categories based on activities. These licence categories are:

Agent licence

- Commercial Agent
- Crown Controller Agency
- Security Agent
- Inquiry Agent

Employee licence

- Commercial Sub-agent
- Crowd Controller
- Security Guard

An agent licence is usually valid for 3 years. An employee licence is usually valid for 1 year.

The application process

An applicant for a licence must complete an application form and take the form to *Service Tasmania*. Applicants must prove their identity to the staff member at the *Service Tasmania* counter and the form must be accompanied by photographs, a copy of the applicant's National Police Record and evidence that they hold the requisite qualifications. This process is detailed in the Consumer Affairs and Fair Trading Website at:

http://www.consumer.tas.gov.au/business_affairs/security_agents/applying_for_licence

Applicants must:

- Be at least 18 years of age;
- Have sufficiently qualifications, experience and competency to carry out the security activities to which the application relates.

An applicant is ineligible to apply for a licence if convicted of one or more indictable offences and sentenced to:

- imprisonment for a term or terms in the aggregate of 3 years or more; or
- a period of detention for 3 years or more under a restriction order made under section 75(1)(e) of the *Sentencing Act* 1997 or an equivalent order elsewhere.
- Ineligibility to apply for a licence extends for a period of 5 years from the completion of the term of imprisonment or a period of detention (section 5 of the Act).

Except in the case of a crowd controller or security guard, an applicant is also ineligible to apply for a licence if they are an undischarged bankrupt or has made arrangements with creditors that have not been completed.

Granting of licences under the Security and Investigations Agents Act 2002

Once an application has been received, a request is made to the Commissioner of Police for any information which might be relevant to the decision by the CCA to grant or not to grant a licence.

The Commissioner of Corporate Affairs discretion to grant a licence

If an applicant is eligible to apply for a licence and holds the requisite qualifications and experience, a licence is ordinarily granted. However, where an applicant has been found guilty of a disqualifying offence or is in the opinion of the CCA, not a fit and proper person, that person is refused a licence.

Where a licence is refused, that applicant may appeal to a Magistrate. The Magistrate has the final say in granting a licence.

The CCA may also refuse to grant a licence if in the CCA's opinion, it would not be in the public interest to grant a licence.

The purpose of the following policy guidelines is to provide an indication of the manner in which the CCA will use information in making a decision about whether or not to grant a licence, suspend a licence or impose conditions on a licence.

Police Commissioner's Report

On receipt of an application for a licence, the CCA will provide a copy of the application and any other relevant information to the Commissioner for Police. The CCA will also request from the Commissioner of Police a 'character report' as outlined in section 7 of the Act.

The Commissioner of Police must inquire into and report to the Commissioner on any matters concerning the application that the CCA has requested.

The CCA will consider how the information provided by the Commissioner for Police in determining whether to grant or not to grant licence.

There is no statutory right for Police to object to the granting of a licence under the Act. However, the Commissioner for Police may choose to express an opinion in the report to the CCA.

The key information that should be contained in the report is a list of disqualifying offences. Some of these disqualifying offences may be listed on the Police Record appended to the application form. However, offences may have been committed since that record was produced or the record may be incomplete as offences may have been committed interstate or overseas.

Information about the applicant's character is important and may be critical in deciding whether or not to grant licence. Character is determined primarily by reference to prescribed and other convictions. One conviction or negative aspect of character may not alone be sufficient to refuse to grant a licence. However, a number of such convictions or multiple negative character issues may inform such a decision.

Granting of licences under the Security and Investigations Agents Act 2002

Criminal history – prescribed offences

The CCA may refuse to grant an application if the applicant has been convicted of a 'prescribed offence'.

A 'prescribed offence' means:

- An offence involving dishonesty, whether committed in the State or elsewhere; or
- An offence involving violence, whether committed in the State or elsewhere; or
- An offence under the *Poisons Act 1971* or *Misuse of Drugs Act 2001*, or a similar offence under the law of another State or Territory of the Commonwealth; or
- An offence relating to the possession and use of a firearm, or any other weapon, that would disqualify the applicant from holding a licence under the *Firearms Act 1996*; or
- An offence against this Act.

A conviction for a 'prescribed offence' does not necessarily stand alone as a reason for not issuing a licence. It is important that it is viewed in conjunction with several other factors that may include:

- the nature of the offence;
- how long ago the offence was committed;
- how old the applicant was at the time;
- was it a repeat offence; and
- how serious was the offence as viewed by reference to the penalties imposed.

Generally, if an offence was committed over 10 years ago and a conviction recorded, or 5 years ago and no conviction recorded then the CCA will grant licence. However, these matters may be taken into account along with other issues in determining whether the applicant is a fit and proper person.

If a person has been found guilty of a prescribed offence but no conviction was recorded, then this will be considered to be of less relevance than if a conviction has been recorded. However, this may still be taken into account in determining whether the applicant is a fit and proper person.

Pending charges and current investigations

Pending charges or current investigations are key considerations in assessing the applicant's suitability for holding a licence. While the CCA will generally presume that a person is innocent until proven guilty, it may be appropriate, in some cases, to withhold the granting of a licence until the matter is resolved. The CCA is likely to withhold the granting of a licence where the charges relate to allegations concerning dishonesty, violence or inappropriate use of firearms.

Where a person has a current licence and has matters pending in the court, the CCA may suspend a licence. Again, the presumption of innocence would apply and suspension is most likely where charges relate to allegations relating to dishonesty, violence or inappropriate use of firearms.

Where a Court convicts a person of a prescribed offence or an offence under the Act, Police can ask the Magistrate to either suspend a licence under section 16(2) or cancel a licence under section 15(2) of the Act. This approach is preferable to reporting the matter to the CCA for suspension or cancellation but unfortunately, this provision is seldom used.

Granting of licences under the Security and Investigations Agents Act 2002

'Fit and proper person'

There is no exhaustive list as to what should be considered in determining whether a person is a fit and proper person. However relevant case law suggests that weight should be applied to those matters that are relevant to the security industry¹.

Accordingly, the CCA will take into account the following factors in determining whether the applicant is a 'fit and proper person.'

- **The activities** which the applicant will be licenced to undertake and whether in the opinion of the CCA the applicant will fulfil his/her obligations as a licensee;
- **The character** of the applicant applying for the licence. This relates to the applicants general behaviour and their regard for the lawful authority.
- The **honesty, knowledge and ability** of the person applying for the licence. This relates to whether improper conduct has occurred, whether it is likely to occur, and whether the general community will have confidence that it will not occur.
- **The prior convictions** of the applicant. This relates to whether the applicant has recent offences for dishonesty, any repeat offences for dishonesty; and whether the prior convictions are significant in number.

Issues relating to the character of the applicant

Minor driving offences such as parking and speeding fines will not ordinarily be taken into account in assessing an application. However, it is the view of the CCA that driving while disqualified, driving without a licence (*Vehicle and Traffic Act* section 8), driving at excessive speed and driving under the influence illustrate a disregard for the law and should be taken into account when considering an application for a licence.

In particular, where an applicant has repeatedly committed such offences, these will be taken into account in assessing the applicant's suitability for a licence.

Similarly, matters relating to violence, including family violence related offences (breaching of a family violence orders and restraint orders under the *Family Violence Act 2004*, section 16) will be considered serious matters that are likely to inform a view that an applicant is not of good character.

Associations

Some other states and territories have provisions relating to associations. Tasmania does not currently have 'associations provisions' but may soon adopt them in line with national policy initiatives. Nevertheless, there is currently an ability to consider associations as part of an assessment as to whether a person is of good character and consequently a fit and proper person to hold a licence.

However, it is not sufficient to demonstrate that a person regularly associates with other persons who are or may be involved in criminal or unlawful activity. If a person associates with other persons it is necessary to demonstrate that they participate in or are likely to participate in criminal or unlawful activity.

¹ *Nathan Joyce v Commissioner for Corporate Affairs (Magistrates Court of Tasmania) (2007) – Chief Magistrate AG Shott. This Tasmanian case specifically dealt with an appeal application of a security guard licence and examined the factors that should be taken into consideration when assessing the applicant's suitability for the role.*

Granting of licences under the Security and Investigations Agents Act 2002

Granting a licence with conditions

The CCA may choose to grant a licence but with conditions. For example, the applicant may have committed relevant offences but is unlikely, in the opinion of the CCA to offend again. In this case, the CCA can impose a condition on a licence under section 13 of the Act and the licence is obliged to comply with condition. A breach of a condition can result in a penalty or the subsequent suspension of a licence.

Summary

The decision to grant or to refuse to grant a licence needs to be made on the basis of a range of matters and can be a complex and difficult decision. Licensees perform important and often responsible roles and the community is entitled to expect that those persons are appropriately trained and are appropriate people for those roles.

While there is clearly a desire for certainty in decisions, it is often difficult to predict how each decision will be made. This document attempt to give some certainty but ultimately, each application presents different challenges that require the exercise of discretion.

Clearly this policy will evolve over time as case law develops in the Courts and as changes are made to the legislation. These changes will also reflect the needs of the national security environment.

g:\business affairs\security agents\commissioners policy statements\guidelines for fit and proper person test.doc