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SECURITY
CONTRACTS
GUIDING
PRINCIPLES

AUSTRALIA-NEW ZEALAND **COUNTER TERRORISM** COMMITTEE
Crowded Places Sub-Committee

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Security Contracts Guiding Principles

Introduction

Private security providers play a central role in protecting crowded places from terrorism. In many cases, private security personnel (including security contractors, consultants and the frontline guarding security officers) are directly responsible for strengthening the security of crowded places. Furthermore, they are often the first responders to any incident. Consequently, they must be well-trained and professional.

These *Guiding Principles* focus on the guarding sector of the private security industry and recognise there are opportunities to strengthen the capability in Australia to help better protect crowded places. Governments have a role in supporting the private security sector to achieve this, including by maintaining a robust regulatory regime around employment, training, and registration (Crowded Places Strategy, 2023, p.9).

These *Security Contracts Guiding Principles* are for crowded places owners/operators across the sector—no matter the size or location—and equally applies to all levels of Government. These should be considered when preparing tenders for or invitations to bid for security contracts and awarding and administering such contracts. This includes transitioning in and out of contracts and what this may mean for owners/operators in a necessarily flexible and agile environment.

These *Guiding Principles* aim to provide a best practice guide to support the *Crowded Places Strategy* and to recognise the important role that security personnel perform, protecting Australia's crowded places from terrorism.

The following Checklist aims to present a range of guiding principles, some of which may be relevant to the type, size, and risk profile of your crowded place. It also illustrates any gaps you may have in your security contract arrangements. It is important to remember that just because a box has been answered in the negative, does not necessarily mean that your present security contract arrangements around that specific issue is defective. However, several negative answers in the same section could illustrate that additional work is required.

Disclaimer: The information provided in this document is intended to be used as general guidance material only and is not provided for any other purpose. It is not intended to provide comprehensive advice. Those organisations and individuals using or relying upon the information contained in this document are deemed to do so in conjunction with their own judgement and assessment considering their particular needs and circumstances.

Many of the questions outlined in the *Guiding Principles* can be incorporated in any contract prepared with the security provider. Any contract should have the flexibility to cover your security requirements and outline the range of security services expected to be undertaken.

Attachment 1 highlights a range of security services you may wish to include in a contract.

Attachment 2 defines some key terms used within this document.

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The following checklist will identify questions for you to consider in what a contract should include. Common errors or pitfalls when failing to consider these may include:

- Failure to conduct thorough due diligence
- Failure to conduct regular audits throughout the life of the contract
- Lack of specific provisions in the contract regarding whether/under what circumstances sub-contracting is allowed
- Lack of flexibility to meet the operating environment
- Lack of supervision to confirm services are being provided to the standard required by the contract
- Lack of an onsite induction
- Lack of disclosure and transparency (for example 'ghosting' – services that have effectively not been supplied)
- Exposure to reputational risk
- Exposure to accessorial liability under S550 of the Fair Work Act 2009
- You sometimes get what you pay for (for example the cheapest tender may come with significant other risks)
- Lack of transitional arrangements within a contract (for example when a new contractor takes over)

Ultimately, you the owner/operator of the crowded place, are responsible for a safe environment. You cannot transfer your risk to a contractor. You still own the risk. However, as these Guidelines hopefully illustrate, you can provide stringent safeguards that mitigate that risk.

It is recommended that owners and operators of crowded places give consideration to membership of peak body or advisory networks, such as the *Australian Security Industry Association Limited (ASIAL)*, to stay abreast of industry information and protections that are available, with access to relevant and helpful resources.

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Guiding Principle 1 – Due diligence

There is a responsibility for employers, or persons engaging security staff or consultants, to ensure that they are appropriately licensed, and have the capability, education, and experience for the function they have been employed to fulfil.

Due Diligence	YES	NO	N/A
Do you know the licensing requirements and any security clearances required for the job to be undertaken?			
Through reference checks, have you verified the contractor holds the appropriate and current licence for the work to be performed?			
Do you know the contractor's qualifications and experience?			
Are you aware of the contractor's professional associations and affiliations, including commercial affiliations (potential conflicts of interest)?			
Have you reviewed publicly available information about the contractor, independent of the application?			
Can the contractor provide evidence of their financial capability to perform the service?			
Can the contractor provide evidence of their operational capability to perform the service, including when there is a surge requirement?			

Guiding Principle 2 – Adherence to Government laws

There is an onus on the provider to be aware of the current laws and regulations in the engagement of security services with an expectation that this is kept up to date.

Adherence to Government laws	YES	NO	N/A
Have you considered key relevant legislation, such as security licensing, employment, payroll, tax, public order, and criminal law?			
Have you considered work, health and safety regulations both nationally and in your state or territory?			
Are you aware of your responsibilities under the <i>Australian Standard AS/NZS 4421:2011 Guard and Patrol Security Services</i> ?			
Are you working within contemporary laws and regulations within your state or territory?			

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Guiding Principle 3 – Supervision and management of workforce

Effective supervision and management of a workforce by a contractor requires active monitoring and possibly intervention by the client.

Supervision and management of workforce	YES	NO	N/A
Have you developed a schedule of the specific security services that are required to be delivered?			
Will you evidence that induction obligations have been met?			
Is there a regular feedback and contractor reporting requirement within the contract?			
Have you established contractual requirements in respect to the contractor's obligations for the supervision of personnel, confidentiality, return of equipment and documents?			
Will there be a process for security personnel to receive induction information onsite?			
Will there be a process for security personnel to receive debriefings after any incident?			
Are you going to provide supervision?			
Can you provide evidence that this will occur?			
Once inducted, will there be opportunities for ongoing training?			
Is there a system in place to ensure you are getting the workforce you are paying for?			

Guiding Principle 4 – Training and professional development

There is a need to ensure the workforce is adequately skilled to undertake roles expected of them, to meet state or territory and/or national standards, as applicable. This will include contractual service requirements and knowledge of any relevant legislation. There is a requirement for continuing professional development and refresher/induction training which may be a cost for you to assess.

Training and professional development	YES	NO	N/A
Will the workforce you are employing/contracting have appropriate training/education/skills for the duties expected of them?			
Will the contract address this?			
Will there be accreditation or a mechanism to recognise specific skills/competencies required?			
Will a training needs analysis be undertaken and updated?			
Will onsite training and education be provided. If so by whom, and, for what purpose?			
Will this training be ongoing throughout the length of the contract?			
Does the contract permit you to deliver training directly to the contractor's personnel?			

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Guiding Principle 5 – Sub-contracting

Multi-level contracting can be risky and is not necessarily recommended. If you are allowing sub-contracting, ensure compliance with award provisions/payments and with industrial and other legislation given you are still responsible for actively managing your contact and holding the risk.

Sub-contracting	YES	NO	N/A
Will sub-contracting be permitted under the terms of the contract?			
Will your contract require them to seek your permission?			
If you intend to allow sub-contracting, the following questions apply:			
Do you have an understanding of sham contracting and are you prepared to call it out?			
Will the sub-contractor be required to provide evidence of the capability to perform the work in accordance with the contract?			
What systems do you have in place to monitor the compliance and performance of sub-contracted services?			

Guiding Principle 6 – Disclosure and transparency

Disclosure and transparency through the lifetime of the contract and by the contractor and workforce should be encouraged and rewarded.

Disclosure and transparency	YES	NO	N/A
Do you keep documentation and records per requirements in your state or territory (e.g., Crowd Controllers or incident register)?			
Do incidents that fall under a Regulatory Event (e.g., close calls, forcible removals) get recorded?			
Do you undertake periodic compliance checks and audits?			
Does the contractor's internal Standard Operating Procedures provide appropriate mechanisms for personnel to disclose impropriety and illegality?			
Are there any legislative reporting requirements to the state or territory security licensing authority in the event of impropriety or illegality and if so, are they supported within the contract?			

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Guiding Principle 7 – Ability to call out wrongdoing

A culture of calling out any wrongdoing is a positive one and should be encouraged.

Ability to call out wrongdoing	YES	NO	N/A
Do you have clear grievance/reporting processes for employees?			
Is there provision of reporting lines outside your organisation/event, for example to a specific regulator?			
To ensure there is no conflict of interest around recommended security products and services, do you require conflict of interest declarations?			
Do you have a process for reporting gifts and benefits?			
Are these policies documented in the formal service agreement with the contractor? Are they aware of their contractual obligations?			

Guiding Principle 8 – Key performance standards within contracts and tenders

When considering contract management, it is important to know what areas (key performance indicators) you require of the contractor to achieve your objectives. KPI's need to be realistic, measurable and achievable.

Key performance standards within contracts and tenders	YES	NO	N/A
Have key performance standards been developed in respect to each area of service within the contract?			
Is there a system in place to actively manage the contract (system, process or procedure)?			
Have you ensured the right within your contract to audit?			
Is the process of managing poor performance documented within your contract including mechanisms for performance management and termination?			
Have penalty clauses within the contract been developed for breaching key performance standards?			
Do you have a schedule for reporting on KPI's (e.g., monthly, written etc)?			
Do you have fee/wage review requirements within the contract?			
Do you understand vicarious liability?			
Do you understand accessorial liability?			

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Attachment 1

A contract could cover these areas of security:

Static guarding - Employment of a security officer at a specified post for a specified period. Static guarding duties include:

- monitoring and controlling entry of personnel and/or vehicles to a site
- concierge/reception duties
- producing and issuing passes to authorised personnel
- searching personnel and their belongings (and operating equipment to conduct searches)
- guarding gates
- inspecting vehicles
- giving directions to people
- answering telephones
- recording times of entry and exit of visitors
- responding to routine and emergency incidents
- on-site and off-site control room operations
- operating, close circuit television (CCTV)
- fire panels/systems, alarm systems and attending incidents
- fire warden/chief fire warden duties.

Patrolling Sites - Includes:

- a mobile security officer to patrol sites, on foot or by vehicle
- a physical presence to deter crime and watching for safety and security.

Patrols can lock up in the evening and open up in the morning. Patrols can inspect doors, windows, and gates for signs of unauthorised entry.

Mail Scanning - Mail scanning includes inspecting and scanning mail or parcels on delivery. Only trained security can scan and inspect, as scanning requires the use of specialist equipment.

Alarm response - Alarm response includes security officers' response to any alarm activation notified to them.

Crowd control for events - Security for a planned event, held in a building or series of buildings or an area of defined open land. This includes general shows, fairs, concerts, sporting events, and public events.

Other security services - Other security services include the following:

- **Corporate/Special events** - Corporate and special events that may need security. Functions and events may occur at any time, can be infrequent and be on weekends or public holidays.
- **Remote locations** - Security can cover remote sites. It can include patrolling perimeters or monitoring sites for safety and security. Security officers are trained to perform this activity and the safe use of any specialist equipment.
- **Surge** - Security services provided on call for an urgent need for security resources.

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Attachment 2

Key Definitions/Terms

Accessorial Liability – occurs when a person or company is involved in the contravention of a workplace law. They are treated the same way as the employer responsible for the contravention.

Ghosting – involves the use of the name and security licence details of a security guard who is not working a shift to secure a financial benefit.

Mutual Recognition – is the principle that a person who is registered in one state or territory for an occupation is entitled to a registration in a second state for an equivalent occupation, after they have notified the second states local registration authority.

Phoenixing – Illegal phoenix activity occurs when a new company, for little or no value, continues the business of an existing company that has been liquidated or otherwise abandoned to avoid paying outstanding debts. <https://asic.gov.au/for-business/small-business/closing-a-small-business/illegal-phoenix-activity/>

Sham Contracting – a sham contracting arrangement is when an employer attempts to disguise an employment relationship as a contractor relationship. They may do this to avoid certain taxes and their responsibility for employee entitlements like minimum wages, superannuation and leave. <https://business.gov.au/people/contractors/contractor-rights-and-protections>

Sub-Contracting – refers to the process of bringing an outside body to undertake certain aspects of the services' contract or interim project. It is a business-to-business relationship where one entity or prime contractor outsources obligations they have with a client to another entity or subcontractor.

Vicarious Liability – when you or your business are held financially responsible for the actions of another person or party. Most commonly, this is the legal framework at play when you are sued over mistakes made by your contractors, employees, or agents.

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