NATURE, RATIONALE, AND EFFECTIVENESS OF SECURITY INDUSTRY REGULATION IN NEW SOUTH WALES, 1985–2014

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I INTRODUCTION

The period from 1985 to 2012 witnessed a progressive transformation of the New South Wales ('NSW') statutory framework regulating the character and conduct of security providers. The significant impetus for legislative change stemmed from the recurrent nature of scandalous events and misconduct allegations that challenged the inadequacies in regulatory coverage.[1] Key documented challenges include the use of non-licensed and untrained personnel, excessive use of force, mishandling of security weapons, misrepresentation of ability to perform a contract, infiltration by organised crime, abuse of authority or negligence, and poor service standards.[2] The legislative prescription aimed at these vulnerabilities, however, has been characterised as either 'patchy' (sector-specific regulation selectively targeting certain risks) or 'abstract' (without sufficient planning and a long-term funding roadmap).[3]

In NSW, since the inception of a licensing regime, the longstanding issue has been devising industry-specific regulatory strategies to deal with the recurring

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1 For a detailed description of the recent reform issues in NSW, see Tim Prenzler and Alastair Milroy, 'Recent Inquiries into the Private Security Industry in Australia: Implications for Regulation' (2012) 25 *Security Journal* 342. On Australia more broadly, see Tim Prenzler and Rick Sarre, 'The Evolution of Security Industry Regulation in Australia: A Critique' (2012) 1(1) *International Journal for Crime, Justice and Social Democracy* 38. See also Rick Sarre and Tim Prenzler, 'Private Security and Public Interest: Exploring Private Security Trends and Directions for Reform in the New Era of Plural Policing' (Report, Australian Research Council, April 2011) <https://www.asial.com.au/documents/item/12>.

2 See generally Prenzler and Sarre, 'The Evolution of Security Industry Regulation in Australia', above n 1.

3 See, eg, the analysis contained in Tim Prenzler and Rick Sarre, 'Regulation' in Martin Gill (ed), *The Handbook of Security* (Palgrave Macmillan, 2nd ed, 2014) 857.

challenges that arise from the 'opportunistic nature of the security employment'.[4] Security providers serve the licensed venues, business precincts, key installations, tourist attractions, mass gatherings, events and locations which are all known to attract the interest of potentially undesirable individuals or organisations. However, the case for the effective regulation of the security industry has often been compounded by the industry's diversifying roles and functions that tend to outpace the progressive build-up of a statutory framework. This is because the security industry is a diverse industry that consists of a range of sectors, tailored to differing demands of private clientele. The entrepreneurial dimension of the industry in NSW includes: general guarding, guarding with a dog, guarding with a firearm, cash in transit, close protection, crowd control, private investigations, locksmiths, security systems installation, monitoring centre operations, security consulting, and security equipment manufacturing and distribution; to mention some of the most popular.

With these challenges in mind, this article explores the passage and implementation pathways of the key pieces of the security industry reform legislation in NSW: the *Security (Protection) Industry Act 1985* (NSW), the *Security Industry Act 1997* (NSW), the *Security Industry Amendment Act 2002* (NSW), and the *Security Industry Amendment Regulation 2012* (NSW). The format of study has been framed chronologically in order to fully demonstrate the evolution of regulatory regimes established by these statutory instruments. The reform eras covered include pre-reform era (pre-1985), the first phase of reform (1985), the second phase of reform (1997–2003), and the third phase of reform (2011 onwards). The purpose of the review is to examine the effectiveness of regulatory approaches and systems in each era of change, and to identify the criteria that can be considered in a model arrangement for managing industry-specific risks.

A research synthesis method was utilised to identify and integrate qualitative materials on turning points and factors specific to NSW that have triggered regulatory changes. The primary qualitative sources were the parliamentary debates, the statutory regulations with their supplementary texts, and government reports containing gap analysis. Information derived from these sources ranged from the official in-depth description of the reform drivers to legal loopholes, funding and other practical issues. These primary sources were integrated with other relevant qualitative materials, notably policy documents, discussion papers, media reports, and industry association resources. These secondary sources provide a reference point for surveying the following circumstantial evidence: the key political drivers of reform; grounds for inclusion or omission of certain provisions; critical issues that attracted media attention in terms of publicity; and controversial elements of the reform provisions from the perspective of the industry stakeholders. Access to these sources was assisted by available

4 See generally R J Bartley, 'Report on the Licensing Aspects of the *Security (Protection) Industry Act 1985*' (Report, New South Wales Business Deregulation Unit, September 1990) 12–14 ('*Bartley Report*'); Tim Prenzler and Rick Sarre, 'Developing a Risk Profile and Model Regulatory System for the Security Industry' (2008) 21 *Security Journal* 264, 274.

electronic databases, including Hansard, the parliamentary library archive, and the Factiva research tool that catalogues current and retrospective documents relevant to NSW private-sector security.

By integrating the above outlined primary and secondary sources, the study aims to construct a more comprehensive picture of the NSW security industry regulatory regimes in the context of policy development and practices, than has previously been available. It should be noted that the approach taken by Parliament and its intent can be difficult to fully unravel, in part due to the complexity of interactions between risk factors and special-interest politics, and further because the reform has spanned several decades. For this reason, close attention is paid to considering the interplay among primary motives for regulation, missed opportunities and the plethora of proposals that paved the way for reform in a chronological sequence. Lastly, it is noteworthy to mention other methods of research that could have been employed, but were not incorporated into the methodological framework, in particular stakeholder surveys and interviews. As the findings section will demonstrate, different stakeholders involved in commercial security provision did not necessarily share common perspectives or priorities on many issues. Likewise, it would be difficult to fully separate competing opinions obtained from small-scale interviews that may not be representative of the industry or political groups. Designing comprehensive survey research would have added more depth to this study. However, such research was outside the scope of this study. In consideration of these issues, it was determined that this study should utilise information derived from official sources in order to maintain a balanced narrative of transitions and turning points in industry reforms.

This article begins by briefly reviewing the nature of industry control from the 1950s through to the 1980s. Upon identifying vulnerabilities in the mandated minimum standards, the focus will shift to surveying the promises and pitfalls of the nation's foremost industry-specific legislation of 1985. The post-1985 advances in reforms are then taken into account by documenting the main pillars of intervention instruments, the merits of new measures, and the methodological approaches pursued. The latter section (2002 onwards) reviews relevant strategies advanced to date against a backdrop of counterterrorism and mutual recognition backlash agendas. The first half covers 2002–11, during which extensive adjustments were made to intelligence policymaking. The remainder covers 2012 onward, a period that witnessed increased parliamentary activism aimed at repealing the contentious interstate licensing scheme. The article closes by discussing the outlook on the most recent reform that called for an overhaul of the licensing agency model.

II PRE-REFORM ERA (PRE–1985)

A Relevant Private Security Legislation

Before 1985 legislation in NSW, only a few security industry-specific reform initiatives had been documented.[5] Between the 1950s and 1960s, several Acts regulating inquiry agents were introduced, notably, the *Private Inquiry Agents Act 1955* (NSW) and the *Commercial Agents and Private Inquiry Agents Act 1963* (NSW).[6] These Acts primarily covered the private investigation sector.[7] Criticism by the courts in relation to covert evidence gathering tactics, such as stalking and use of surveillance equipment, resulted in greater oversight for this particular sector.[8] Conversely, there was little in the way of intervention in other sectors of the industry. Cowan opined that

> until well into the [19]80s obtaining a licence [to practise in the industry] was as simple as filling out a form, paying a fee, and taking it to a local licensing sergeant … after which [one] could strap a gun to [their] hip … go on patrol and provide cash carrying services.[9]

Pre-1985 in NSW, it was common for citizens to own firearms for personal protection or pastoral vermin control, which was made possible due to the exception rule embedded in gun control law.[10] Under the then *Firearms and Dangerous Weapons Act 1973* (NSW), a person was required to hold a licence for possession, in public places, of firearm categories including pistols, antique handguns, blank firing replicas, and the like.[11] However, a licence was not required to possess a firearm on one's own property or on a private property where one had the permission of the landowner to shoot.[12] This meant that private guards – agents of the property owner or occupier – were virtually exempt from regulation, and so too the general population who privately owned guns for protection or recreational use, such as target shooting (where allowed). The background to such an exemption is not clear. However, this may have been a possible concession to the powerful gun lobby which was strongly supported in rural areas, as illustrated by Labor Party member Stanley Neilly's address to NSW Parliament:

> The rifle or long arm industry in New South Wales is a big industry, both directly and indirectly. One indirect benefit is that a person who purchases a weapon

5 For a general overview of the industry's early history, see Rod Cowan, 'Celebrating 40 Years, ASIAL 1969–2009 – Then and Now: Licensing and Training' (2009) 14(4) *Security Insider* 76.

6 See Ministry for Police (NSW), *Issues Paper: National Competition Policy Review: Commercial Agents and Private Inquiry Agents Act 1963* (December 2001) 6–7 ('*Commercial Agents Issues Paper*').

7 See especially Tim Prenzler and Michael King, 'The Role of Private Investigators and Commercial Agents in Law Enforcement' (Trends and Issues in Crime and Criminal Justice Paper No 234, Australian Institute of Criminology, August 2002) 1–2.

8 *Commercial Agents Issues Paper*, above n 6, 15, 26, 34.

9 Cowan, above n 5, 77.

10 New South Wales, *Parliamentary Debates*, Legislative Assembly, 21 February 1985, 3633–4 (Peter Anderson).

11 Ibid 3633 (Peter Anderson); *Firearms and Dangerous Weapons Act 1973* (NSW) s 7.

12 New South Wales, *Parliamentary Debates*, Legislative Assembly, 21 February 1985, 3633 (Peter Anderson).

> would probably buy anything up to [$1000] worth of accessories to go with that weapon so that he may go out in the bush. That includes camping gear, motor vehicle accessories, and even … a change in the style of vehicle, probably to a 4-wheel drive … A lot of that expenditure is in country towns. The effects of too stringent legislation on this industry will probably be felt more in rural areas than in city areas.[13]

Well into the 1980s, gun ownership was considered a part of the 'Australian militia culture', and overly restrictive regulations were unpopular and difficult to enforce.[14] Hence, it seems that the government was overly cautious about imposing greater legislative change. Correspondingly, the guarding sector too remained immune from close scrutiny. However, from 1984, amid scandal over deadly shootouts, more stringent legislative changes became inevitable.

B Milperra Massacre and its Aftermath (1984–85)

NSW firearms reform in 1985 followed the State's worst mass shooting at the time.[15] In September 1984, more than 20 people were injured in a 15-minute gun battle between rival bikie gangs outside a pub car park in Milperra, a suburb of Sydney. One victim, 14-year-old Leanne Walters, was fatally wounded.[16] The Australian Labor Party soon campaigned for sweeping gun control measures resulting in an amendment to the Act, the *Firearms and Dangerous Weapons (Amendment) Act 1985* (NSW), the crux of which was to ban firearms being carried in public (unless a genuine reason was satisfied).[17] A strong push for gun regulation additionally came from insurance industry groups, nursing associations and women's organisations. Judith Walker, a former union secretary and insurance industry accountant, elucidates the rationale for pre-emptive gun controls:

> It has been said … that the bills are a knee jerk reaction to the Milperra massacre. [But] [t]hey are an attempt by all the parties concerned … the finance industry, police, nurses in drug clinics and so on. Those people must suffer stress day by day … knowing that there is a possibility at any time during the day someone may burst through the door with a firearm … [P]eople have been killed in the line of duty, not just police but indeed bank clerks and others.[18]

The reforms to gun regulation, although a by-product of the tragic event at Milperra, served as a catalyst for the licensing control movement in the security sector. The salient features included conditions which required: (a) all firearm users to hold a licence (even if shooting on private property); (b) applicants to justify the genuine reason for obtaining a licence (for example, engage in lawful business involving the use of firearms); and (c) applicants to satisfy a pistol

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13 New South Wales, *Parliamentary Debates*, Legislative Assembly, 6 March 1985, 4316 (Stanley Neilly).

14 New South Wales, *Parliamentary Debates*, Legislative Assembly, 27 February 1985, 3912 (John Dowd).

15 See generally Graeme Blundell, 'Terror in Milperra', *The Weekend Australian* (Sydney), 21 April 2012, 26.

16 '1984: Seven Killed in Sydney Biker Shootings', *BBC News* (online), 2 September 1984 <http://news.bbc.co.uk/onthisday/hi/dates/stories/september/2/newsid_2495000/2495261.stm>.

17 See generally Alex Caine, *The Fat Mexican: The Bloody Rise of the Bandidos Motorcycle Club* (Random House, 2009).

18 New South Wales, *Parliamentary Debates*, Legislative Council, 7 March 1985, 4398–9 (Judith Walker).

safety test.[19] Further legislative reform resulted in the principal security industry legislation: *Commercial Agents and Private Inquiry Agents Act 1963* (NSW). Certain 'security agents' were removed from the definition of 'private inquiry agent' and placed under a separate piece of legislation, the *Security (Protection) Industry Act 1985* (NSW).[20] In bringing forward the legislative framework, the second reading speech states that:

> The provisions of the Security (Protection) Industry Bill will provide for the regulation of persons carrying on or employed in the business of providing security protection for persons or property. This objective will principally be achieved by a licensing scheme … for three classes of licence.[21]

In regard to the classes of licence, the first class provided for the guarding, installation and repair services. The second class applied to firms. Persons in the business of furnishing advice were covered by the third class.[22] As evidenced in the gun control movement, the legislative intent to cover the manned guarding aspect was clear. However, it is unclear how far the regulatory coverage extended over the technical security providers servicing hardware installation and repairs. In the second reading speech, Richard Face, one of the initiators of the Security (Protection) Industry Bill 1985 (NSW), briefly went on to cite an increase in property offences across NSW.[23] On this basis, it could be suggested that the influential insurance groups were behind this change, because they were understandably concerned about the cost of property loss or damage claims, and increasing insurance premiums.

The entire drafting phases of the *Security (Protection) Industry Act 1985* (NSW) took place in less than eight months in an atmosphere of contention.[24] As a matter of fact, the primary legislation (the *Firearms and Dangerous Weapons (Amendment) Act 1985* (NSW)) and the two cognate Acts (the *Security (Protection) Industry Act 1985* (NSW) and the *Commercial Agents and Private Inquiry Agents Act 1963* (NSW)) were declared to be 'urgent' and consequently minimal attention was given to the administrative aspects generally.[25] The complexities embedded in licensing regulations are examined in the following section.

C Legislative Outcomes (1985–88)

In May 1985, the *Security (Protection) Industry Act 1985* (NSW) received royal assent. The Act covered the activities of security officers, bodyguards,

19 New South Wales, *Parliamentary Debates*, Legislative Assembly, 21 February 1985, 3634–5 (Peter Anderson).

20 New South Wales, *Parliamentary Debates*, Legislative Council, 7 March 1985, 4389 (Jack Hallam); see *Security (Protection) Industry Act 1985* (NSW) s 8(2).

21 New South Wales, *Parliamentary Debates*, Legislative Council, 7 March 1985, 4390 (Jack Hallam).

22 Ibid.

23 New South Wales, *Parliamentary Debates*, Legislative Assembly, 27 February 1985, 3871–2 (Richard Face).

24 *Bartley Report*, above n 4, 8.

25 New South Wales, *Parliamentary Debates*, Legislative Assembly, 27 February 1985, 3854 (Terry Sheahan).

consultants, locksmiths, and sellers and installers of mechanical and electronic security devices.[26] As to the pre-entry qualifications, the Act established automatic disqualification criteria for security providers with a conviction in the preceding 10 years relating to indictable offences or offences against the Act.[27] Armoured operatives were additionally bound by the 'good character and repute' criterion under the *Firearms and Dangerous Weapons Act 1973* (NSW) relating to weapons and dangerous articles offences.[28] These screening requirements set by the legislature explain the reasoning behind designating the police service as the licensing authority,[29] given the police service's capacity to monitor the criminal index and firearms registry.

The government additionally provided that an application for a licence must be lodged in person at the police station nearest to the applicant's residence.[30] The rationale was that there would otherwise be 'no chance of local police knowledge having any bearing upon the applicant's suitability to hold a licence'.[31] As to the period of licence validity, all licences were issued for a one-year term only.[32] In other words, if a person held more than one licence, a common renewal date was not given; each separate licence had to be renewed annually with a fresh application.[33] This was to ensure that a new photograph was taken and a full criminal check was conducted.[34] However, the difficulty remained as to how these overlapping vetting tasks could be efficiently reconciled, particularly when coupled with the burden of compliance monitoring.

In terms of training, the *Security (Protection) Industry Regulation 1986* (NSW) required applicants for guarding licence categories to complete a security industry course.[35] By 1990, no safety course had been prescribed under the regulation, being subject to approval by the Commissioner of Police, but by 1995, some prescription had been made.[36] Nonetheless, details of the training requirements remained elusive at the time and were scheduled to commence with the proclamation of the regulations, which ultimately went into effect a decade later with the promulgation of the *Security (Protection) Industry Regulation 1995*

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26 *Security (Protection) Industry Act 1985* (NSW) ss 4 (definition of 'security activity'), 18(1).

27 *Security (Protection) Industry Act 1985* (NSW) s 10(1)(a).

28 *Firearms and Dangerous Weapons Act 1973* (NSW) s 7(6)(a).

29 *Security (Protection) Industry Act 1985* (NSW) ss 3(1) (definition of 'Commissioner'), 10(1).

30 *Security (Protection) Industry Regulation 1986* (NSW) regs 7(1)(a)(i)–(ii). This mirrors the requirements introduced for shooter's licences under the *Firearms and Dangerous Weapons Act 1973* (NSW) at the same time: *Firearms and Dangerous Weapons Regulation 1975* (NSW) reg 6(3)(b), as inserted by *Firearms and Dangerous Weapons Amendment Regulation 1986* (NSW) reg 2(b). See New South Wales, *Parliamentary* Debates, Legislative Assembly, 27 February 1985, 3914 (Richard Amery).

31 New South Wales, *Parliamentary* Debates, Legislative Assembly, 27 February 1985, 3914 (Richard Amery).

32 *Bartley Report*, above n 4, 12–14.

33 Ibid.

34 Ibid 17.

35 *Security (Protection) Industry Regulation 1986* (NSW) sch 6.

36 See, eg, *Firearms and Dangerous Weapons Regulation 1975* (NSW) reg 36I(1), inserted by *Firearms and Dangerous Weapons (Amendment) Regulation 1986* (NSW) reg (a); *Security (Protection) Industry Act 1985* (NSW) s 10(1)(c).

(NSW).[37] The scheduled proclamation of regulations and core competencies was suspended indefinitely due to possible deregulation (de-licensing) of the industry (except for guarding categories) following early complications of implementation.[38] Subsequently, few initiatives directed at either compliance monitoring or enforcement strategy garnered attention.

D Implementation Challenges (1987–90)

The *Security (Protection) Industry Act 1985* (NSW) came into operation on 1 January 1987.[39] Prior to this, the Minister for Police and Emergency Services, Peter Anderson, the Act's initiator, accepted the portfolio for local government in 1986. Ted Pickering, the succeeding minister administering the Act, became increasingly concerned about proper implementation pathways. The perceived problem revolved around the question of administrative unworkability.[40] On this issue, Mr Pickering commented:

> Although there is a nexus between activities under the Act and the policing function, many other considerations are in some respects more attuned to the consumer affairs sphere. For instance, if a device is improperly installed in one's home, that could be because the installer is not properly qualified or trained … The police could obviously build up expertise in that regard, but the accreditation of people for training under certain aspects of the Act does not necessarily gel with the straight-out policing function of officers of the force.[41]

As earlier noted, the Act was declared to be an 'urgent' measure and unilaterally developed without industry consultation.[42] It was argued by Mr Anderson that the review of the reform 'solicited and received input from many parties involved in the industry'.[43] Nonetheless, there was minimal public reporting made available to support this contention. In the *Bartley Report* on the licensing aspects of the *Security (Protection) Industry Act 1985* (NSW), it was noted that '[o]ne thing all industry interviewees agreed was that they were not consulted about the contents of the legislation before it was drafted nor did they know of anyone who had been consulted'.[44]

Industry dissatisfaction with the legislation was apparent within the first 12 months of its coming into operation. This dissatisfaction, as documented by Mr Reg Bartley, a past chair of the Licensing Court of NSW, pertained to the scant police knowledge of the requirements of the Act, and little evidence of interest

37 *Bartley Report*, above n 4, 16. See also *Security (Protection) Industry Regulation 1986* (NSW) reg 8, sch 6; *Security (Protection) Industry Regulation 1995* (NSW) reg 8, sch 6.

38 *Bartley Report*, above n 4, 11.

39 Governor (NSW), '*Security (Protection) Industry Act 1985*' in New South Wales, *New South Wales Government Gazette*, No 186, 5 December 1986, 5907.

40 New South Wales, *Parliamentary Debates*, Legislative Council, 30 March 1993, 907 (Stephen Mutch).

41 Ibid.

42 New South Wales, *Parliamentary Debates*, Legislative Assembly, 27 February 1985, 3854 (Terry Sheahan).

43 New South Wales, *Parliamentary Debates*, Legislative Assembly, 21 February 1985, 3637 (Peter Anderson).

44 *Bartley Report*, above n 4, 8.

among officers on improving regulatory enforcement.[45] As previously noted, the regulations to the Act required that applicants lodge their application at the local police station nearest to the applicant's residence.[46] This provision was designed to best utilise local law enforcement judgment about an applicant's suitability to hold a licence.[47] Nonetheless, it was identified that there were only two designated full-time licensing police officers and four administrative staff in the entire State attempting to enforce the Act.[48] This limited level of staffing meant that applications normally bypassed processing at the local police station.

By 1989, a subsequent remedial measure was under discussion in parliamentary circles to address this staffing issue. The basic concepts were based on the 'side-extension' approaches; that is, doubling the size of the existing full-time staff and/or employing a civilian clerical and administrative workforce.[49] Bartley, who was tasked with gathering and reporting recommendations on a suitable arrangement, dissented from both views in favour of a 'stand-alone' approach; that is, cutting the nexus between the police and the security industry with partial police liaison in character testing.[50] In his report, Bartley considered that the industry would not benefit from police continuing to assume licensing control, adding that police even struggled to keep up with producing photo-licences, which caused significant processing delays, because all licensees being subject to annual renewal and a common renewal option was unavailable for multiple licence holders.[51] In the *Bartley Report*, these systemic management problems were similarly identified in the firearms training domain, the main objective of legislative intervention.

For training purposes, *Firearms and Dangerous Weapons Regulation 1975* (NSW) regulation 36I(1) established conditions that 'an armed security guard shall satisfy an annual test approved by the Commissioner'; and 'an employer of the guard shall ensure compliance with the training requirement'.[52] Based on these conditions, it was an employer's duty of care to their employees to have safety tests carried out, and the Commissioner was held responsible for setting standards. The *Bartley Report* raised doubts about the effectiveness of this training arrangement:[53] 'As of this date no test has been set or approved by the

45 Ibid 14.
46 *Security (Protection) Industry Regulation 1986* (NSW) regs 7(1)(a)(i)–(ii).
47 New South Wales, *Parliamentary Debates*, Legislative Assembly, 27 February 1985, 3914–15 (Richard Amery).
48 New South Wales, *Parliamentary Debates*, Legislative Council, 19 April 1989, 6665 (Ron Dwyer).
49 Ibid 6665 (Ron Dwyer), 6685 (Edward Pickering).
50 *Bartley Report*, above n 4, 17, 23–4.
51 Ibid 14, 17–19.
52 This provision was inserted by the *Firearms and Dangerous Weapons Amendment Regulation 1986* (NSW) reg (a).
53 The *Bartley Report* was referring to the *Firearms Regulation 1990* (NSW) reg 77, which is relevantly identical to *Firearms and Dangerous Weapons Regulation 1975* (NSW) reg 36I(1). The *Firearms Regulation 1990* (NSW) was made after the *Firearms and Dangerous Weapons Act 1973* (NSW) was replaced by the *Firearms Act 1989* (NSW).

Commissioner. Thus the regulation is inoperative. … [I]t must be remembered it is seven years since action was called for'.[54]

It was brought to light that the only firearms training in operation at the time was an instructional course on safe handling, after which the person qualified for a security industry pistol licence.[55] No further assessment was required in relation to testing a person's competency after completion of the initial instruction.[56] Competency evaluation remained the primary responsibility of the employer, not the licensing authority.[57] According to the *Bartley Report*, only two firms provided satisfactory firearms training, as they were the only two with proper facilities.[58]

Given that the core concern of inadequate minimum standards for firearms controls propelled industry reform, the question became whether the police services were the best organisation to administer licensing.[59] Bartley saw no clear merit in the police-based licensing agency model beyond a criminal background clearance. Rather, the licensing process was a subset of administrative affairs that could be handled more cost effectively by a non-sworn civilian regulator.[60] To Bartley, the desirable solution for optimising the administrative complexities was to tighten gun endorsement considerably. The purpose was to require only persons who carry pistols in the course of their duties be licensed and to de-license the rest of unarmed sectors.[61] Bartley's de-licensing recommendations evoked mixed reactions. Some Members of Parliament supported it, while others denounced the approach as the industry legislation had to undergo another overhaul.[62] In a broad sense, some doubts remained as to whether de-licensing would produce better regulation.

III REFORM ERA (1990–99)

A The Mutch Report, March 1993 (1990–93)

The early 1990s saw a lingering controversy over the existing police capacity to properly manage the industry licensing regime.[63] An inquiry led by Mr Stephen Mutch began when, in 1992, the Government Ministerial Advisory Committee received a reference from the Minister of Police and Emergency Services, Mr Ted Pickering, to contribute constructive opinions on a preferred

54 *Bartley Report*, above n 4, 21–2.
55 *Bartley Report*, above n 4, 23. See also Stephen Mutch, 'The Mutch Report: Security (Protection) Industry Report' (Release No 24, November 1993) 2 ('*Mutch Report Summary*') (copy on file with author). The authors have been unable to locate a copy of the original report itself.
56 *Bartley Report*, above n 4, 23.
57 Ibid 27.
58 Ibid 22.
59 Ibid 12–14.
60 Ibid 22–4.
61 Ibid 2, 20.
62 New South Wales, *Parliamentary Debates*, Legislative Council, 30 March 1993, 906–7 (Stephen Mutch).
63 *Mutch Report Summary*, above n 55, 1.

licensing agency model.[64] In regards to the corrective actions taken to ensure proper operation of the *Security (Protection) Industry Act 1985* (NSW), Mutch found insufficient evidence to overturn the earlier observations made by Bartley.[65] He noted that '[t]he devolution of [licensing] enforcement to the Patrol, coupled with lack of knowledge by police officers of the requirements of the Act, with corresponding lack of interest, has resulted in a situation where the Act is being avoided'.[66]

In a parliamentary speech, Mutch then turned to a central rationale for the deliberate rejection of the de-licensing approach: 'Mr Bartley made pertinent points in his report. However, the Committee after discussing the deregulatory aspects, adopted another view'.[67] This decision took into account the changing circumstances in the industry. In the *Mutch Report Summary*, the legislation 'imposing fines where police are called to false or faulty alarms' was cited as a major factor engendering changes to the industry's scale of operations.[68]

1 The Effect of the Fire Brigades Act 1989 (NSW) (1991–92)

The *Mutch Report Summary* highlighted that legislative interference targeting false or faulty alarms distinguishes the pre-1990s and post-1990s industry roles.[69] That said, the trigger for change warrants elaboration. In 1991, Mr Ted Pickering laid out a proposal to amend the *Fire Brigades Act 1989* (NSW).[70] While the *Fire Brigades Act 1989* (NSW) was mainly concerned with fire response, under part 3 division 3, entitled 'Command structure', section 25 imposed a requirement for every member of the police force to recognise duties in connection with brigades 'in respect of the protection of persons from injury or death, or of property from damage when the persons are or the property is endangered by fire'.[71] In discussing the amendment's industry-wide impact, Mutch noted:

> Times have changed. Today a guard might well be performing static duties, but also is more than likely to be on mobile patrol, acting as a first response to electronic alarms, which are often installed by the same security company. Legislation imposing fines where police are called to false or faulty alarms has underlined this first response role of private security personnel.[72]

Given that the supply and maintenance of alarms in general were specialised and serviced by security firms, the legislative action, as underlined in the *Mutch*

64 New South Wales, *Parliamentary Debates*, Legislative Council, 30 March 1993, 906 (Stephen Mutch).
65 Ibid 908 (Stephen Mutch).
66 *Mutch Report Summary*, above n 55, 1.
67 New South Wales, *Parliamentary Debates*, Legislative Council, 30 March 1993, 917 (Stephen Mutch).
68 *Mutch Report Summary*, above n 55, 2.
69 Ibid.
70 See, eg, *Fire Brigades Regulation 1991* (NSW).
71 *Fire Brigades Act 1989* (NSW) ss 25(1)–(3).
72 *Mutch Report Summary*, above n 55, 2.

Report Summary, had been highly influential by prompting private actors to assume responsive and proactive roles.[73]

2 The Mutch Recommendations (1993)

During a January 1993 field trip, Mutch observed a wide range of activities performed by security.[74] Security vehicles en route to checkpoints provided a visual deterrence to security breaches, as well as early detection of emergency events. The nature of private engagement and its implications for policy directives were addressed during a parliamentary speech by Mutch:

> In the Tweed area there are routine breakfast get-togethers with the taxi people and private patrolmen … [I]n another area a radio transmitter connected private security firm cars to a police control room to enable police to act instantaneously on information coming over the [security patrol] airwaves. … [I]ncreasingly the industry is relied upon to provide the first response. … The fact that security guards can be the first line of law enforcement has major consequences for law enforcement. … That is how the industry is developing. Therefore, it is in the interests of the public and security personnel that they be trained to the highest possible efficiency.[75]

With these observations, the following question can be posed: is regulation by a government agency other than the police force the best solution to reform?

The Mutch Committee submitted a report to the NSW Parliament in March 1993. The report considered key issues at stake for facilitating a positive public–private nexus; that is, implementation of standards for police-run training organisations and off-duty 'moonlighting' practices (police security employment).[76] In proposing the need for the assurance measures, the Mutch Committee touched on the following problematic aspects:

> With the consent of the Commissioner, police officers may be employed in the industry while off-duty. Many police officers are employed as security officers and as the providers of education and training in the security protection industry. A major concern of those who made representations to the Committee was that this situation was one in which conflicts of interest invariably arise. … It is easy to understand the concerns that arise when a police officer, who may be employed by a private security company, enforces that Act against a rival security company. In addition, when police officers are responsible for the accreditation of training courses, many of which are delivered by fellow police officers, allegations of favouritism are all too easily made.[77]

With a view to prioritising these concerns, the main recommendation tabled in Parliament was twofold: first, 'the Police Service be relieved of responsibility for the administration and enforcement of the [*Security (Protection) Industry Act 1985* (NSW)]'; and secondly, 'the Government establish a security protection industry commission to report directly to the Minister for Police'.[78] In a

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73 *Mutch Report Summary*, above n 55, 1–2. See also New South Wales, *Parliamentary Debates*, Legislative Council, 30 March 1993, 917–18 (Stephen Mutch).

74 New South Wales, *Parliamentary Debates*, Legislative Council, 30 March 1993, 917 (Stephen Mutch).

75 Ibid 917–18 (Stephen Mutch).

76 New South Wales, *Parliamentary Debates*, Legislative Council, 15 March 1994, 652 (Stephen Mutch).

77 *Mutch Report Summary*, above n 55, 2.

78 New South Wales, *Parliamentary Debates*, Legislative Council, 15 March 1994, 652 (Stephen Mutch).

parliamentary speech, Mutch proposed further review into the security industry to determine whether the police should be relieved of roles other than probity clearance, complaints investigation, and firearms control:

> While I am of the view that serving police can play a role in the security industry … that is on the basis that the administration and enforcement of licensing and standards should be under the control of a separate and demonstrably independent licensing authority.[79]

The Mutch Inquiry subsequently triggered the *Wedderburn Review* by Chief Inspector Wedderburn of the NSW Police Service, who was tasked with drawing up further recommendations for reforms.[80] The result of the *Wedderburn Review*, made in May 1995, was largely conservative about the idea of establishing a commission and recommended the 'continued administration of the Act by the Police Service'.[81] The *Wedderburn Review* stated that 'during the lengthy discussions with the personnel and management involved within the security industry it was evident that there was a willing and eager response for more police involvement in their industry'.[82] Since there was a clear lack of consensus among policy reviewers on the most appropriate regulatory path, the overall direction of reform was largely in limbo, but then a high-profile scandal lent urgency to calls for the reform initiative.

B The *Industrial Relations Commission Report*, February 1995 (1995–97)

Between July and September 1995, nearly two months following the *Wedderburn Review*'s reception, there were outbreaks of armed robberies of cash-in-transit vans at a shopping centre, a mall, and at the credit union at the former Camperdown Children's Hospital.[83] It was later revealed that there was no simulation training given to road crews, nor was it required by the existing regulation to familiarise personnel with possible robbery or siege situations.[84]

In the aftermath, the Minister for Industrial Relations, Mr Jeffrey Shaw, made a reference to the NSW Industrial Relations Commission ('IRC') to inquire into occupational health and safety standards of the industry in general.[85] The inquiry was allocated to Justice Russell Peterson, who advised the IRC in February 1997, following the release of a 449-page document, that '[t]he multi-faceted nature of the industry and the very real [regulatory] doubts … require a more tentative

79 New South Wales, *Parliamentary Debates*, Legislative Council, 6 December 1995, 4157 (Stephen Mutch).

80 Ibid 4156.

81 Ibid 4156–7.

82 Ibid 4157 (Stephen Mutch), quoting Wedderburn, 'Security Industry Review' (New South Wales Police Service, 1995) ('*Wedderburn Review*').

83 New South Wales Industrial Relations Commission, *Reference by the Minister for Industrial Relations Pursuant to s 345(4) of the Industrial Relations Act 1991 Regarding the Transport and Delivery of Cash and Other Valuables Industry* (File No IRC1880/1995, 28 February 1997) 7, 50 ('*Industrial Relations Commission Report*').

84 Ibid 21, 259, 286.

85 Ibid 1–2.

approach'.[86] The doubts seemed to outweigh any privilege the industry may possess to deny some interventionist regulatory scheme. By and large, the legacy of the *Industrial Relations Commission Report* was contributing to the planning and development of a Bill for the second generation legislation, the *Security Industry Act 1997* (NSW).

1 Legislative Scrutiny (1997–99)

The intended purpose of introducing a Bill for the *Security Industry Act 1997* (NSW) was described by the Minister for Police, Mr Paul Whelan, in the following lines:

> At the present there are over 46 000 licensed security personnel in the security industry in New South Wales. This is half the national figure … The choice of Sydney as the venue for the 2000 Olympic Games gives further impetus to the need for these changes. … There is also a need for an integrated approach to policing duties, in the widest sense … For this reason, I have decided that the responsibility for the administration of this legislation will rest solely with the Police Service …[87]

One prominent feature of the second-generation licensing regime was the significantly strengthened screening measure, which included a ban on appeals against decisions on refusal of a licence. This was obviously in recognition of the impending Olympic Games.[88] The primary impetus for the ban on appeals stemmed from dissatisfaction with the perceived leniency of magistrates.[89] One notable case involved a rejected applicant who was subsequently ordered to be given a Class 1A licence that became effective on the day of their release from prison.[90] In the second reading speech, Mr Michael Egan, Treasurer and Vice-President of the Executive Council, stressed that everything possible had been done to stop criminal exposure as far as banning human elements from magistrates.[91] With regard to the targeted licence categories, three occupational domains were newly distinguished: crowd-control and cash-in-transit segments from manned guarding; salespersons (other than sales from approved retail stores) from the hardware division; and trainers from the competency services domain.[92]

The *Security Industry Act 1997* (NSW) commenced on 1 July 1998.[93] During the period between August and October 1998, a number of submissions were made concerning the industry dissatisfaction with the new Act. This dissatisfaction arose from the concept of mandatory disqualification with no chance for appeal. The following matters were brought to the House's attention:

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86 Ibid 23.

87 New South Wales, *Parliamentary Debates*, Legislative Assembly, 19 November 1997, 2088–9.

88 *Industrial Relations Commission Report*, above n 83, 194.

89 Ibid.

90 New South Wales, *Parliamentary Debates*, Legislative Council, 2 December 1997, 2921 (Michael Egan).

91 Ibid.

92 *Security Industry Act 1997* (NSW) s 4 (carrying on 'security activities').

93 Governor (NSW), '*Security Industry Act 1997*' in New South Wales, *Government Gazette*, No 87, 29 May 1998, 3915.

> A number of requests have been made … regarding problems being faced … in relation to the [*Security Industry Act 1997* (NSW)] … because of convictions which, in some cases appear to be minor and date back to the early 1990s. In one case the penalty involved was a fine of $150 and $30 compensation. … Under section 16 of the Act stealing is an offence which requires the commissioner to refuse a licence or to disqualify a licence if the offence has occurred within 10 years of the licence being granted. … Unfortunately, it is impossible for the [Administrative Decisions Tribunal] to consider any subjective elements …[94]

One implication of this dilemma was the shrinking pool of police personnel to cover normal duties over the Olympics Games period. Reiterating the importance of this special issue, the Shadow Minister for Police, Mr Andrew Tink, stated in a parliamentary speech that two potential options were thoroughly explored, that is, asking other states to supply backup security personnel and having retired police perform security tasks. Neither option was pursued due to the obvious interstate portability issues as such an exercise would result in lowering the strengthened legislative standards of NSW, and due to doubts surrounding the capability level of retired police.[95] Reaching a dead end, John Bartlett of the Australian Labor Party, as the State's small business community advocate, called for a win-win proposition. To John Bartlett, the desirable solution would be that this supply issue be resolved through the creation of an interim licence for those requesting reviews:

> The legislation has a very strong retrospective element. I request that in the meantime interim licences be issued to applicants asking for review so that they can continue to ply their trade. … [I]f there has been a conviction of any sort, the commissioner must refuse an application for a licence.[96]

John Bartlett's submission was in line with the Government's continuing review obligation a year following the introduction of the *Security Industry Act 1997* (NSW). His submission met with positive confirmation from a key member, Parliamentary Secretary Bryce Gaudry, that

> when the Government introduced the [*Security Industry Act 1997* (NSW)], the Minister for Police made a commitment to review the Act after 12 months. The Minister has appointed me to chair that review. I assure the honourable member [John Bartlett] that the issues he has raised will be included in the review of the Act.[97]

2 Disputes with Fee Structure

Meanwhile the Legislative Council was dealing simultaneously with the backlash against the allegedly hefty fee structure. The new Act introduced a five-year fixed licence term and a tenfold fee increases for operatives ($350). The costs incurred in setting up and maintaining the Security Industry Registry ('SIR') of the police service and the interstate background check system were the

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94 New South Wales, *Parliamentary Debates*, Legislative Assembly, 9 September 1999, 234 (John Bartlett).

95 New South Wales, *Parliamentary Debates*, Legislative Assembly, 18 November 1999, 3331 (Bradley Hazzard).

96 New South Wales, *Parliamentary Debates*, Legislative Assembly, 9 September 1999, 235 (John Bartlett).

97 Ibid (Bryce Gaudry).

cited reasons for such an increase.[98] During the parliamentary debates held in September 1998, the rationale that had shaped the cost layout was refuted. The Liberal Party Deputy Chair, the Hon John Ryan addressed the perceived problem as follows:

> We are told that the fees must increase because there is a cost involved in collecting the licence fees. That is true, but I do not know that for each individual licence the fee collection needs to involve a cost of $330. … We are told also that criminal records checks will be very expensive. … [C]riminal Records checks … are at least as extensive as those that operate in the child-care industry … [which] involve a fee of $30 per person – not $330 per person.[99]

Mr John Ryan also pointed out that the issue of pre-entry training expenses mostly went unheeded by the House:

> a person [becoming a security guard] … has to complete a course of study costing between $200 and $250. … [A] person then has to pay another $330 to get his or her ticket to operate in the industry. … In what other job would a casual worker expect to pay over $500 before walking through the door to start the job and finding out what it is like? … It is said that fees have not increased for 13 years; equally, the inflation rate has not increased by 1000 per cent in that period of time. … I ask the Government and the Police Service to consult again and produce a fee regime that is fair … An individual fee of about $60 would more than cover the specific costs involved in registering each security employee.[100]

During the proceedings, Mr John Hannaford, Leader of the Opposition in the Legislative Council, rallied in support of Mr Ryan, stating that:

> Simple mathematics show that the amount the Government will gain from this regime is $20 million. Do honourable members really believe that it will cost $20 million each year to licence people in this industry, or is the Government using this fee as a means to gain revenue? … The Government could introduce an amending regulation overnight to provide for a one-year licence at a cost of $35.[101]

Despite the Hon John Hannaford's efforts, successful negotiation did not take place overnight, but continued through to November 1998. Eventually, with the security industry and industry unions' support, resolution was reached for two options: a one-year licence costing $85, or a five-year licence costing $350.[102] However, because the Opposition disallowed the whole clause,[103] the Government was not able to pass a new regulation on fees within the four-month time frame required under the *Subordinate Legislation Act 1989* (NSW) section 8. The Government thus chose to handle all arrangements at one sitting to avoid any further amendments and confusion,[104] especially regarding the training program

98 New South Wales, *Parliamentary Debates*, Legislative Council, 23 September 1998, 7775 (Janelle Saffin).

99 Ibid 7777 (John Ryan).

100 Ibid 7777–8 (John Ryan).

101 Ibid 7779–80 (John Hannaford).

102 New South Wales, *Parliamentary Debates*, Legislative Council, 12 November 1998, 9800 (Jeffrey Shaw).

103 New South Wales, *Parliamentary Debates*, Legislative Council, 23 September 1998, 7772.

104 New South Wales, *Parliamentary Debates*, Legislative Council, 12 November 1998, 9800 (Jeffrey Shaw).

for security throughout the Olympic Games. The following section assesses the outcome of the parliamentary committee meeting held a year later.

C The *Security Industry (Olympic and Paralympic Games) Act 1999* (NSW)

Members of the NSW Parliament convened on 18 November 1999 and 30 November 1999 for the Legislative Assembly and Legislative Council meetings. The core purpose of the sessions concerned three arrangements for security for the Olympic Games: a disqualification standard, a training strategy, and an implementation plan. Parliamentary Secretary, Reba Meagher, delivered the decision by the Government to introduce the *Security Industry (Olympic and Paralympic Games) Act 1999* (NSW) to address these needs:

> The key challenge to be addressed is to provide the security industry with a practical method of supplying a large number of security personnel who are licensed and trained to the appropriate standard for security and patrolling duties … It is proposed that this supply issue be resolved through the creation of an Olympic security licence … with a four-month validity, that is, for use between 1 August 2000 and 30 November 2000.[105]

The Government's decision to introduce the interim licensing arrangement arose from the following causes. First, the Members of Parliament decided that there would be no compromise in disqualification standards pursuant to the *Security Industry Act 1997* (NSW), reasoning that '[c]lose scrutiny of the background of licensees is one of the main features of the security industry legislation and particularly important during the Olympics'.[106] Accordingly, the interim licence aimed to provide a means of expanding the pool of personnel by enabling those who lacked the full competencies, but were otherwise suitable enough, to be granted an interim licence.[107] As such, the focal point of the proceeding was to present a method for alleviating this 'skills gap' issue. Andrew Tink followed Parliamentary Secretary Reba Meagher, presenting the action plan and strategic goal. With regard to the action plan, Minister Tink noted:

> While the training will be rigorous, it does not necessarily fully equate with the training required for a fully licensed guard under present arrangements. … [T]he Olympic and Paralympic sites are broken up into precincts, and … those precincts will be under the control of the Police Service, and they are tendered out to the private security industry for the provision of a wide range of security services … This measure, I understand, will provide a flexible arrangement to attempt to fill a gap in security personnel that currently exists.[108]

In support of the overall strategy, Mr Andrew Tink assured that, while there was no illusion about the daunting challenges that lay ahead, these challenges would be overcome through long-term partnership approaches. In his closing speech, he shared a vision for a partnership:

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105 New South Wales, *Parliamentary Debates*, Legislative Assembly, 18 November 1999, 3251 (Reba Meagher).

106 Ibid.

107 Ibid 3329 (Andrew Tink).

108 Ibid.

> whilst those qualifications alone will not of themselves lead to formal recognition of those people in the security industry long term, the training and qualifications that they undergo to obtain those [interim] licences will be taken into account as part for more formal qualifications that will hold them in good stead in the security industry …
>
> We really ought to keep an open mind about other ideas that may assist to ease the load on serving police officers. … I have every confidence that the police will do the job well and will be well supported by the security industry. … I hope they all come through it safely, and provide the best Games that we have ever seen.[109]

Part IV reflects on the event's strategic implications and revisits the ripple effect of the strengthened private-sector capacity.

IV SECURITY PERSONNEL EMPOWERMENT MOVEMENT (2000–01)

The Olympic Games were safe from security incidents.[110] Following the successful hosting of the Games, there was a range of positive initiatives launched, which aimed to capitalise on a greater capacity of trained security personnel, as well as allow more legal powers to assist them to perform their duties.[111] In April 2001, a major initiative to clarify the functions and powers for these security personnel came with a push for the Police Legislation Amendment (Special Constables) Bill 2001 (NSW) by the Minister for Police, Mr Paul Whelan. The intended purpose of the Bill was to abolish the office of special constable from 2002 and transfer its functions to special constable-type guards.[112] Mr Whelan, in commending the Bill to the House, emphasised the need for a new direction:

> Let me make it clear that special constables are not and never have been beat police. The role special constables perform in the community is a limited one. Their role is either to perform security duties, like those performed by environmental rangers, parking patrol officers and security guards. At law, special constables currently have the same powers and immunities as police. They carry firearms without a licence and may arrest people upon suspicion. They are theoretically able to use these powers. I say 'theoretically' because it would not be tolerated by the community and by their employers, for special constables to act as if they were police.
>
> Agencies employ special constables to perform specific duties, such as ensuring the security of buildings or public areas. Non-government organisations employ security guards to perform these functions. Honourable members would have it that the security of New South Wales will be at risk following the abolition of the office of special constable. However, this is clearly not the case. The Bill will clarify the functions and powers of officers performing regulatory and compliance

109 Ibid 3329–30 (Andrew Tink).

110 New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 November 2002, 6870 (Andrew Tink).

111 New South Wales, *Parliamentary Debates*, Legislative Assembly, 19 September 2001, 16 828 (Paul Whelan).

112 New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 June 2001, 14 848.

> roles in New South Wales. It is time to repeal this remnant of a nineteenth century concept, which is outmoded in the millennium.[113]

Mr Whelan's efforts to push through the Bill were eventually halted. In the same year, a major scam was uncovered within Chubb, Australia's leading security service provider. It was revealed that, to boost margins, Chubb overcharged customers for non-existent services or services delivered under different standards, through third-party subcontracting.[114] This scandal prompted questions about the maturation of the industry, and the overall direction of industry reform beyond the 2000 Olympics. The year 2001 also saw a worrying trend of deterioration in service quality, plagued by slow alarm response times.[115] No major firms came close to achieving an average response time of 15 minutes.[116] In 1999, a 15-minute response time was part of the services agreement.[117]

Under the NSW five-year statutory review policy, the *Security Industry Act 1997* (NSW) was due for its first major review.[118] Given the unfavourable circumstances, it seemed implausible that the time had come to pass a conservative statutory instrument (in terms of security personnel empowerment outreach), as exemplified through the subsequent disallowance of the Police Legislation Amendment (Special Constables) Bill 2001 (NSW). The security industry was still perceived as immature to be granted special power or privilege. The unforeseen coordinated terrorist events of 11 September 2001, however, radically shifted the pace and direction of reforms in favour of private security.

V COUNTERTERRORISM POLICYMAKING (2002–03)

The use of a 'plane missile' by terrorists to destroy the World Trade Center in New York signalled an age of uncertainty for public safety.[119] The impetus for the *Security Industry Amendment Act 2002* (NSW), which would formally broaden the scope of licensable activities across public service domains such as airports, critical infrastructures, government buildings, and key assets, resulted from NSW Premier Bob Carr's determination to expand counterterrorism operations. As

113 New South Wales, *Parliamentary Debates*, Legislative Assembly, 19 September 2001, 16 828 (Paul Whelan).

114 New South Wales, *Parliamentary Debates*, Legislative Assembly, 6 June 2001, 14 539 (Diane Beamer).

115 New South Wales, *Parliamentary Debates*, Legislative Council, 26 June 2001, 15 318 (Patricia Forsythe).

116 Ibid.

117 Ibid.

118 *Security Industry Act 1997* (NSW) s 52; New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 November 2002, 6871 (Andrew Tink), quoting Fascimile from Larry Circosta to Andrew Tink, 14 November 2002.

119 Steve Hendrix, 'F–16 Pilot Was Ready to Give Her Life on Sept 11', *The Washington Post* (Washington, DC), 8 September 2011, 1.

members of Parliament stated, 'dumped vehicles must now be viewed as a safety risk'.[120] In presenting the Act's intent, Mr Andrew Tink stated:

> The Government claimed that the 1997 legislation was comprehensive, but it was obviously nothing of the sort. … [It] was designed to enhance the security industry in the lead-up to the Olympic Games. One is left with the uncomfortable conclusion that the Olympic Games was free from any security crisis by default, rather than by any active preparation and planning …[121]

The assurance measures of the Act, from Andrew Tink's speech, referred to the five main pillars of intelligence (counterterror-oriented) policymaking. The main features are discussed in the five sections following, providing a brief description of each measure and legislative intent.

A Ballistic Testing of Firearms

Random ballistic testing was introduced because of the need for frontline police to be able to identify whether carriage of a firearm by a guard was bona fide.[122] For example, armed '[i]ndividual guards, if questioned by police, may simply claim that they [were] on their way to their place of work'.[123] However, a search warrant was required to perform forensic testing, which might have allowed time to 'lose' firearms.[124] These gaps were closed by introducing the following rules: security personnel must be wearing their security uniform while carrying their security firearm; special authority must be issued for the carriage of firearms out of uniform; any modifications made to firearms must be reported and tested against the NSW Police Integrated Ballistic Identification; and random ballistic testing of security industry firearms shall be conducted at any time and without notice (to enable the police to readily verify storage status, unlawful usage, and loaning of firearms).[125]

B Australian Citizenship

The perceived need for the citizenship or permanent residency requirement arose from two causes. Members of Parliament raised the issue that 'the requirements for obtaining a visa do not include … extensive criminal record checks' in the first place; and '[t]he administrative costs associated with obtaining criminal history checks on all overseas applicants are prohibitive'.[126] The NSW Parliament believed that these new conditions would be able to address these issues: a security licence holder must meet permanent resident status; a person is to be granted permanent resident status if his or her continued

120 New South Wales, *Parliamentary Debates*, Legislative Assembly, 21 September 2001, 17 036 (Peter Debnam).

121 New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 November 2002, 6870 (Andrew Tink).

122 New South Wales, *Parliamentary Debates*, Legislative Council, 21 November 2002, 7320 (Ian MacDonald).

123 Ibid.

124 Ibid 7321 (Ian MacDonald).

125 Ibid 7320–1 (Ian MacDonald).

126 Ibid 7324 (Ian MacDonald).

presence in Australia was not subject to any limitation as to time imposed by or in accordance with law;[127] and those persons who were not currently residents would be allowed to continue until their licence expires, and no new licences would be issued to non-residents.[128]

C Mandatory Fingerprinting

Electronic fingerprinting and digital photographing requirements were initiated to counter identity fraud. In particular, '[p]olice [had] identified a pattern of applications to be made by persons who [had] legally changed their name, in order to circumvent the criminal records checks'.[129] The major issue for police was that applicants with a disqualifying criminal history could not be identified unless each special reference was successfully lodged to the registry, as without such consent, the database was prohibited from police release, on privacy grounds.[130] To simplify this time-consuming task, an amendment was made to section 18 of the *Security Industry Act 1997* (NSW) to provide for mandatory fingerprinting (LiveScan electronic fingerprinting) and photographing (PhotoTrac digital photographing) of all applicants and licence holders.[131] The PhotoTrac capability would assist operational police to validate whether a licence had been forged or altered falsely. The matching LiveScan fingerprinting and the relevant records were to be profiled in the police database during the course of security employment.[132]

D Discretionary Interpretation of the 'Fit and Proper' Person Grounds

Previously, the definition of a 'fit and proper' person under the section 15 of the *Security Industry Act 1997* (NSW) carried no precise meaning.[133] The issue was that the regulatory regime had no answer for those who were suspected but not charged or convicted of offences, or accused of ties to other criminal activities including terrorism.[134] This vulnerability in the Act was addressed with the following clarified definition: 'persons who are know [sic] to have extensive links to organised crime figures, who are … suspected of offences relating to drug trafficking, murder or other violence offences, should be regarded as 'not fit and proper' to hold a licence'.[135]

127 Ibid 7325 (Ian MacDonald).
128 Ibid.
129 Ibid 7321 (Ian MacDonald).
130 Ibid.
131 Ibid 7322 (Ian MacDonald).
132 Ibid.
133 Ibid.
134 Ibid 7322–3 (Ian MacDonald).
135 Ibid 7323 (Ian MacDonald).

E Powers of Seizure and Questioning

Lastly, the *Security Industry Amendment Act 2002* (NSW) dealt with granting the police licensing authority greater discretionary powers.[136] Previously, police were legally prevented from removing records from firm premises for external copying if the master (employer) licence holder refused permission.[137] In order to facilitate prompt access to records, the power of the licensing officers was expanded to circumstances where

> they consider it necessary to do so for the purposes of obtaining evidence of the commission of an offence, [to be able to] seize any registers, books, records or other documents relating to the business conducted by the master security licence holder and [to be able to] require any person to answer any question relating to any such registers, books, records or other documents or any other relevant matter.[138]

VI THE EFFECTS OF FIREARMS AND PROBITY ENFORCEMENT, AND UNRESOLVED ISSUES (2003–07)

Despite the important steps taken to transform the regulatory regime, an underlying problem remained: the need for more active engagement in auditing and monitoring practices.[139] These gaps in regulatory oversight had begun to be addressed in 2003 with a more determined response in a bid to tackle recurring and emerging challenges.

In 2003, 'embarrassing' episodes of firearms theft hit the State.[140] Army-operated museums and military supply centres were targeted for assault rifles; police storage facilities and vehicles were targeted for semiautomatic revolvers; and the most effortless and handy targets of all – security firms' safes and guards – were targeted for handguns.[141] By November 2003, out of the approximate 4000 firearms registered in the security industry, 59 handguns had been stolen from firms' premises and 17 from guards.[142] The spate of incidents led the NSW Minister for Police to conduct statewide audits to restrict access to firearms by those who could not demonstrate a genuine need to be armed.[143] By June 2004, more than 1000 guns were removed from the industry that had been at risk of being lost or stolen.[144] In addition, by September 2004, the Police Licensing Authority had revoked 435 security licences, rejected 5562 applications, and did

136 Ibid 7320–1 (Ian MacDonald).
137 Ibid 7321 (Ian MacDonald).
138 Ibid.
139 See also Prenzler and Sarre, 'The Evolution of Security Industry Regulation in Australia', above n 1, 42.
140 New South Wales, *Parliamentary Debates*, Legislative Council, 3 July 2003, 2768 (David Oldfield).
141 Ibid.
142 New South Wales, *Parliamentary Debates*, Legislative Assembly, 11 November 2003, 4698 (Joseph Tripodi).
143 New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 October 2004, 11 701 (John Watkins).
144 Ibid.

not renew more than 17 000 licences, consistent with the five-pillar screening policy that included mandatory fingerprinting and background checks for all security personnel.[145] These figures represent a major change to the nature and quality of licensing regulation.

In spite of significant progress during 2003 and 2004, some questions about monitoring practices needed to be answered in the wake of the Warnborough University bogus degree scandal in 2003 and Karen Brown armed robbery shooting incident in 2004. In short, in 2003, Warnborough University, a company not accredited as a university, operating out of Newcastle, was indicted for offering a bogus security degree for $12 000 – the Bachelor of Applied Science Degree in Security Investigations and Risk Management.[146] A subsequent probe found that counterfeit university crests and degrees were readily available from more than 40 different sources.[147] These discoveries led to the adoption of a $22 000 penalty for supplying non-genuine degrees, transcripts or serials specific to the security industry (up from $550).[148] In addition, all security-relevant degree providers were required to be approved by the Department of Education and Training, and made accessible through a departmental website.[149]

In July 2004, in another major case, an assaulted cash-in-transit guard, Karen Brown, shot dead a fleeing robber outside a hotel in alleged self-defence.[150] The guard was 'alone, plain-clothed, lacked an armoured vehicle and was carrying cash well above the set limit'.[151] The Karen Brown case also instigated the penalty regime aimed at what Anthony Kelly described as 'Dodgy Brothers Security, [those] who strap some saucepans to their car and call it an armoured vehicle', with a maximum monetary penalty of $110 000 for a firm, and either or both of a $55 000 fine or two years' imprisonment for a person.[152] Nevertheless, a more systematic change was required to ensure that persons who carry out high-risk activities were appropriately instructed and supervised.[153] The *Security Industry Amendment Act 2005* (NSW) and *Security Industry Regulation 2007* (NSW) took into account these and other unresolved issues.[154]

Overall, the main elements of 2005–07 reform were:

145 New South Wales, *Parliamentary Debates*, Legislative Assembly, 14 September 2004, 10 857 (John Watkins).

146 New South Wales, *Parliamentary Debates*, Legislative Assembly, 27 May 2003, 1160 (Andrew Refshauge).

147 Ibid.

148 Ibid.

149 Ibid 1160–1 (Andrew Refshauge).

150 See Rick Sarre and Tim Prenzler, *The Law of Private Security in Australia* (Lawbook, 2nd ed, 2009) 232.

151 Les Kennedy, 'Guard Cannot Remember Shooting Her Attacker', *The Sydney Morning Herald* (Sydney), 28 July 2004, 5. See also, Tim Prenzler and Rick Sarre, 'Protective Security in Australia: Scandal, Media Images and Reform' (2008) 3(2) *Journal of Policing, Intelligence and Counter Terrorism* 23, 27.

152 New South Wales, *Parliamentary Debates*, Legislative Council, 23 June 2005, 17 439 (Anthony Kelly).

153 Ibid.

154 New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 October 2004, 11 701–2.

- licensing of previously unregulated sectors (guard dog holder, monitoring centre operator, loss prevention officer, barrier security equipment specialist);[155]
- mandating high-risk sector applicants to satisfy twelve-month provisional licensing (under the direct supervision of a full licence holder);[156]
- providing for certain offences in relation to security recordings, impersonating a licensee, false qualification certificates,[157] and breaching training organisation approval conditions;[158] and
- tightening certain conditions in relation to master licences (for example, the holder of a master licence must take out public liability insurance in certain circumstances, must keep records in relation to licensees employed by the master licensee, must keep an incident register and must also ensure that vehicles used for cash in transit activities are properly equipped).[159]

A year later, in 2008, these reform measures had been largely put in place. However, the greater effect of these developments was neutralised by the national mutual recognition exercise and its backlash.

VII ANTI CO-REGULATION AND HARMONISATION MOVEMENTS (2008–2011)

In July 2008, the Council of Australian Governments ('COAG') agreed to adopt a nationally consistent approach to the regulation of the security industry after more than a decade of reforms across all jurisdictions.[160] The intergovernmental agreement meant another major step forward on the path to increased consistency in industry regulation but a backward step for NSW, as was voiced by Premier Morris Iemma.[161] But then, COAG was unable to reach agreement on a nationally consistent approach to security industry licensing at the time. The scope for mutual recognition had, in turn, been limited to an

155 *Security Industry Amendment Act 2005* (NSW) sch 1 item 4, amending *Security Industry Act 1997* (NSW) s 4; *Security Industry Amendment Act 2005* (NSW) sch 1 item 13, *Security Industry Act 1997* (NSW) s 11(1); *Security Industry Amendment Act 2005* (NSW) sch 1 item 14, amending *Security Industry Act 1997* (NSW) s 12(1).

156 *Security Industry Regulation 2007* (NSW) reg 19, repealed by *Security Industry Amendment Regulation 2012* (NSW) sch 1 item 23.

157 *Security Industry Regulation 2007* (NSW) reg 15 repealed by *Security Industry Amendment Regulation 2012* (NSW) sch 1 item 14.

158 *Security Industry Regulation 2007* (NSW) reg 43–5.

159 *Security Industry Regulation 2007* (NSW) reg 35–8.

160 Council of Australian Governments, *Council of Australian Governments' Meeting: Sydney* (Communique No 22, 3 July 2008) 11.

161 Phillip Coorey, 'Premier Muscles up to Bouncers, without Irony Supplement', *The Sydney Morning Herald* (Sydney), 14 April 2007, 6 See also, Prenzler and Sarre, 'The Evolution of Security Industry Regulation in Australia', above n 1, 45.

interstate licensing scheme, and therein lay the crux of the problem. By November 2009, the scheme was open to widespread abuse and exploitation.[162]

As noted above, 12-month provisional licensing was introduced in NSW in 2007 to provide a pathway for new applicants to enter the high-risk manned guarding sector under direct supervision. However, the need to provide that supervision led to reluctance by businesses to employ provisional licensees.[163] This reluctance motivated many new NSW applicants (and applicants for renewal of licences) to obtain interstate licences from low-level-check states, particularly the Australian Capital Territory and Queensland, to bypass a range of regulations enforced by the Security Industry Registry ('SIR') of the police service in NSW.[164] The regulations that could be bypassed in other states included requirements for national fingerprint-based background checks, permanent residency status, longer training and assessment.[165] The basic problem was that, despite knowing the issues involved, SIR had no alternative but to grant a NSW licence if the applicant satisfied the interstate licensing requirements; that is, they have an equivalent licence and were not subject to disqualification.[166]

Between 2008 and 2009, concerns emerged following rising reports of an alleged influx of hierarchical and highly organised gangs into the Sydney night-time economy.[167] By 2009, the Australian Crime Commission had completed a two-year national investigation into the security industry. The intelligence operation uncovered how criminal enterprises had moved into the industry in all mainland states, and were involved in the supply of party drugs, illicit goods smuggling and distribution, and money laundering.[168] Also in 2009, one major NSW government-instigated inquiry into the industry found that at least three training organisations registered with the Vocational Education and Training Accreditation Board were providing certificates for a fee, including a first aid certificate.[169] By August 2011, the inevitable government response to these problems was to order a major review of the mutual recognition arrangement with the passing of the *Statute Law (Miscellaneous Provisions) Act (No 2) 2011* (NSW). This Act contained allowance provisions consequent to replacing SIR with the Security Licensing and Enforcement Directorate ('SLED') model.[170]

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162 Ibid.

163 New South Wales, *Parliamentary Debates*, Legislative Council, 13 June 2012, 12 644 (Michael Gallacher).

164 New South Wales, *Parliamentary Debates*, Legislative Assembly, 27 November 2009, 20 170–1 (Anthony Stewart).

165 Ibid.

166 Ibid 20 170 (Anthony Stewart), quoting New South Wales, *Parliamentary Debates*, Legislative Assembly, 30 June 1992, 4803 (John Fahey).

167 New South Wales, *Parliamentary Debates*, Legislative Council, 2 April 2009, 14 343–4 (Frederick Nile).

168 Australian Crime Commission, Submission No 8 to Parliamentary Joint Committee on Law Enforcement, *Inquiry into the Adequacy of Aviation and Maritime Security Measures to Combat Serious and Organised Crime*, 9 November 2009, 7–10.

169 Independent Commission Against Corruption, *Report on Corruption in the Provision and Certification of Security Industry Training* (Report, 9 December 2009) 17–18.

170 *Statute Law (Miscellaneous Provisions) Act (No 2) 2011* (NSW) sch 1.

VIII POST-HARMONISATION ADJUSTMENTS AND REMAINING AGENDAS (2012 ONWARD)

In November 2012, with the establishment of the SLED, NSW carried out a number of changes to challenge interstate licensees and controlled groups operating in the industry, and to assure appropriate oversight of registered training providers. The reforms included the introduction of a palm-print clearance requirement;[171] removal of the provisional licensing arrangement (in order to 'significantly reduce the number of mutual recognition interstate licence applicants');[172] empowerment of the civilian inspection officer to the level of sworn officer;[173] and strengthened supervision of registered training providers (SLED-approved training organisations).[174] The movement to a SLED-approved registered training organisations ('RTOs') model followed withdrawal from the commitment to maintaining a co-regulatory partnership with the industry which dated back to 2005. Co-regulation entailed compulsory membership by security firms of professional associations which conducted independent compliance reviews. The decision to shut down the system was based on an unpublished review by Deloitte, and the action was interpreted as an attempt to scapegoat the industry for regulatory failures largely attributable to government inaction.[175]

Progress notwithstanding, in terms of compliance and verification, a number of issues were ongoing from 2005. One concerned the stalled introduction of a drug testing regime. Implementation was delayed initially because of the alleged substantial time and resources burden likely to be incurred by the licensing authority, and later by the supposed success of the three-strikes disciplinary scheme (through random or targeted auditing). That scheme forced employers, contractors and subcontractors to maintain a clean, audit-ready environment, or risk being shut down.[176] Another area lacking sufficient attention by the government after 2005 was psychological testing of crowd controllers, despite prolonged lobbying by the Christian Democrat Party MP, Mr Gordon

171 *Security Industry Amendment Regulation 2012* (NSW) sch 1 item 31, amending *Security Industry Regulation 2007* (NSW) reg 21(3)(b).

172 *Security Industry Amendment Regulation 2012* (NSW) sch 1 item 4, amending *Security Industry Regulation 2007* (NSW) reg 24(1). See generally New South Wales, *Parliamentary Debates*, Legislative Council, 19 June 2012, 12 956 (Steve Whan).

173 *Security Industry Amendment Regulation 2012* (NSW) sch 1 item 39, repealing *Security Industry Regulation 2007* (NSW) reg 39. See also Sarre and Prenzler, 'Private Security and Public Interest', above n 1, 37–8.

174 *Security Industry Amendment Regulation 2012* (NSW) regs 31, 36–39, 42. See generally, New South Wales, *Parliamentary Debates*, Legislative Council, 13 June 2012, 12643–5 (Michael Gallacher); New South Wales, *Parliamentary Debates*, Legislative Council, 19 June 2012, 12 960–3 (Charlie Lynn); New South Wales, *Parliamentary Debates*, Legislative Council, 19 June 2012, 12 963–4 (Michael Gallacher). See generally Prenzler and Sarre, 'The Evolution of Security Industry Regulation in Australia', above n 1, 46; Sarre and Prenzler, 'Private Security and Public Interest', above n 1, 37–8.

175 See Sarre and Prenzler, 'Private Security and Public Interest', above n 1, 37–8. See also Nick O'Malley, 'The Tough Business of Cleaning up Security', *The Sydney Morning Herald* (online), 1 October 2011 <http://www.smh.com.au/nsw/the-tough-business-of-cleaning-up-security-20110930-1l1g2.html>.

176 Sam Ekinci, *Violent Venues and 'Three Strikes' Disciplinary Scheme* (6 June 2014) Allied Risk Solutions <http://www.alliedrisk.com.au/violent-venues-menu/item/40-violentvenues>.

Moyes. The implementation of this policy was set back because the NSW Legislation Review Committee believed the program depended on the willingness of the applicants to disclose comprehensive and candid information and was therefore dubious.[177] There was also a setback in relation to attempts to curb criminal associations, which extended to security providers, when the High Court found the *Crimes (Criminal Organisations Control) Act 2009* (NSW) invalid.[178] The decision necessitated amendments and the passage of the *Crimes (Criminal Organisations Control) Act 2012* (NSW) in 2013, prohibiting forms of association between controlled members of declared organisations.[179]

IX DISCUSSION AND CONCLUSION

This article has charted the main changes in the compulsory security industry licensing regimes in NSW, starting with the 1950s pre-reform era and closing with the case for harmonisation. The focus of review was on providing exploratory evidence on the drivers and determinants of licensing reforms in each era of change, and on examining the effectiveness of instructive responses generated in relation to different sets of problems. Special attention was paid to the crisis-driven changes to the security industry licensing regulations and unforeseen challenges that emerged through the implementation and enforcement processes. The issue of regulatory challenges was linked to several factors including illegal bugging operations involved with private investigators,[180] mishandling of weapons,[181] fraudulent misrepresentation of patrol and alarm monitoring services by firms,[182] unauthorised subcontracting practices,[183] corruption in security guard training,[184] criminal infiltration by organised crime,[185] and manipulation of mutual recognition licensing scheme.[186]

While reviewing these areas of risk, particular attention was paid to the evolving form of regulatory strategies developed to overcome the shortcomings identified in the different licensing regimes, and to track the baseline modifications made in the parameters of probity, competency and compliance

177 Legislation Review Committee, *Legislation Review Digest*, No 7 of 2006, 19 May 2006, vii, 20; New South Wales, *Parliamentary Debates*, Legislative Council, 11 May 2006, 23 053 (Gordon Moyes).

178 *Wainohu v New South Wales* (2011) 243 CLR 181.

179 See generally Elizabeth Byrne, 'NSW Bikie Consorting Laws Upheld: High Court', *ABC News* (online), 8 October 2014 <http://www.abc.net.au/news/2014-10-08/high-court-ruling-upholds-nsw-consorting-laws/5797786>; *Crimes (Criminal Organisations Control) Act 2012* (NSW) s 26. For a broader critique on the effectiveness of anti-bikie legislation, see Rick Sarre, 'Doubtful Measures in Crime Control' (2013) 51(8) *Law Society Journal* 68.

180 *Commercial Agents Issues Paper*, above n 6, 15, 26, 34.

181 Kennedy, above n 151, 5.

182 New South Wales, *Parliamentary Debates*, Legislative Assembly, 6 June 2001, 14 539 (Diane Beamer).

183 Ibid.

184 Independent Commission Against Corruption, above n 169, 17–18.

185 Australian Crime Commission, above n 168, 7–10.

186 New South Wales, *Parliamentary Debates*, Legislative Assembly, 27 November 2009, 20 170–1 (Anthony Stewart).

checks. The review also followed a shift away from an emphasis on compulsory pre-entry standards to continuous post-licence monitoring of probity, refresher training and proactive compliance. Some consistency was evident in a couple of aspects in the long-term direction of reform: prescriptive, validation-based, and deterrence-focused approaches. While controversy continues over the best methods to secure compliance, it has been observed that current private security regulation in NSW is increasingly early intervention-based. The intention in part is to minimise the undesirable consequences of escalating sanctions, such as 'loss of supply of services, through punishment by trading prohibitions and shut down' and 'unemployment, via punishment by disqualifications and removal'.[187] The article closed by identifying several policy areas where further initiatives remained pending – primarily compulsory drug testing and mandatory medical or psychological evaluations. A major unresolved issue concerned alleged circumvention of NSW licensing standards through entry from lesser training regimes under mutual recognition processes.

To advance the contributions of private and public security, this study of the developmental milestones of industry regulation in NSW has shown the need for further refinements to ensure adequate 'width' and 'depth' of regulation, as set out by Button and George.[188] The 'comprehensive-wide' model criteria, modelled under the four Cs – comprehensive licensing, compulsory training, complete national criminal history checks, and continuous monitoring – have been developed to address the inherent limitations of piecemeal responses to security industry reform. As Prenzler and Sarre highlight, ideally the regulatory regime should ensure comprehensive licensing of all relevant categories, in line with the changing risk profile within the industry, compulsory training linked to clear career pathways, complete national probity checks for both guarding and technical service categories, and continuous compliance monitoring of the firms and personnel, with wider application of crime and incident log checking across the whole suite of categories.[189] It can be argued that setting the framework for a 'comprehensive-wide' scheme, even a basic arrangement, is crucial to raising standards to an adequate level, as summed up in a recent study by Button and George internationally, and Prenzler and Sarre in Australia.[190] As Prenzler and Sarre have emphasised, the recognition of the need for a 'comprehensive-wide' approach has risen due to the resurgence of adverse events associated with security providers, and revelations of regulatory inadequacies in addressing these occurrences.[191] To adopt a comprehensive-wide approach requires strong research-based regulation that addresses shifting practices and issues in the

187 See Prenzler and Sarre, 'Regulation', above n 3, 859, 872.

188 See Mark Button and Bruce George, 'Regulation of Private Security: Models for Analysis' in Martin Gill (ed), *The Handbook of Security* (Palgrave Macmillan, 2006) 563, 570.

189 See generally Prenzler and Sarre, 'Developing a Risk Profile and Model Regulatory System for the Security Industry', above n 4, 271–2.

190 See, eg, Button and George, above n 188; Prenzler and Sarre, 'Developing a Risk Profile and Model Regulatory System for the Security Industry', above n 4.

191 See Prenzler and Sarre, 'Developing a Risk Profile and Model Regulatory System for the Security Industry', above n 4, 272.

industry, and which underpins a proactive evaluative approach. Ultimately, the key to implementing a best-practice model of regulation involves a commitment to informed and adaptable risk management.