

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

**LICENSEE:** Serco Sodexho Defence Services Pty Ltd

**LICENCE NUMBER:** Security Firm Number 148

**PROCEEDING:** Complaint pursuant to Section 53(A) of the *Private Security Act*, regarding the alleged engagement of a person to carry out the functions of a Security Provider, without that person holding the appropriate licence

**HEARD BEFORE:** Ms Brenda Monaghan (Presiding Member)  
Mr Paul Costigan  
Mr Ian O'Reilly

**DATE OF HEARING:** 29 May 2006

**APPEARANCES:** Mr Marc Mackenzie, for the Director, Licensing (RGL)  
Mr Wayne Smith for Serco Sodexho Defence Services Pty Ltd (SSDS)  
Mr John O'Connell for SSDS

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1. The facts concerning the complaint lodged against SSDS are not in dispute. They are that on 4 January 2006 Licensing Inspectors found that a security guard employed by the company on duty in the guard box at the entrance to Robertson Barracks Army Base was unable to provide a valid security officer's licence.
  2. In response to the complaint, SSDS, in a letter dated 13 January signed by Mr Smith, admitted a breach of Section 13(2) of the *Private Security Act* (the *Act*).
  3. On behalf of the Complainant RGL, Mr Mackenzie submitted that another breach had occurred involving the same unlicensed person, which was discovered during investigation. That person was found to have been rostered alone once during the period between his employment in late December 2005 and the breach. This was admitted by SSDS in its letter of 13 January.
  4. The Commission met to hear submissions from both parties on the appropriate penalty to be imposed in the particular circumstances of this case.

5. RGL submitted that there were at least two other occasions where SSDS had been shown to not exercise due diligence toward their responsibilities as a Security Firm Licensee. These were in relation to the subcontracting of Stiel Security (subsequently the subject of a separate Commission hearing) for work at Tindal in 2004, and the expiry of the Security Licence of another SSDS employee in December 2005.
6. SSDS responded to the former allegation by indicating they were never formally informed by RGL of the full nature of the problems regarding Stiel Security despite requests to this end, and as soon as SSDS had sufficient information to make a decision, the Stiel contract was terminated.
7. The facts surrounding the latter allegation were disputed. As a result, the Commission has not taken either of these matters into account in reaching a decision regarding appropriate penalty.
8. SSDS submitted that a number of matters be taken into account as mitigating circumstances. These were:
  - The unlicensed employee involved was employed as a supernumerary while awaiting the granting of his security licence “under the strict condition that he not perform the functions of a Security Officer” (correspondence from SSDS, 13 January 2006). This instruction was “firmly understood” by the appropriate supervisory staff.
  - Since the complaint, SSDS’ internal investigation found that the breach occurred because a supervisor acted contrary to these instructions. The company’s response was to immediately terminate the employment of this supervisor. This indicates how seriously the company takes its responsibilities.
  - The supernumerary’s licence application occurred over the Christmas-New Year period. The process was delayed due to a clerical error.
  - The company was confident the licence would be granted, as the applicant possessed all the personal qualities required.
  - RGL has in recent years ceased the practice of reminding individuals when their licences were coming due, cost-shifting responsibility for this on to employers. This decision appears not to have been communicated directly to employers.
  - SSDS has recently instituted a computerized payroll system that flags upcoming licence renewals for all security staff.
  - SSDS co-operated fully with RGL during the investigation of this complaint.

9. S53D of the *Act* provides the following options for the Commission regarding determination of a breach:
- a) *That... the complaint is of a frivolous, irrelevant or malicious nature, or that the complaint does not set out facts and circumstances that are sufficient ground on which to base a complaint, and dismiss the complaint;*
  - b) *That no further action is warranted;*
  - c) *To reprimand the security provider;*
  - d) *To fine the security provider an amount not exceeding the prescribed amount;*
  - e) *To impose conditions on or vary the conditions of the security provider's licence;*
  - f) *To suspend the security provider's licence; or*
  - g) *To cancel the security provider's licence.*
10. The Commissioners decided that a) and b) do not apply. A statutory offence has been admitted and some penalty must therefore be applied. The Commissioners agreed with RGL's submission that f) and g) are excessive in this circumstance. Further, Commissioners decided that there was no reason to apply e) in this case.
11. Finally, Commissioners decided that a reprimand alone (Option C) was insufficient for a proven statutory offence, despite SSDS' submission that they had already been financially penalised sufficiently due to the termination of the supervisor responsible for the breach, and the fact that to date the company has been unable to replace this officer.
12. The Commission therefore determined that a fine was appropriate. S13(2) of the *Act* prescribes the maximum penalty for such a breach as 500 penalty units for a body corporate. A penalty unit is currently \$110 making the maximum fine for a body corporate \$55,000 (and not \$5,500 as was stated at the hearing).
13. When asked to comment on the extent of penalty, RGL drew the attention of the Commission to a Commission decision of 2002 when a firm (New Millenium Security) providing security to the rail corridor had employed unlicensed personnel to perform security duties. In that case the breach was also admitted, and the Licensee (an individual rather than a body corporate) had co-operated fully. The penalty determined by the Commission at that time was \$1000. This penalty was 10% of the maximum fine that could be imposed at that time.

14. The Commissioners accept some of the company's mitigating circumstances, particularly those relating to their commitment to discharging their responsibilities appropriately, their systemic responses, and the difficulties presented by employees who disobey clear instructions.
15. This is obviously not a case for a maximum penalty, which should apply to companies that knowingly and flagrantly ignore their statutory obligations.
16. A penalty near the scale of the 2002 Commission decision seems appropriate, even though there are some differences in circumstances – SSDS are not guarding property as such, but controlling access to property. The fact that the guarded property belongs to the Defence Department is not relevant to the size of the penalty.

### **Decision**

17. That Serco Sodexo Defence Services Pty Ltd, having admitted a breach of Section 13(2) of the *Private Security Act*, that is, engaging a person to carry out the functions of a Security Officer without that person holding the appropriate licence, be fined 20 penalty units being \$2,200. This sum shall be paid within twenty-eight (28) days from the date of this decision.

Brenda Monaghan  
Presiding Member

26 June 2006