

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

LICENSEE:	ISS Security Pty Ltd
LICENCE NUMBER:	Security Firm Number 197
PROCEEDING:	Complaint pursuant to s13(2) of the <i>Private Security Act</i> , regarding the alleged engagement of a person to carry out the functions of a Security Provider, without that person holding the appropriate licence and Consideration of Application to Renew Licence.
HEARD BEFORE:	Mr Richard O'Sullivan (Chairman) Mr John Brears Ms Brenda Monaghan

1. The facts concerning the complaint lodged against ISS are not in dispute. They are that on eight (8) occasions between 6 November 2006 and 25 December 2006, the Licensee employed Ms Patricia Hansen as a Security Officer at a time when she did not hold a Security Officer's licence. Further, on twenty-four (24) occasions between 4 December 2006 and 8 January 2007, Mr Ian Cochrane was similarly employed without a licence.
2. As a result of the alleged breaches, a "Show Cause" notice was sent to the Licensee on 6 February 2006 for reason to be given why the Security Firm Licence should not be cancelled. Mr Brenton Ellis, General Manager of ISS, in letters dated 8 February and 8 March 2007 admitted to the breaches but made the following submissions:
 - a. The breaches were inadvertent. In Ms Hansen's case, the company's omission was "in failing to ensure that the full requirements of the provisional licence extension were understood by rostering personnel resulting in Ms Hansen being rostered as a security officer beyond the expiration of her provisional licence and prior to her security licence being granted". In Mr Cochrane's case, the company could offer "no mitigating circumstances beyond the fact that our recruiting procedures as defined within our Divisional Work Practices manual were not followed."

- b. ISS has “robust and clearly defined policies and procedures” as part of its Quality Management System but in these particular instances at Gove Airport, the procedures failed.
 - c. Gove is remote and in reality is not easily subject to the same management scrutiny on a regular basis as some other places are.
 - d. The Company assures the Commission that similar occurrences will not happen again and has taken the following action:
 - i. Appropriate counselling and further training of supervisory staff at Gove Airport on relevant issues;
 - ii. General advice to all staff associated with staff recruitment in the Northern Territory emphasising that all security officers rostered on duty must have security licences;
 - iii. An immediate audit of security licences was undertaken for all staff and copies of current licence placed on their personnel files;
 - iv. A register of the expiry dates of all licences introduced and maintained to monitor the need for licence renewals etc;
 - v. An acknowledgment of the serious nature of these breaches but asks the Commission to take account of the isolated nature of these breaches;
 - vi. Advice that ISS has operated as a security provider for thirty (30) years in a responsible and effective manner;
 - vii. A submission that a refusal by the Commission to renew the licence would result in significant business losses for the Company and the immediate loss of employment of 115 staff members.
3. On 21 March 2007, the Commission met to consider this matter including the appropriate penalty to be imposed in the particular circumstances of this case. It is interesting to note that had these breaches been laid as a formal complaint pursuant to Section 13 of the *Private Security Act*, the maximum penalty able to be applied to each separate offence would have been 500 penalty units (\$55,000). This is not the case however and the Director of Licensing has elected to proceed under Section 27 of the Act which enables the Commission to consider cancellation or suspension of the licence but provides a more modest maximum fine of \$10,000. It reads as follows:

27. Procedure for suspension, cancellation or refusal to renew

(1) *If the licensing authority believes that reasonable grounds exist to suspend, cancel or refuse to renew a licence (the "action"), the licensing authority shall give the Licensee a written notice (a "show cause notice") that –*

- (a) states the action proposed;*
- (b) states the grounds for proposing to take the action;*
- (c) outlines the facts and circumstances that form the basis for the licensing authority's belief;*
- (d) if the licensing authority proposes to suspend the licence – states the suspension period the licensing authority proposes to impose; and*
- (e) invites the Licensee to show cause within a specified time, of not less than 28 days, why the action proposed should not be taken, and the Licensee may make submissions to the licensing authority accordingly.*

(2) *If, after considering all submissions, if any, made by the Licensee, the licensing authority still believes that grounds to take the action exist, it may –*

- (a) if the show cause notice was a notice of intention to suspend the licence for a specified period –*
 - (i) suspend the licence for a period not longer than the specified period; or*
 - (ii) impose a penalty of not more than \$10,000;*
- (b) if the show cause notice was a notice of intention to cancel the licence –*
 - (i) cancel the licence;*
 - (ii) suspend the licence for a period; or*
 - (iii) impose a penalty of not more than \$10,000;*
 - or*
- (c) if the show cause notice was a notice of intention not to renew the licence –*
 - (i) refuse to renew the licence;*
 - (ii) refuse to renew the licence for a period; or*
 - (iii) impose a penalty of not more than \$10,000.*

(3) *The licensing authority shall inform the Licensee of the decision by written notice.*

(4) *If the licensing authority decides to –*

- (a) cancel, suspend or refuse to renew the licence; or*
- (b) impose a penalty,*

under subsection (2) the notice shall state –

- (c) the reasons for the decision; and*
- (d) that the Licensee may within 28 days appeal to the Local Court against the decision.*

(5) *A decision under subsection (2) takes effect on –*

- (a) the day on which the notice is given to the Licensee; or*
- (b) the day specified in the notice,*

whichever is later.

(6) Notwithstanding subsections (1) and (2), the licensing authority may, where it considers immediate suspension of a licence on one or more of the grounds specified in section 26 is, in all the circumstances, justifiable, suspend the licence immediately by serving on the Licensee notice of the suspension, stating –

(a) the reasons for the decision; and

(b) that the Licensee may within 28 days appeal to the Local Court against the decision.

4. The Commissioners are agreed that this is not a case where suspension or cancellation is an appropriate penalty. The Licensee has not appeared before us before on a complaint and has put forward good reasons for us to take into account when deciding penalty including the recent efforts they have made to upskill their staff and to improve their management systems and practices. There were thirty-two (32) separate occasions noted, however, when unlicensed security was employed and this is a matter we cannot ignore. It amounts to a serious course of conduct which exhibits a lack of due care and diligence by ISS. It is also too serious to be dealt with by reprimand alone.
5. We take note of the fact that these breaches were identified during routine enquires by Racing Gaming and Licensing and did not arise from a complaint of a lack of proper conduct or behaviour by the security officers themselves. Also, in both instances licence applications had been lodged and, although different in circumstances, both applications were ultimately granted. The Commission therefore determines that a fine is the appropriate penalty. Section 27(2)(c) of the Act prescribes the maximum penalty for such a breach as \$10,000 and noting the submissions of the Licensee, a fine of \$6500 is imposed. This sum shall be paid within twenty-eight (28) days from the date of this decision.

Richard O'Sullivan
CHAIRMAN

28 May 2007