

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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**APPLICANT:** **MRS JACOB BROWN aka  
MR JACOB BROWN-BELO aka  
MR JACOB GLEN JEFFREY BROWN**  
9 Rosella Crescent  
WULAGI NT 0810

**LICENCE NUMBER:** N/A

**PROCEEDINGS:** Application for Dual Security Officer /  
Crowd Controller Licence

**HEARD BEFORE:  
(On papers)** Mr Richard O'Sullivan (Chairman)  
Mr Philip Timney  
Mr Walter Grimshaw

**DATE OF HEARING:** 30 December 2010

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### BACKGROUND

- 1) On 12 August 2010 Mr Jacob Brown (the Applicant) lodged an application for a Dual Security Officer and Crowd Controller Licence under the *Private Security Act* (the Act), pending the receipt of a Criminal History Fingerprint Check. The completed application was received at Licensing Regulation and Alcohol Strategy (LR&AS) on 8 October 2010.
- 2) During assessment of the application by LR&AS staff it came to light that the Applicant has identifying documents in the name of Jacob Brown-Belo. The Applicant did not disclose any alias on the application form, nor did the Criminal History Fingerprint Check identify an alternate name. The Applicant had identified on the application that he had juvenile criminal history and convictions for traffic offences. No information was provided by the Applicant as to the nature of the offending and no offences appeared on the Criminal History report for Jacob Brown.
- 3) When queried about his criminal history by a Licensing Inspector the Applicant advised that he had not been convicted of any matters and that the matters recorded were from a few years ago when he was a juvenile. The Applicant also advised that Brown-Belo was his mother's married name and that he did not go by that name. When queried whether it was possible that

any convictions were recorded against the name Brown-Belo, the Applicant replied “no”.

- 4) Further investigations by LR&AS staff identified a series of court appearances in the name of Jacob Brown-Belo and Jacob Glenn Jeffrey Brown, for various offences. Some of the offences were disqualifying offences under the Act.
- 5) Certificates of Proceedings identified that on 21 May 2010 the Applicant appeared before the Youth Justice Court, under the name of Jacob Brown-Belo, and was found guilty of the following offences committed on 23 February 2010:
  - Unlawfully enter a building with circumstances of aggravation, being with intent to commit an offence and entry occurred at night time (a disqualifying offence)
  - Stealing
  - Unlawfully damage property
- 6) On 9 November 2010 the Applicant again appeared before the Youth Justice Court, this time under the name of Jacob Glen Jeffrey Brown, and was found guilty of a number of offences. However no conviction was recorded and the Applicant was placed on a good behaviour bond for twelve months. The details of those offences are not able to be disclosed due to the provisions of the *Records (Spent Convictions) Act* (discussed in further detail below).
- 7) On 24 November 2010, a Senior Licensing Officer contacted the Applicant regarding the offences identified in the Certificates of Proceedings. The applicant was asked whether he had been to court earlier in the year, to which he replied “yes, for traffic matters”. When queried further as to whether he had been to Court for any other matters the Applicant replied “not that I can remember”.

## **CONSIDERATION OF THE ISSUES**

- 8) Section 15(5) of the *Private Security Act* prescribes the matters the Commission is to take into account in considering a licence application in respect of whether the applicant is an appropriate person to hold a licence:
  - (5) *In deciding whether a person is an appropriate person to hold a licence, the licensing authority is limited to considering the matters specified in subSections (6) and (7)*
  - (6) *In deciding whether a person is an appropriate person to hold a licence, the licensing authority may consider the following matters as indicating that the person may not be an appropriate person:*
    - (a) *that in dealings in which the person has been involved, the person has:*
      - (i) *shown dishonesty or lack of integrity;* or

- (ii) *used harassing tactics;*
  - (d) *that the person is suffering from an illness that makes them unfit to work in the security industry;*
  - (e) *that the person has been found guilty of an offence;*
  - (f) *information provided by a person or body responsible for the issue of licences under an Act of the Territory, the Commonwealth or a State or another Territory of the Commonwealth;*
  - (g) *evidence given in a court of the Territory, the Commonwealth or a State or another Territory of the Commonwealth or a commission of inquiry.*
- (7) *A person is not an appropriate person to hold a licence if the person, within 10 years of applying for a licence, has been convicted of:*
- (a) *a disqualifying offence in relation to such a licence; or*
  - (b) *an offence that would be a disqualifying offence in relation to such a licence if committed in the Territory. (Emphasis added).*

14) Section 15(8) of the Act further states:

*The licensing authority may, in its absolute discretion, refuse to grant a licence to an applicant if the licensing authority has grounds for believing that the applicant is likely to be of bad character, having regard to the public interest in ensuring that persons of bad character are not employed as security providers, and the licensing authority shall give reasons for its decision. (Emphasis added).*

15) The Applicant was born on 9 July 1992 and is currently eighteen years of age. As outlined above, despite his relatively young age, he has been convicted or found guilty of a number of offences, some of which involve acts of dishonesty.

16) The assessment of whether the Applicant is a suitable person to hold a Private Security Licence necessitates a careful consideration of his criminal history to date. The Certificates of Proceedings referred to the Commission in the application brief reveal the following convictions and the circumstances of the Applicant's offending.

17) On 21 May 2010, in the Darwin Court of Summary Jurisdiction, the Applicant was found guilty and convicted for the following offences:

- On 23 January 2010 the Applicant unlawfully entered the Parap Railway Sports and Social Club contrary to Section 213 of the *Criminal Code* with the circumstances of aggravation that he intended to commit the crime of stealing and that the entry occurred at night;
- On 23 January 2010 the Applicant stole alcohol to the value of \$738.00 from the Parap Railway Sports and Social Club contrary to Section 210 of the *Criminal Code*. For those offences the Applicant was found guilty, convicted and released on security in the sum of \$800 to be of good

behaviour for a period of twelve months. He was also ordered to pay \$50 restitution to Parap Railway Sports and Social Club; and

- On 23 January 2010 the Applicant unlawfully damaged a glass door at the Nightcliff TAB causing damage in the amount of \$420.94 contrary to Section 251(1) of the *Criminal Code*. For that offence The Applicant was convicted without further penalty and ordered to pay \$200 in restitution to Nightcliff TAB.
- 18) On 9 November 2010, in the Darwin Court of Summary Jurisdiction, the Applicant was found guilty of a number of offences that are spent convictions on the basis that the Applicant was found guilty of the offences but no conviction was recorded. It is noted however that one of those offences was also a disqualifying offence, being an offence against Section 210 of the *Criminal Code*.
- 19) Regulation 3(a) of the *Private Security (Crowd Controllers) Regulations* provides that an offence against Section 210 of the *Criminal Code* is a disqualifying offence. The remaining offences for which the Applicant was found guilty on 21 May 2010 are not disqualifying offences however, as a starting point, they remain relevant in terms of the Commission's assessment as to whether the Applicant is an appropriate person to hold the licences for which he has applied.
- 20) In conducting that assessment, it is noted that the Applicant committed offences on 23 January 2010 for which he was convicted on 21 May 2010 whilst he was a minor, having reached eighteen years of age on 9 July 2010. The Commission also notes the provisions of the *Criminal Records (Spent Convictions) Act*. Section 6(2)(a) of that Act provides that a criminal record is a spent conviction on the expiration of a period of five years immediately after the date of conviction for the offence where the offender was convicted in the Youth Justice Court. The earliest the Applicant's convictions recorded on 21 May 2010 will become spent convictions is 20 May 2015.
- 21) Section 7 of the *Criminal Records (Spent Convictions) Act* relates to an offence where a conviction has not been recorded, such offences are deemed to immediately be a spent conviction once the person is discharged. On that basis, the offences for which the Applicant was found guilty on 9 November 2010 are spent convictions and, as a consequence, are not to be taken into account by the Commission in assessing whether or not the Applicant is an appropriate person to hold a security licence. Refer to Section 11(c)(ii) of the *Criminal Records (Spent Convictions) Act*.
- 22) In respect of the disqualifying offence, a person is deemed, by Section 15(7)(a) of the Act, to be not appropriate to hold a Security Licence where the person has been convicted of a disqualifying offence within ten years of applying for the licence. The Act provides the Commission with no discretion in respect of the waiver of a disqualifying offence. The Applicant was convicted of the disqualifying offence of stealing, with aggravating circumstances, contrary to Section 210 of the *Criminal Code* on 21 May 2010.

That conviction is not a spent conviction and, subject to the proviso set out below, the conviction precludes the Commission from granting a crowd controller or security provider licence to the Applicant.

- 23) The proviso referred to in the preceding paragraph arises from an apparent anomaly in Regulation 3 of the *Private Security (Crowd Controllers) Regulations*. Regulation 3(a) prescribes an offence against Section 210 of the *Criminal Code* as a disqualifying offence. However, in what appears to be a contradictory provision, Regulation 3(c) provides that an offence against Section 210 of the *Criminal Code* is a disqualifying offence where a custodial sentence is imposed that is wholly or partially served. The Applicant's conviction on 21 May 2010 satisfies Regulation 3(a) as a disqualifying offence. However, no custodial sentence was imposed or served in respect of that offence with the result the conviction is not a disqualifying offence under Regulation 3(c).
- 24) In this instance the Commission does not need to resolve the apparent contradiction within Regulation 3 as it is not persuaded that the Applicant is an appropriate person for the grant of a Security Licence, regardless of whether his conviction for stealing is a disqualifying offence or not.
- 25) The Applicant committed offences of unlawful entry, stealing and unlawful damage to property on 23 January 2010, for which he was convicted on 21 May 2010. Those offences entail criminal activity of a nature that is particularly pertinent in respect of the grant of a private security licence in that they involve dishonesty and property damage, the types of activity security guards are often called upon to prevent on behalf of the proprietors of premises they are engaged to protect.
- 26) Of equal significance to the Commission in terms of the Applicant's character, is his failure to properly disclose those offences, both when completing his licence application and in subsequent discussions with staff of LR&AS, who specifically raised his criminal history. Those discussions included the Applicant's evasive responses when queried regarding any alias he may have used in the past. His responses in that respect proved to be not only misleading but dishonest in that he had in fact been charged with offences under alias names.
- 27) The Certificates of Conviction demonstrate clearly that the Applicant did not accurately detail his criminal past in the application lodged on 12 August 2010, less than three months after his court appearance and conviction for several offences on 21 May 2010. The Commission is not persuaded that the Applicant could not recall the offences such a short time after his court appearance and conviction. The Applicant must also have been aware when lodging his application that further charges were pending against him in respect of offences committed on 25 February 2010 and yet he made no disclosure of those offences or the impending Court hearing.

- 28) The Commission notes that the offences which have been taken into account for the purpose of this decision were committed when the Applicant was a juvenile. The applicant was approximately 17 years and 6 months old when he committed those offences on 23 January 2010. The discussions between the Applicant and officers of LR&AS in respect of his criminal history and possible aliases took place in November 2010, by which time the applicant had reached eighteen years of age.
- 29) Taking account of the Applicant's lack of candour and honesty in completing his application and in his dealings with LR&AS staff, coupled with his conviction for offences committed within the past twelve months, the Commission is not satisfied that the Applicant is an appropriate person to hold a Crowd Controller or Security Officer Licence.

## **DECISION**

- 30) The Commission determines, in pursuance of Section 15(5) of the *Private Security Act*, that Mr Jacob Brown is not a suitable person to hold a Security Officer or Crowd Controller Licence and the application for the grant of those licences is refused pursuant to Section 15(8) of the Act on the basis that the Commission has grounds to believe Mr Brown is likely to be a person of bad character.

Richard O'Sullivan  
CHAIRMAN

17 January 2011