



STATEMENT OF A WITNESS

In the matter of: Operation Gerda
Place: Parramatta
Date: 28 December 2018

Name: Cameron James Smith

STATES:

1. This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false, or do not believe to be true.
2. I am 49 years of age.
3. I am employed by the NSW Police Force as the Director of the Security Licensing & Enforcement Directorate (SLED). I have held this position since 30 August 2010. As the Director of SLED, I am responsible for providing strategic leadership and direction regarding the regulatory requirements for the security industry and other relevant industries susceptible to criminal penetration. I oversee SLED's functions so as to ensure continuous improvement in industry regulation, legislative compliance, industry training, probity assessment services and service delivery to both internal and external stakeholders.
4. In NSW, any business that employs or provides persons (including subcontractors) to carry on security activities must hold an appropriate Master security licence. Individuals who carry on security activities as an unarmed guard, bodyguard, crowd controller, guard dog handler, monitoring centre operator and/or armed guard require a Class 1 security licence. Individuals who carry out security activities as a security consultant, security seller, security equipment specialist and/or security trainer require a Class 2 security licence. As at 27 November 2018, there were 4645 businesses holding Master licences in NSW, and 52,033 individuals holding operator licences.

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- 5. SLED employs 72 staff across six teams consisting of Customer Relations, Licensing Services, Adjudication, Assessment, Compliance & Enforcement and Training Regulation.
- 6. SLED was formed in 2010 following recommendations from the Independent Commission Against Corruption (ICAC) arising from Operation Columba, an investigation into fraudulent security training qualifications being issued by Registered Training Organisations (RTOs) approved by the NSW Police Force to deliver security training. Prior to the formation of SLED, security industry licensing was administered by the NSW Police Force Security Industry Registry (SIR), which was formed in 1998. I was employed as the Deputy Registrar of the SIR in March 2003 and, subsequently, as Registrar from June 2007 until August 2010 when the SIR was renamed SLED.
- 7. Based on my experience in the above roles, I can state that the private security industry is a high-risk industry requiring rigorous regulation to ensure legislative compliance and the probity and competence of persons working within the industry. The main historical and contemporary regulatory challenges for the NSW security industry are summarised below:

Organised crime and terrorism

- 8. Historically, the security industry has been susceptible to infiltration by organised crime groups, such as Outlaw Motorcycle Gangs (OMCGs). Organised crime groups may enter the private security industry by owning security firms and/or having group members employed by security firms. The private security industry is attractive to organised crime groups as it provides a means to facilitate illegal activity such as the distribution and sale of illegal drugs through licensed venues and at major events. It also provides an opportunity to launder proceeds of crime through seemingly legitimate business structures.
- 9. With an increased focus on the role of private security in public safety in protecting against and responding to terrorist attacks, the private security industry is attractive to those seeking to gain intelligence about or access to sensitive sites, as well as access to and operational knowledge of events held in crowded places. It is therefore critical that rigorous probity screening is undertaken to prevent anyone with links to organised crime or to issues motivated groups, from entering the security industry.
- 10. In NSW, section 16 of the *Security Industry Act 1997* (the Act) provides mandatory grounds for refusal of licence applications by persons who have been subject of:

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- criminal convictions and/or findings of guilt for prescribed offences within a prescribed period (see Fact Sheet 6 attached)
- the imposition of civil penalties
- dismissal from employment as a Police officer
- findings of involvement in corrupt conduct.

In addition to these eligibility restrictions, section 15(6) of the Act enables criminal intelligence to be taken into account in determining whether the applicant is a fit and proper person to hold the class of licence sought by the applicant, or whether the grant of the licence would be contrary to the public interest. The Commissioner is not required to give any reasons for not granting a licence, if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information.

11. In relation to current NSW security licensees, SLED evaluates any new information received relating to criminal charges, criminal intelligence, etc, to determine if the licensee continues to be a fit and proper to continue to hold a security licence and whether it continues to be in the public interest for them to do so. Such determinations may result in the relevant licence being revoked pursuant to section 26 of the Act.
12. Administration of these legislative provisions by SLED has been effective in removing and excluding people with relevant criminal history or criminal intelligence from the NSW security industry.

Illegal phoenix activity

13. Illegal phoenix activity (when a new company is created to continue the business of a company that has been deliberately liquidated to avoid paying its debts, including taxes, creditors and employee entitlements) continues to be reported by industry representatives and other regulators as prevalent within the NSW security industry.
14. Clauses 13(1) and 13(3) of the *Security Industry Regulation 2016* (the Regulation) provide mandatory grounds for refusal of a Master licence where the applicant or a close associate has previously been the subject of bankruptcy, liquidation or administration of businesses in which they have been involved, unless the Commissioner is satisfied that the person took all reasonable steps to avoid the bankruptcy, liquidation or administration.

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15. These provisions assist in preventing entities who are known for phoenix activities obtaining a Master licence to operate security businesses, however, it is often difficult to detect the use of “straw directors” and undisclosed close associates of a business at the time of Master licence application.

Non-compliance with Commonwealth and State based workplace laws

16. A problem endemic in the private security, and often associated with illegal phoenix activity, is the non-payment of worker entitlements. Industry groups and other regulators report that below award payments, cash in hand payments and non-payment of other entitlements, such as overtime and superannuation, continue to be common place in the private security industry.

17. Multi-tier subcontracting arrangements, which are common in the industry, play a significant role in perpetuating this issue. It is generally the case that a subcontractor, who is engaged by the principal contractor, needs to deliver the security services with a lesser profit margin than would be the case if it was contracted directly to the client. This, in turn, leads to problems of non-compliance with Commonwealth and State based workplace laws.

18. In relation to the requirement to hold a Master licence, the Act refers to “providing persons” rather than “employing persons” to carry out security activities. This is to ensure transparency (and shared compliance obligations) when subcontracting occurs. This legislative amendment, introduced in 2012, sought to address unnecessary subcontracting with non-security firms skimming the cream off the top of contracts, placing cost pressures on the security firms actually delivering the services, and contributing to non-compliance with security industry legislation and industrial requirements.

19. Whilst SLED does not investigate allegations relating to below award payments, non-compliance with award conditions, non-payment of entitlements or avoidance of taxation obligations, any such issues identified by SLED investigations or reported to SLED are referred to the appropriate regulatory body. SLED works closely with other regulators such as the Fair Work Ombudsman, Australian Taxation Office, and Revenue NSW regarding strategic regulatory responses to these issues.

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Training standards and exploitation of the Mutual Recognition Scheme

20. In 2012, significant legislative amendments were introduced to enable NSW to effectively regulate the provision of security training in NSW (see Part 3B of the Act relating to enforcement powers). In NSW, RTOs and trainers cannot deliver security training for licensing purposes unless they have the approval of the Commissioner, pursuant to section 27A(1) of the Act. Such RTOs are subject to Conditions of Approval imposed by the Commissioner. SLED regulates the provision of security training by specifying course structure, minimum duration of training and the content of course assessments. SLED proactively monitors the compliance of approved RTOs with their Conditions of Approval through regular unannounced audits, as well as investigation of any suspected or alleged non-compliance.
21. The more stringent requirements around security training in NSW have led to those wishing to circumvent the process seeking to obtain training qualifications from unscrupulous RTOs in other jurisdictions (such as Queensland), who offer courses of very short duration, and in some cases, with no training being provided at all. These NSW residents then use the qualification to apply for a security licence in the other jurisdiction in order to present that interstate licence for mutual recognition in NSW. Under the Mutual Recognition Act 1992 (Cth), NSW must recognise an equivalent occupational licence from another jurisdiction and cannot query or seek to remake the decision of that jurisdiction, despite the fact that the licensee may not meet the NSW training or eligibility criteria.
22. An additional driver for NSW residents seeking training qualifications and security licences from other jurisdictions is that NSW is the only jurisdiction that has restrictions in place regarding the eligibility of visa holders to apply for a security licence. Section 15(f) of the Act requires the Commissioner to refuse to grant an application for a licence if the Commissioner is not satisfied that the applicant is an Australian citizen or a permanent Australian resident or holds a visa that entitles the applicant to work in Australia (other than a student visa or a working holiday visa). NSW imposed these restrictions due to the difficulties posed in establishing the probity of certain classes of visa holders.
23. As a result, many NSW residents who hold student visas or working holiday visas obtain their training qualifications and security licences interstate (under circumstances outlined above), and then seek mutual recognition of their licence in NSW. This process exposes the NSW security industry to risks such as:

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- licensees who have poor language, literacy and numeracy skills
- licensees who have received insufficient training
- licensees who have not been properly assessed for competency
- licensees who have not been subject to rigorous probity checks.

24. SLED works closely with the relevant security industry regulators in each jurisdiction, as well as the Australian Skills Quality Authority, to identify possible fraudulent RTOs and mutual recognition 'scams' and take action under our respective legislation and/or regulatory remit. This has resulted in a significant reduction in the number of mutual recognition applications being received in NSW, however it continues to be a problem.


25. I provide the following information regarding legislative requirements and regulatory practices for the NSW security industry in relation to issues identified to me by ICAC as being relevant to its Operation Gerda investigation:

Subcontracting agreements

26. Section 38A of the Act provides that it is an offence to subcontract security services without the client's express approval and provides that the principal contractor must disclose the subcontractor's details to the client before seeking payment for provision of the services. These requirements apply to every tier (eg. for the next level down, substitute "client" with "principal contractor" and "principal contractor" with "subcontractor") and seek to ensure transparency. The legislation also provides that liability for non-compliance by a subcontractor is shared by all tiers above them. For example, if a third-tier subcontractor employs an unlicensed person, the subcontractor and principal contractor are also deemed to have committed that offence. This seeks to ensure that subcontracting is not used to distance higher tier providers from compliance obligations.

27. Whilst the Act states that subcontracting can only take place if the client has "expressly agreed" in the contract to the provision of the persons by a subcontractor, in the event that the principal contractor increases the extent to which they provide security staff via a subcontracting arrangement without the client's agreement, this would only be regarded as "unauthorised" if the contract between the principal and client explicitly addressed the extent of subcontracting permitted. For example:

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- **Scenario 1:** The client has agreed in the contract that security company ABC may contract out patrolling work to company XYZ “as required” to fulfil the contract. For a period of time, ABC typically subcontracts about 50% of the work to XYZ, but subsequently increases the level of subcontracting to 75% of the services without discussion with the client. This would not constitute an offence under s38A(1) of the Act, as the client agreed to “as required” subcontracting.
- **Scenario 2:** The client has agreed that company ABC will subcontract “no more than 50%” of the security services to company XYZ to fulfil the contract, with this requirement being stipulated in the contract. ABC subsequently subcontracts 75% of the services to XYZ, without obtaining express permission from the client. This would be considered unauthorised subcontracting, for the purposes of section 38A(1) of the Act, because it is contrary to the terms of the client’s agreement to the use of subcontractors.

The maximum penalty for this offence is 200 penalty units (in the case of a corporation) or 100 penalty units or imprisonment for 6 months, or both (in the case of an individual).

28. Non-compliance with contract conditions are not matters that are regulated by SLED (other than with respect to subcontracting), however contract and payment records are frequently sought by SLED, using the enforcement powers in the Act, when conducting investigations to determine whether there has been compliance with, or a contravention of, the Act or the Regulations.

Sign-on registers

29. Master licensees must, as a condition of their licence, keep a sign-on register in a manner and form approved by the Commissioner if they provide:

- Class 1 licensees to carry on security activities at particular premises on a recurrent basis (other than mobile patrol and cash-in-transit activities)
- three or more Class 1 licensees at any one time to carry on security activities at particular premises (other than mobile patrol and cash-in-transit activities).

30. The following information must be recorded in the sign-on register for each day that a Master licensee provides Class 1 licensees to carry on security activities at the premises:

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- (a) the class 1 licensee’s name, signature and licence number, and
- (b) the time at which the class 1 licensee commenced carrying on security activities on that day, and
- (c) the time (whether on the same day or the following day) at which that class 1 licensee ceased carrying on the security activities.

31. If a Master licensee is required to keep a register at particular premises, any Class 1 licensee provided by the Master licensee must, as a condition of their licence, complete the register on each occasion that they carry on security activities at those premises, before commencing, and immediately following ceasing, the carrying on of security activities.
32. Master licensees must, as a condition of their licence, take reasonable steps to ensure that the Class 1 licensees they provide complete the register in the manner described above. All Master licensees, regardless of whether they are the principal contractor or subcontractor, have a responsibility to ensure compliance with this requirement for persons they provide. Checks of the sign-on register for completeness should be made regularly. In terms of accuracy, checking sign-on register data against the roster, physical checks of security licensees during their shift by a supervisor, technological checks such as GPS sign-on (if available) and checks of licensee signatures against Master licensee records would be all be considered “reasonable steps”.

Misuse of security licences

33. It is a requirement of the Act that the holder of a class 1 or class 2 licence must wear their licence at all times while carrying on a security activity. The security licence bears the licensee’s name, signature, licence class(es), licence number and photograph. The NSW security licence displayed by security operatives can be used to check the accuracy of details being entered into sign-on registers.
34. In the event that a properly licensed security guard works a shift using the name and licence number of another properly licensed security guard, this may (if done with the knowledge and consent of the second licensee) be considered a contravention of section 37 of the Act which states that a licensee must not:
- (a) sell, dispose of, deliver, let out, hire or rent the licence to any other person, or
 - (b) permit any other person to use the licence.

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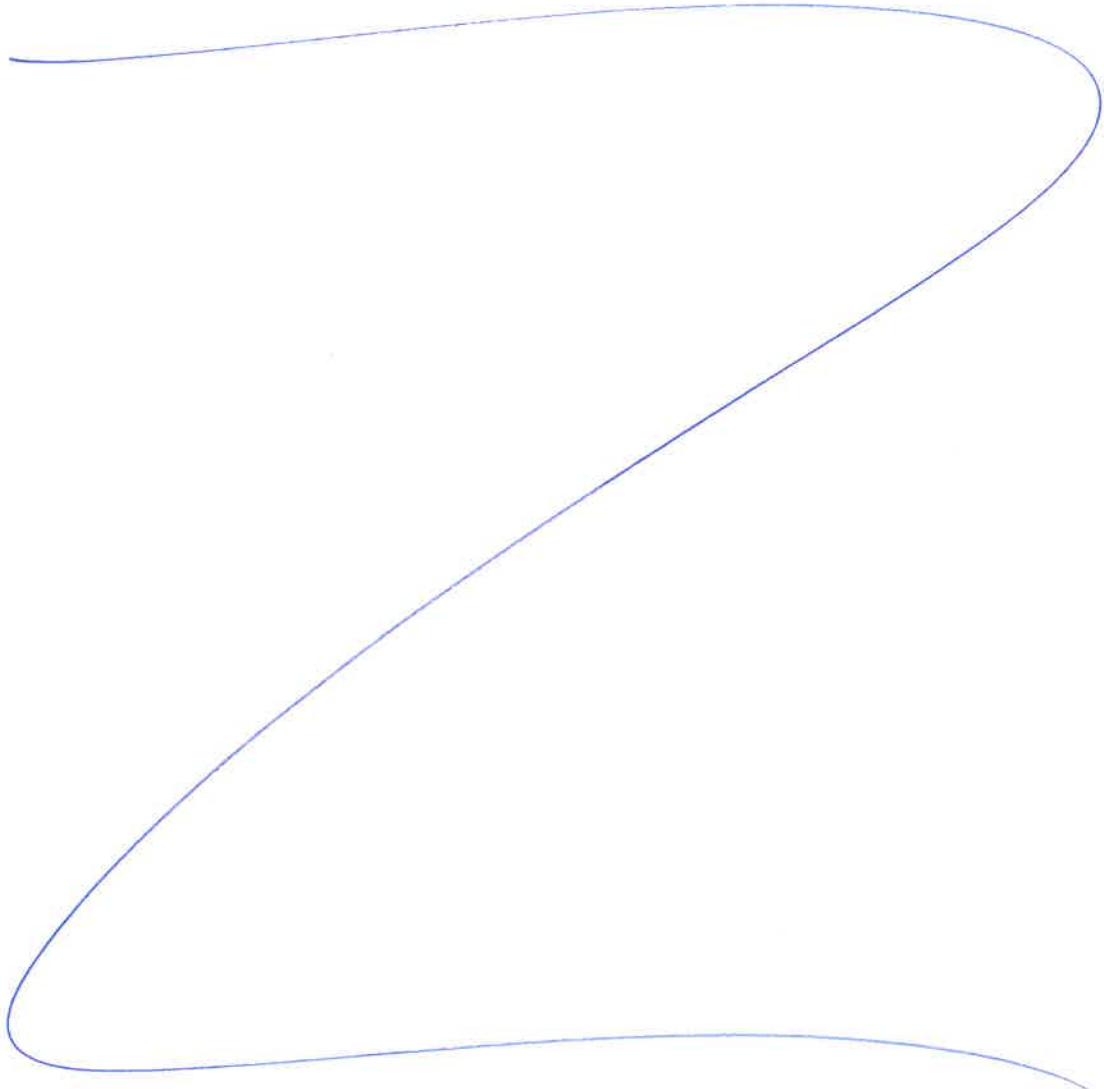
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The maximum penalty for this offence is 200 penalty units (in the case of a corporation) or 100 penalty units or imprisonment for 6 months, or both (in the case of an individual).



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Am I Eligible for a NSW Security Licence?

To be eligible for a NSW security licence, you must meet suitability criteria required by security industry legislation. These fall into two main categories:

1. General; and
2. Criminal and Other Related History.

Please note that further probity and background checks will also be conducted which may affect your suitability. For further information, please contact the Security Licensing & Enforcement Directorate on 1300 362 001.

GENERAL SUITABILITY CRITERIA

If you wish to be granted a NSW security licence, you must:

- be 18 years of age or over;
- be a fit and proper person to hold the class of licence sought;
- have the relevant competencies and experience required;
- have successfully completed any required training and assessment;
- be competent to carry on the security activity to which the proposed licence relates;
- be an Australian/New Zealand citizen or permanent Australian resident or hold a visa that entitles you to work in Australia (other than a student or working holiday visa).
- If you are not an Australian/New Zealand citizen or permanent Australian resident, you will need to provide a police certificate from each country you have lived in for 12 months or more over the previous 10 years since turning 16. Each certificate must be translated into English (if necessary) and verified by the relevant country's embassy/consulate in Australia. Police certificates submitted with an application will need to have been issued within 12 months prior to the application being lodged.
- obtain a Driver Licence, Photo Card or Customer Number from NSW Roads & Maritime Services.

CRIMINAL AND OTHER RELATED HISTORY SUITABILITY CRITERIA

You are not eligible to be granted a NSW security licence if you have:

- within the previous 10 years, been convicted in NSW or elsewhere of an offence prescribed by the regulations;
- within the previous 5 years, been found guilty (but with no conviction recorded) by a court in NSW or elsewhere of an offence prescribed by the regulations;
- within the previous 5 years, had imposed against you by a court or tribunal in NSW or elsewhere, a civil penalty prescribed by the regulations;
- within the previous 10 years, been removed or dismissed from the NSW Police Force or any other jurisdiction (whether in Australia or overseas) on the grounds of your integrity as a police officer; or
- been involved in corrupt conduct.

PLEASE SEE OVER FOR A LIST OF OFFENCES AND CIVIL PENALTIES THAT DISQUALIFY APPLICANTS FROM OBTAINING A NSW SECURITY LICENCE



PRESCRIBED OFFENCES

Offences that are relevant to the criminal and other related history suitability criteria are those:

- relating to firearms or weapons, where the offence would disqualify the person from holding a firearms licence
- relating to prohibited drugs, prohibited plants or restricted substances
- involving assault, where the penalty imposed is imprisonment, an intensive correction order, a community correction order, a conditional release order, a good behaviour bond, a community service order or a fine of \$200 or more.
- involving assault, where guilt has been found but no conviction recorded and the Commissioner is of the opinion that it is a serious assault offence
- involving fraud, dishonesty or stealing where the maximum penalty is imprisonment of three months or more
- relating to robbery
- relating to riot
- relating to affray
- involving stalking or intimidation
- relating to reckless conduct causing death at a workplace
- relating to terrorism
- involving organised criminal groups and recruitment
- relating to industrial relations matters where a total of at least five offences have been committed by the applicant during any period of two years (in the case of an application for a master licence only)

SECURITY LICENSING & ENFORCEMENT DIRECTORATE

Locked Bag 5099
Parramatta NSW 2124

Telephone: 1300 362 001

Fax: 1300 362 066

Email: sled@police.nsw.gov.au

Website: <http://www.police.nsw.gov.au/sled>

WHERE CAN I FIND MORE INFORMATION?

The information provided in this Fact Sheet is for general guidance only. Applicants and licensees should familiarise themselves with the amended *Security Industry Act 1997* and the *Security Industry Regulation 2016*, which are available on the NSW Legislation website (www.legislation.nsw.gov.au).





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| Witness Personal Details | |
|--------------------------|--|
| Title: | Mr |
| Family Name: | SMITH |
| Given Names: | Cameron |
| Mobile Telephone: | Known to ICAC |
| E-mail Address: | Known to ICAC |
| Witness Work Details | |
| Occupation: | Director |
| Company: | Security Licensing & Enforcement Directorate, NSW Police Force |
| Work Address: | Level 9A, 1 Charles Street |
| Suburb/Town: | Parramatta |
| State: | NSW |
| Post Code: | 2150 |
| Work Country: | Australia |
| Work Telephone: | [REDACTED] |