

INDEPENDENT COMMISSION AGAINST CORRUPTION

STATEMENT IN THE MATTER OF: Operation Gerda

PLACE: ASIAL Office

NAME: Bryan de Caires

ADDRESS: Australian Security Industry Association, Security Industry
House, 41 Hume Street, Crows Nest, NSW 2065

OCCUPATION: Chief Executive Officer of ASIAL

TELEPHONE NO: Known to ICAC

DATE: 30 January 2019

States: -

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1. This statement made by me accurately sets out the evidence which 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 shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.
 2. I am 56 years of age.
 3. On 28 September, I participated in an electronically recorded interview with Barry Davidow and Giselle Tocher at the offices of Australian Security Industry Association Limited (ASIAL). This statement was drafted from the digital recording and transcripts of that interviews. I have been given the opportunity to

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read the draft statement and make any necessary amendments prior to signing this document.

4. I am the Chief Executive Officer of ASIAL.
5. ASIAL is the peak industry body. We have over 2,600 members. The majority would be what we call corporate members. We are a federally registered organisation of employers under the Fair Work Act. So we represent the interest of members on a whole range of issues from regulatory, industrial relations, compliance and technical.
6. We initiated a review which may be pertinent to this investigation into procurement practices within Local Government and the Fair Work Ombudsman started up about 4 or 5 years ago now, an education campaign. Then they followed that with an audit campaign where they audited about 23 councils around the country. I think found about 61 per cent were non-compliant.
7. There needs to be accountability for people not doing the right thing because it makes it difficult for legitimate operators to compete against them. There can be a mentality of if you cannot beat them, join them, which is a concern.
8. With subcontracting the client needs to know what they are paying for and receiving. In New South Wales in extreme situations you could see multiple

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levels of subcontracting. There have been issues over the years and it continues to be an issue.

9. With subcontracting you need to ensure it is all done legitimately, that people are paid in accordance with the Award, that it is not cash in hand. It is a problem with everyone making a skim on the way through and that is where you start to get some of the more nefarious practices where people are paying cash in hand.
10. Users of security services should pay a lot of attention to subcontracting to ensure they know exactly what is going on.
11. We have spoken with a number of government departments in this State to try and educate them. Local Government and government in general are some of the worst offenders.
12. We look at this race to the bottom mentality that has been around for quite a while, but it just keeps going lower and you think, "Can it get any lower?" And that is when you get practices such as cash in hand. And funny, more nefarious practices start to come in such as people not getting entitlements and phoenixing.
13. The margins can be skinny – as low as 3 percent.
14. Users should have a good idea of the supply chain.
15. If someone is quoting below a rate, say \$26 an hour for normal hours, you need to ask questions. It is not saying that is the rate you have to pay, but it is saying

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alarm bells should start to ring. That is really what the guards should be getting, you know. So then you have the oncost of the company – insurance / public liability and so on. All the Award rates are published on Fair Works. You can look at the security guard level two.

16. The rates each year are published by Fair Work and we publish a simple schedule for our members every year.

17. It should be mandatory for a large user of security services to ask tenderers: “Are you paying at least x dollars per hour?” The user needs to know if the company is complying with the law.

18. Key questions are: “Are they paid in accordance with the Award? Are they licenced? Do they hold appropriate insurance?”

19. There should be transparency so that users know who is the subcontractor and any other companies down the line.

20. Contractors should have a framework in place to give assurance to the user that subcontractor staff are doing the work in accordance with the contract.

21. They should also have a framework in place to give assurance that their own staff are doing the work properly.

22. Our view is that users should be asking for best value for money, not the lowest, cheapest and nastiest you can get.

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23. The head contractor should have full responsibility for the supply chain, because they are delivering a service for a dollar to the end user.
24. It is just normal business practice and risk management as well to have internal controls and systems and processes in place to make sure that whatever the user is paying for is being delivered. It is just being accountable because you are providing a service which you are getting paid for.
25. Where cash is paid to employees it could be that the employee is not receiving their correct entitlements - ie there is no holiday pay, sick leave, there is no payroll tax being paid potentially, there is no taxation from the employees' side. So you could be breaking a number of laws.
26. I think in this day and age, most people can transmit pays electronically. Cash payments may be used to avoid doing something that you should be doing. And what it creates is an uneven playing field, because you are competing against someone who may not paying all the obligations. All these little percentages can make you competitive or not competitive, and that is how you get your price down. So that is why we try to inform the buyers, "You should be checking all these things, all these factors because you want to know what you are getting," It is hard to quantify – it certainly happens, but we only hear anecdotal stories.
27. If a user finds out that many of the security guards are being paid cash each week, alarm bells should ring. They need to check an explanation - why is that

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occurring? It just damages the industry when things go pear shaped as it portrays the industry as full of cowboys, when this is not the case. It is difficult for us to control as we are not the regulator.

28. If guards work longer hours than those set out in the Award it becomes a work, health and safety issue. A person that has done excessive hours becomes overtired. They could have an accident driving home or on site. I believe that has happened in other States where patrols worked long shifts and have crashed the car and died.

29. Where people are required to be in control, whether it is a bus, a train, or a plane, or whatever, if they are tired, they're judgement can become impaired. That is why the Award covers what you can work, and the hours you can work, and the breaks you are entitled to. It is done for a reason and the client should demand that, because they do not want someone who is going to make poor decisions. If they are on the site having worked excessive hours or more straight, they are likely to make some poor decisions, which can impact on your business or fall asleep on the site or on the job, which means they cannot do their job. The contractor should take reasonable measures to prevent and detect that occurring. The client also has a responsibility.

30. In New South Wales, there is the fitness for work policy. So if people are intoxicated, drunk, tired, they are not fit for work. There is WH&S that you have to provide a safe workplace. So if they are they are exhausted and they are expected to do certain things it could be unsafe. It seems like a no brainer.

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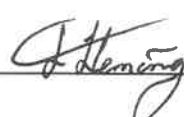
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31. Guards working under the names of other guards would be a concern as it is illegal for any guard to work without a valid licence. Why wait until there is a catastrophic event before asking "What is that person doing here?" This is not a good outcome for anyone.
32. Having a set attendance sheet that is signed off is part of the NSW licencing regulation. You need to know when guards are on, because you have a duty of care. How do you know they are not in trouble?
33. Welfare calls to guards to see that they are okay should be standard practice. It would be good practice to keep records of welfare calls made. Ideally they would log welfare calls made. It is part of a duty of care.
34. There would be an expectation that a client would require technology to be used by guards. For example a little disc tag is installed around different checkpoints at the client's site, the guard is equipped with a data wand and at certain times they have to make sure that they badge in at all those points. The client has the satisfaction then that that patrol has been done and the site has been covered and at the times they were allocated.
35. There are GPS devices. GPS devices can be important because, unlike police, guards are typically unarmed and on their own in most cases and they are going into locations where there could be assaulted. GPS is good for protecting guards because if they have not called in within a period, you know where they were last.

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You can see where they are supposed to be. It is good for guards and good for the company and the client.

36. Technology can also map the patrols and help with dispatching guards to best help with incidents and alarms. There are sophisticated systems.

37. In a tender it would be a good thing to put the technology requirements in the specifications.

38. Phoenix companies are a bad practice all around. They can be difficult to detect.

39. There should be strict requirements for security companies providing services to government. They should have to provide evidence of their compliance. There should be high stakes where there is non-compliance otherwise people will take the punt because they just get a slap saying, "The next time, can you just fix it up, because that is a bit a bit embarrassing for the government, that we have got some legislation that we are not complying with." For example if you are going to be considered it is fairly obvious you have got to provide evidence that you comply with the payroll requirements. It is black and white.

40. Wages should preferably not be paid in cash other than in exceptional circumstances and there should always be payslips and all legal requirements properly met.

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41. When you are dealing with multi-million dollar security contracts – it is not the first time you have done it. They should have refined their processes to determine what is required based on the risk assessment. Failure to conduct a risk assessment would be remiss.

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