

INDEPENDENT COMMISSION AGAINST CORRUPTION

STATEMENT IN THE MATTER OF: Operation Gerda

PLACE: ASIAL Office

NAME: Chris Delaney

ADDRESS: Australian Security Industry Association, Security Industry
House, 41 Hume Street, Crow's Nest, NSW 2065

OCCUPATION: Workplace Relations Consultant

TELEPHONE NO: Known to ICAC

DATE: 4 January 2019

States: -

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 68 years of age.

3. On 3 October 2018, 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 Workplace Relations Advisor for ASIAL. I have my own private company and I consult to ASIAL and have done for about 25 years.
5. The Security Services Industry Award 2010 is a modern award and part of the 122 modern awards made in or about 2009 for the new system.
6. Under this system with the Security Services Industry Award 2010 there is one rate of pay per classification of employee for all security, I will call them guards for want of a better name, who work under that Award. So, with the exception of Western Australia in all jurisdictions in all states and territories, security guards who have a classification in this Award will work under a particular rate of pay. There are five classifications and roughly they work as guarding number 1, patrolling number 2, guarding and patrolling with some extra responsibilities number 3, working in a monitoring centre number 4 and being a supervisor in the monitoring centre number 5.
7. They have a base rate of pay and they have various rates that include penalty rates for working different times of the day. So, if you work between 6am and 6pm Monday to Friday you will get one rate, if you work between 6pm and 6am Monday to Friday you will get another. If you work on Saturday or Sunday you

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will get a different rate again. So, it will depend on the day of the week and the time of the day as to exactly what your rate of pay might be.

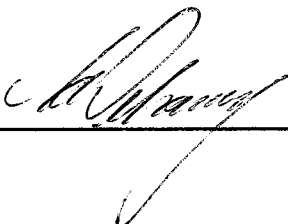
8. All guards are expected to be paid in accordance with either the Award or an enterprise bargaining agreement which is an approved agreement by the Fair Work Commission and people would need to prove that they have that arrangement to pay differently from the Award.

9. And that legislation requires that employers in the Federal system, corporations in New South Wales, any private industry employer, whether it is a corporation or otherwise, is required to pay the minimum rates of pay in that Award based on the classification of the individual employee.

10. Night span is the period of time between 6pm and 6am Monday to Friday.
Security guards may work on a rotating roster. So, let us imagine that somebody works 6am to 6pm for 5 days of a fortnight's roster and works 6pm to 6am for five nights of that same roster. They would be entitled to be paid \$25.87, what we call the span loading, which is 21.7% of the base rate, so they would be entitled to be paid that rate of pay because it is a rotating shift.

11. The permanent night shift rate applies when more than two thirds of the shifts in a roster period finish after midnight or before 6am. So, if you have somebody who works three days of 6am - 6pm and 7 days of 6pm - 6am, more than two thirds of

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the shifts finishing after midnight gets the 30% loading which is that permanent night shift rate.

12. If they work across those periods, for instance if somebody started midday and worked until 8pm, only 2 hours of that would carry the 21.7% loading and the rest would be paid base rate.
13. Table 2 shows what the overtime calculation would be, which is not dissimilar. You will notice the calculation for Saturday and Sunday rates. Overtime for security guards is the first two hours of overtime and is paid at time and a half and the rest at double. Each day stands alone.
14. An employee cannot work more than 38 hours in a week or up to a maximum of 12 hours in a day of ordinary hours before overtime kicks in. But there are some restrictions around that.
15. The rates of pay change every year. The system allows for, what they call an annual wage review. That annual wage review reviews the minimum wage in a blanket way. And every year in or about the middle of June a decision is made and that applies from the first full pay period on or after the first of July every year. So, this year the increase was 3.5%, the year before was 3.4%, the year before that 2.5% and the year before that 2.4%.

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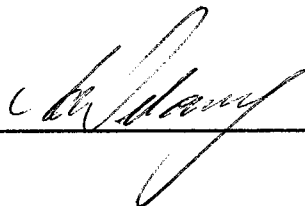


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16. In January 2015 the hourly rate for a level one was \$18.95. Time and a half was \$28.40. Double time was \$37.90. Public holidays \$47.38. The span loading which is a 21.7% loading was \$23 .06. Permanent night shift was \$24.64.
17. After July 2015, the Level 1 rate for ordinary hours is \$19.42, time and a half \$29.13, double time \$38.84, public holidays \$48.55, the span loading \$23.63 and permanent nightshift \$25.25.
18. After 1 July 2016, base rate \$19.89, time and a half \$29.84, double time \$39.74, public holidays \$49.73, span loading \$24.21 and permanent night \$25.86.
19. After 1 July 2017 base rate \$20.54, time and a half \$30.81, double time \$41.08, public holidays \$51.35 span loading \$25, permanent nightshift \$26.70.
20. There is supposed to be a meal break of half an hour after four hours of work. Under this Award if the employee cannot be given the meal break because it is operationally impractical they are paid for the break but they do not go into overtime. They just get paid the flat rate for the break.
21. The Award allows for the 38 hour maximum, which is part of the national employment standards anyway, to be averaged over a roster cycle and that roster cycle can be up to eight weeks.
22. Security officers may work 7.6, they could work 10 or they could work 12 ordinary hours depending on what arrangements exists in that particular

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workplace and what the roster cycle looks like. So, a shift worker that works a 12 hour shift may work 4 on 4 off, so that is 48 hours. But when you take that over a roster cycle of 8 weeks they will do 48 one week, maybe 32 the next and so on. And over that roster cycle they can have their 38 averaged over the roster cycle. So, they could work longer than 8 but no more than 12 ordinary hours in a day. Twelve ordinary hours is the maximum number of ordinary hours you can work and it has to be by arrangement with the employer and a majority of employees on the site. They can work a further two hours of overtime, so the maximum number of hours in any day is 14. So, if they are working 16 there has been a breach of the Award.

23. There is a clause in the Award called "The Long Breaks Clause" which means that you cannot work more than 6 days in a row without having a 2 day break, 48 hours. Now that is 6 ordinary days. So, there is nothing to say that somebody could not work 8 days with two of them being totally overtime but the roster must show a break of two days.

24. The expectation from the Award is that they do not work those extra two days and of course the national employment standards allow an employee to refuse additional hours if it is unreasonable. And there are some criteria within the National Employment Standards that talk about what unreasonable is.

25. Many Security Officers are casuals and casuals get a 25% loading on top of the base rate. Now it is not on top of the loaded rate and it is not paid for overtime.

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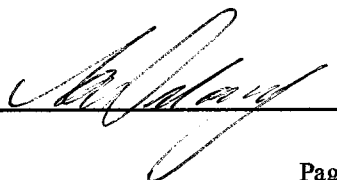


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26. These are the minimum wages. They do not include superannuation.
27. The Superannuation Guarantee Act or at least the ATO have put out some guidelines about what is OTE, what is ordinary time earnings and what is not. If somebody worked regularly every Saturday for instance and they had their 5 days a week, that Saturday overtime would be counted into super. But if they work ad hoc overtime, just bits and pieces here and there it is not counted as superannuation.
28. We calculate on average, and it will change from organisation to organisation depending on how efficient they might be, but on average on costs are going to be somewhere between 26 and 30%. That includes uniforms, administration, payroll tax and superannuation. Payroll tax is around 6% in NSW.
29. A client would expect to pay the hourly rate plus 25 to 30 percent on costs plus the profit margin.
30. For a situation where a guard works for a contractor and then works for a subcontractor at the same place to avoid the contractor having to pay them overtime, or the other way around. If I have got my primary employer and this is my secondary employer. I would have thought, if it was all at the same place and it was just as a continuity of what they were doing with the subcontractor that would look pretty shonky to me. That would be a device to avoid paying overtime. I think it works the same in reverse. If the two were in some kind of collusion and

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it was to the detriment of the employee it would be a matter for the Fair Work Ombudsman or the Federal Court. If somebody came to me and said, look I want my guards to work for Jimmy they will finish at 4 o'clock with me and start at 4:01 with him and he will pay them single time I would say that is a shonky arrangement. It could be a breach.

31. Enterprise bargaining agreements (EBAs) will remain lawful provided that the base rate in the agreement does not fall below the base rate in the Award. So, you could have today an enterprise bargaining agreement that has got \$22.00 an hour and that rate will apply on a Saturday and a Sunday and a public holiday and everything else if that is the way the EBA was originally written. Now some of those go back quite a few years. Now if you are a large principal contractor and you find a subcontractor with a valid lawful enterprise bargaining agreement that has got \$22 an hour with it then you might be able to pay him \$28.00 and that is sustainable to him. That is something that we have been fighting with for some time with all levels of government.

32. EBAs must be registered.

33. It is essential for contract managers to check out that the rates paid down the line comply with the Award or EBA.

34. Procurement managers have a tendency from my experience of all care and no responsibility. So, if Joe Bloggs comes to you as a procurement manager and says

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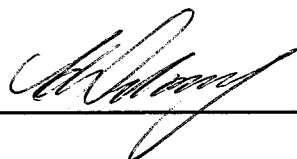
I can do this for \$30 an hour, you go: "This is great, I will take it". But I do not say to myself, no that does not pass the sniff test. You do not want to have a look at this because you do not want to find out something you do not want to know. It is not your problem, it is his problem. And I think that happens a lot. It certainly is the reason why we encouraged the Fair Work Ombudsman to look at the Local Government Procurement Initiative and I believe it happens a lot in government. It certainly happens a lot in private enterprise but my belief is that the procurement manager should be absolutely certain that they have in place ways of making sure that they are getting what they have paid for and they are paying the right price for it. Not just value for money. Value for money should not be a euphemism for cheapest possible price.

35. Section 550 of the Fair Work Act is about accessorial liability and if you read a lot of the speeches that were given by Fair Work Ombudsman, the previous Fair Work Ombudsman, she mentioned on many occasions that turning a blind eye to these things is not a good thing to do. We say if it does not smell right you have got to have another look at it. So how will you know it does not smell right if you do not know what that is and if you do not make yourself aware of what that is?

36. As a procurement manager I want to know who the sub-contractor is. I want to know what lawful industrial instrument they are working under and paying their employees under. I want to know they have all of the insurances that I expect them to have. I want to know that they are paying their superannuation. I want to

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know that they are doing all of their workers comp and what have you. So I want to be absolutely certain that I am not getting in an arrangement with people who are not doing the right thing.

37. I would expect payments of cash by subcontractors to their guards to be very rare. If a contractor is aware that their subcontractor is paying the guards in cash it should ring alarm bells for the contractor. It should promote some kind of action to be taken.
38. A statement that "I attest to the fact that I am paying in accordance with the Award" is just not good enough. From the procurement manager to the principal contractor to the sub-contractor there should be enough transparency for each of those parties to know that the other one is doing the right thing.
39. They should have something in place that allows that to happen. For example some of our larger members conduct audits on their subcontractors to make sure that they are doing the right thing. It is good practice to have an independent auditor help provide assurance.
40. Accessorial Liability - now I am the head of the supply chain so I am going to be the eventual user of the product or the service. If I just took that bit of the Act and said I cannot be complacent about this, I have got to be satisfied I have got to put something in place to ensure that that satisfaction is met. So, I cannot just sit back and say: "Great, you know, this Barry looks like he is a reasonable sort of fellow,

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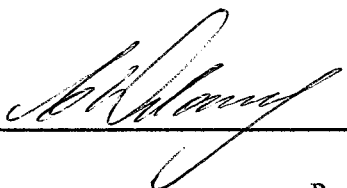
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I do not think he would tell me a lie.” I really should say to Barry: “Prove it to me.” I think it is totally reasonable to ensure that the people you are doing business with are being ethical and lawful.

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