



Civil and Administrative Tribunal

New South Wales

Case Name: Unified Security Group (Australia) Pty Ltd v
Commissioner of Police (No 2)

Medium Neutral Citation: [2021] NSWCATAD 116

Hearing Date(s): 30 March 2021; 26 April 2021

Date of Orders: 7 May 2021

Decision Date: 7 May 2021

Jurisdiction: Administrative and Equal Opportunity Division

Before: L Pearson, Principal Member

Decision: (1) The operation of the decision of the Commissioner of Police to revoke the Master Security Licence 410068657 issued to Unified Security Group (Australia) Pty Ltd is stayed until determination of the application for review or until further order of the Tribunal, subject to the following conditions:

- (a) That Luigi Trunzo and David Millward will not:
 - (i) Hold any relevant financial interest in the business of the Applicant;
 - (ii) Be entitled to exercise any relevant power (whether in his own right or on behalf of any other person), in the business of the Applicant;
 - (iii) Exercise a significant influence over or with respect to the conduct of the business of the Applicant;or
- (iv) Hold any relevant position, whether in his own right or on behalf of any other person, in the business of the Applicant.

For the purposes of this condition, the terms 'relevant financial interest', 'relevant power' and 'significant influence' have the same meaning as the equivalent terms in section 5 of the Security Industry Act 1997.

(b) That all employees of the Applicant used to provide

a security activity hold a current Class 1 or Class 2 Security Licence;

(c) That all subcontractors providing services on behalf of the Applicant hold a Master Licence;

(d) That the Applicant will provide a 'security activity' (within the meaning of s 4 of the Security Industry Act) to a client through the use of subcontractors only in circumstances where the Applicant has obtained the written consent of the relevant client to the use of the nominated subcontractors.

(2) Pursuant to s 64(1)(c) of the Civil and Administrative Tribunal Act 2013, publication of:

(a) evidence or matters in documents exhibits R1, R2, R7, R8, and tabs 2 and 3 in exhibit R12, and documents MFI 1, MFI 2, and MFI 3, and

(b) evidence given in private session on 26 April 2021 subject to an order under s 49 of the Civil and Administrative Tribunal Act 2013, is prohibited.

Catchwords: INTERLOCUTORY ORDER – revocation of security licence – application for stay

Legislation Cited: Administrative Decisions Review Act 1997(NSW)
Civil and Administrative Tribunal Act 2013 (NSW)
Fair Work Act 2009 (Cth)
Security Industry Act 1997 (NSW)
Security Industry Regulation 2016 (NSW)

Cases Cited: AVS Group of Companies Pty Ltd v Commissioner of Police [2010] NSWCA 81
Coulthart v Commissioner of Police [2016] NSWCATAD 297
Loveday v Commissioner for Fair Trading [2018] NSWCATAD 80
QLD Protection Security Pty Ltd v Commissioner of Police, NSW Police Force [2018] NSWCATAP 113
Re Pelling and Secretary, Department of Aviation [1984] AATA 179; (1984) 5 ALD 638

Texts Cited: Nil

Category: Procedural rulings

Parties: Unified Security Group (Australia) Pty Ltd (Applicant)

Commissioner of Police (Respondent)

Representation:

Counsel:

M Robinson SC with J Alderson (Applicant)

C Mantziaris (Respondent)

Solicitors:

Clyde & Co (Applicant)

Maddocks Lawyers (Respondent)

File Number(s):

2021/00081610

Publication Restriction:

Pursuant to s 64(1)(c) of the Civil and Administrative Tribunal Act 2013, publication of:

(1) evidence or matters in documents exhibits R1, R2, R7, R8, and tabs 2 and 3 in exhibit R12, and documents MFI 1, MFI 2, and MFI 3, and

(2) evidence given to the Tribunal in private session on 26 April 2021 subject to an order under s 49 of the Civil and Administrative Tribunal Act 2013, is prohibited.

REASONS FOR DECISION

- 1 On 23 March 2021 Unified Security Group (Australia) Pty Ltd (USG) applied to the Tribunal for administrative review under the *Administrative Decisions Review Act 1997* (the ADR Act) of the decision made by the respondent Commissioner of Police to revoke its Master Security Licence, with effect from 5.00pm 2 April 2021, and for a stay of the decision.
- 2 A decision made under s26 of the *Security Industry Act 1997* (the SI Act) to revoke a licence is an administratively reviewable decision: SI Act, s 29. The task of the Tribunal is to decide what the correct and preferable decision is, having regard to the material then before it including any relevant factual material, and any applicable law: ADR Act, s 63.
- 3 An application for administrative review does not affect the operation of the decision under review. The Tribunal may, on application of any party to proceedings for administrative review, make such orders staying or otherwise affecting the operation of the decision under review as it considers appropriate

“to secure the effectiveness of the determination of the application”, under s 60 ADR Act.

4 Section 60 provides:

60 Operation and implementation of decisions pending applications for administrative review

(1) Subject to this section, an application to the Tribunal for an administrative review under this Act of an administratively reviewable decision does not affect the operation of the decision under review or prevent the taking of action to implement that decision.

(2) On the application of any party to proceedings for an application for an administrative review under this Act of an administratively reviewable decision, the Tribunal may make such orders staying or otherwise affecting the operation of the decision under review as it considers appropriate to secure the effectiveness of the determination of the application.

(3) The Tribunal may make an order under this section only if it considers that it is desirable to do so after taking into account:

(a) the interests of any persons who may be affected by the determination of the application, and

(b) any submission made by or on behalf of the administrator who made the decision to which the application relates, and

(c) the public interest.

(4) While an order is in force under this section (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal may, on application by a party to the proceedings, vary or revoke the order by another order.

5 The application for an interim order under s 60 ADR Act was listed for 30 March 2021. On 29 March 2021 USG filed submissions on the stay application, and affidavits sworn by Mr Manu Mathen, Finance Manager of USG, and Mr Matthew Conway, Chief Executive Officer of USG.

6 On 30 March 2021 an interim order was made by consent to stay the operation of the decision, noting an undertaking given by USG, until 5.00pm 26 April 2021, when the hearing of the stay application was listed.

7 In summary, the undertaking given by USG was that Mr Luigi Trunzo and Mr David Millward would not hold any relevant financial interest, be entitled to exercise any relevant power or exercise a significant influence, or hold any relevant position, in the business of USG; that all employees used to provide a security activity hold a current Class 1 or Class 2 security licence; that all subcontractors providing services on behalf of USG hold a Master Licence; that

USG provide a security activity through the use of subcontractors only with written consent of the relevant client; and that USG lodge with ASIC by 1 April 2021 all documents required to divest Mr Trunzo's relevant interests in USG and record any relevant change in status of members, officers and shareholders of USG.

- 8 On 8 April 2021 a summons was issued at the request of the respondent Commissioner for production of specified documents by USG. USG objected to two parts of the summons, and on 21 April 2021 the objection was dismissed. Separate reasons are provided for that decision.
- 9 The application for a stay was heard on 26 April 2021, and the decision reserved. At the conclusion of the hearing, by consent the operation of the decision to revoke the master security licence issued to USG was further stayed until 11.59pm on the day on which the decision on the application for a stay is delivered, subject to an undertaking in similar terms to that given on 30 March 2021.
- 10 The hearing of the substantive administrative review application is listed for 20 July 2021, for three days.

Legal principles

- 11 In *QLD Protection Security Pty Ltd v Commissioner of Police, NSW Police Force* [2018] NSWCATAP 113 the Appeal Panel discussed the principles concerning stays and other orders under s 60 of the ADR Act:

31. The Tribunal recently considered the power under s 60 of the ADR Act in *Loveday v Commissioner for Fair Trading* [2018] NSWCATAD 80 (*Loveday*). In that decision it was held at [8]:

“... Section 60(2) and (3) give the Tribunal a single discretionary power to make a stay order or to refuse to make such an order taking into account all relevant considerations. Secondly, the words “to secure the effectiveness of the hearing” include a situation where the applicant will suffer irreparable loss in the sense that no recompense for it can be obtained if the application is ultimately successful: *Re Pelling and Secretary, Department of Aviation* [1984] AATA 179; (1984) 5 ALD 638 at 639. It is not confined to the situation where a hearing would be pointless because the applicant will go out of business if a stay is refused. ...”

32. The relevant considerations in deciding whether to make an order under s 60(2) include:

- (1) whether the order is appropriate to secure the effectiveness of the determination of the application for review: ADR Act, s 60(2);
- (2) whether the order is desirable taking into account:
 - (a) the interests of any persons who may be affected by the determination of the application for review: ADR Act, s 60(3)(a), *Loveday* at [10], *Re Scott and Australian Securities and Investments Commission* [2009] AATA 798 (*Re Scott*) at [4];
 - (b) any submission made by or on behalf of the administrator who made the decision to which the application relates: ADR Act, s 60(3)(b), *Loveday* at [10], *Re Scott* at [4];
 - (c) the public interest: ADR Act, s 60(3)(c), *Loveday* at [10], *Re Scott* at [4];
- (3) the applicant's prospects of success on the application for review: *AVS Group of Companies Pty Ltd v Commissioner of Police* [2010] NSWCA 81 (*AVS Group*) at [129], *Loveday* at [10] and [11], *Re Scott* at [4].

33. The circumstances that are relevant in any particular case to the considerations identified above may well overlap or be interrelated.

- 12 In *AVS Group of Companies Pty Ltd v Commissioner of Police* [2010] NSWCA 81 the Court of Appeal held that it was relevant, when determining whether a stay was appropriate, to take into account not only whether there was any practical point in reviewing the decision if a stay was not granted, but also the likelihood that the decision will be affirmed and the correct decision will not have been implemented for some time. The Court held:

129. ...There is an express statutory power for the Tribunal to grant or refuse a stay or other order "as it considers appropriate to secure the effectiveness of the determination of the application." In other words, the purpose of granting a stay or other order is connected with the determination of the application. "[S]ecur[ing] the effectiveness of the determination of the application" involves matters such as ensuring that the lapse of time before the determination is actually made does not deprive the review of practical point. It also involves considering the possibility that the result of the review might be that the decision is affirmed, with the consequence that if a section 60(2) order is granted the decision that the review ultimately decides was correct has not been implemented during the period of the section 60(2) order.

- 13 In *Re Pelling and Secretary, Department of Aviation* [1984] AATA 179; (1984) 5 ALD 638 at 639, referred to in *Loveday v Commissioner for Fair Trading* [2018] NSWCATAD 80 at [14], the Administrative Appeals Tribunal held:

If, after the facts have been ascertained at the hearing, the Tribunal considers that the applicant did deliberately flout the law and that his conduct warrants suspension of his licences in spite of the hardship which it will cause him and the company, the right or preferable decision may well be to affirm the decision under review. But, if its implementation before the facts have been established

is likely to cause him or the company serious irreparable harm (irreparable in the sense that no recompense for it can be obtained if the application for review is successful) and so to affect adversely the effectiveness of the hearing and determination of the application under review, it may be appropriate to stay the implementation of the decision pending the hearing and decision of the application. However, in considering whether that is so, it is necessary that their interests be weighed against the interest of the public in the safe operation of aircraft. Only thus can the right or preferable decision regarding the stay be given.

Background

Relevant legislation

- 14 The decision by the respondent Commissioner to revoke the applicant's master security licence was made under s 26 of the SI Act. Section 26 provides the circumstances in which a security licence must be revoked, and circumstances in which a security licence may be revoked:

26 Revocation of licence

(1) A licence may be revoked:

(a) (Repealed)

(b) if the licensee:

(i) supplied information that was (to the licensee's knowledge) false or misleading in a material particular in, or in connection with, the application for the licence or the renewal of the licence, or

(ii) contravenes any provision of this Act or the regulations, whether or not the licensee has been convicted of an offence for the contravention, or

(iii) contravenes any condition of the licence, or

(c) (Repealed)

(d) for any other reason prescribed by the regulations.

(1A) The Commissioner must revoke a licence where the Commissioner is satisfied that, if the licensee were applying for a new licence, the application would be required by this Act to be refused.

(2) The Commissioner may revoke a licence by serving on the licensee, personally or by post, a notice stating that the licence is revoked and the reasons for revoking it.

(3) The revocation of a licence by such a notice takes effect when the notice is served or on a later date specified in the notice.

Note—

Section 31 requires the licensee to immediately surrender the licence if the licence is revoked.

...

- 15 Section 15 provides for the circumstances in which an application for a security licence must be refused, relevant to s 26(1A) of the SI Act:

15 Restrictions on granting licence—general suitability criteria

(1) The Commissioner must refuse to grant an application for a licence if the Commissioner is not satisfied that the applicant:

(a) is a fit and proper person to hold the class of licence sought by the applicant, or

...

(3) The Commissioner may refuse to grant an application for a licence if the Commissioner considers that the grant of the licence would be contrary to the public interest.

(4) The regulations may provide additional mandatory or discretionary grounds for refusing the granting of an application for a licence.

(5) Except as provided by the regulations, a reference in this section to an applicant includes, in the case of an application for a master licence, a reference to each close associate of the applicant.

...

- 16 Further relevant provisions of the SI Act are:

- (1) Definitions of carrying on a “security activity” in s 4, and “close associate” in s 5 of the SI Act;
- (2) Section 38A, which prohibits subcontracting for provision of security services unless the client has expressly agreed to the provision of the persons to carry out a security activity by a subcontractor, and the principal provides the requisite subcontracting particulars in relation to any subcontractor engaged by the principal to the client before requiring payment by the client for the work of such a subcontractor;
- (3) Section 39, which makes it an offence for the holder of a master licence to provide any person to carry on any security activity if that person is not the holder of a licence that authorises the person to carry on a security activity of that kind.

- 17 Relevant provisions of the Security Industry Regulation 2016 (the Regulation) are:

13 Grounds for refusal to grant licence: section 15 (4)

(1) **Mandatory grounds for refusal—individual** For the purposes of section 15 (4) of the Act, the Commissioner must refuse to grant an application for a master licence if the applicant, or a close associate of the applicant:

(a) at any time in the 3 years immediately preceding the application for the licence was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or

her remuneration for their benefit, unless the Commissioner is satisfied that the person took all reasonable steps to avoid the bankruptcy, or

(b) at any time in the 3 years immediately preceding the application for the licence was concerned in the management of a corporation when the corporation was the subject of a winding up order or when a controller or administrator was appointed, unless:

- (i) the winding up of the corporation was by way of a member's voluntary winding up, or
- (ii) the Commissioner is satisfied that the person took all reasonable steps to avoid the liquidation or administration.

(2) In determining the reasonable steps that could be taken by a person to avoid bankruptcy, liquidation or administration, the Commissioner is to have regard to the steps that could have been taken by the person at the time that the financial difficulties leading to the bankruptcy, liquidation or administration arose.

(3) **Mandatory grounds for refusal—corporation** For the purposes of section 15 (4) of the Act, the Commissioner must refuse to grant an application for a master licence if the applicant:

- (a) is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, or
- (b) at any time in the 3 years immediately preceding the application for the licence, was a corporation the subject of a winding up order or for which a controller or administrator was appointed.

(4) **Discretionary grounds for refusal** For the purposes of section 15 (4) of the Act, the Commissioner may refuse to grant an application for a licence if the applicant, or a close associate of the applicant, has within the period of 3 years before the application for the licence was made, contravened any provision of the Act or the regulations under the Act, whether or not the applicant or close associate of the applicant has been convicted of an offence in relation to the contravention.

(5) **Discretionary grounds for refusal—master licence** For the purposes of section 15 (4) of the Act, the Commissioner may refuse to grant an application for a master licence if the applicant, or a close associate of the applicant, has, within the period of 3 years before the application for the licence was made, been found guilty of an offence under Chapter 4 of the Australian Consumer Law that relates to a contravention of section 29, 31, 33, 34, 36 or 50 of that Law.

...

25 Revocation of licence—additional reasons: section 26 (1) (d)

(1) For the purposes of section 26 (1) (d) of the Act, a licence may be revoked if the Commissioner considers that it would be contrary to the public interest for the person to whom it is granted to continue to hold it.

(2) For the purpose of determining whether it would be contrary to the public interest for a person to continue to hold a licence, the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the person that:

(a) is relevant to the activities carried on under the class of licence held by the person, or

(b) causes the Commissioner to conclude that improper conduct is likely to occur if the person continues to hold the licence, or

(c) causes the Commissioner not to have confidence that improper conduct will not occur if the person continues to hold the licence.

(3) The Commissioner is not, under the Act or any other Act or law, required to give any reasons for revoking a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information referred to in subclause (2).

- 18 Clause 30 of the Regulation provides that it is a condition of a master licence that a licensee notify the Commissioner of any change in the particulars relating to close associates within 14 days after the change occurs or the person becomes a close associate.

Decision under review

- 19 The task of the Tribunal in determining the substantive administrative review application is to decide what the correct and preferable decision is having regard to the material then before it: ADR Act, s 63(1). In determining the administrative review, the Tribunal may decide to affirm the decision, vary the decision, or set aside the decision and make a decision in substitution for it or remit the matter for reconsideration by the administrator: ADR Act, s 63(3).
- 20 In determining the application for a stay, the Tribunal must decide whether and if so what orders may be appropriate to secure the effectiveness of the determination of the administrative review application, and whether it is desirable to do so, taking into account all relevant considerations.
- 21 The following background summary of the basis for the decision under review is based on the Attachment to the Notice of Revocation of Licence, which summarises the six Allegations put to USG in two Show Cause Notices on 5 November 2020 and 19 February 2021, USG's responses to the Show Cause Notices, and the reasoning of the delegate of the respondent Commissioner. The allegations are contested, and the Tribunal will be required in determining the substantive review application to consider the evidence then available and before the Tribunal, and the submissions made by the parties, in making its findings and applying the law.

22 At this interlocutory stage of proceedings no findings are made as to whether any or all of the allegations are established, or what the ultimate decision on the administrative review should be, noting that some of the allegations, if proven, would lead to mandatory revocation of the licence.

Allegation 1

23 The Show Cause Notice issued to USG on 5 November 2020 stated that consideration was being given to revocation of the licence on the ground that USG had failed to comply with the legislative requirement to provide notice as to changes in the details of close associates of USG and also on the basis that it may not be in the public interest for the corporation to continue to hold the licence. The allegation (Allegation 1) related to correspondence between USG and the Security Licensing & Enforcement Directorate (SLED) following the issue of an earlier Show Cause Notice dated 12 August 2019, which concerned Mr Millward being an undisclosed close associate due to his shareholding in USG. The Commissioner alleged that after USG had informed SLED on 25 October 2019 that Mr Millward was no longer a shareholder in USG, on 31 March 2020 there was a change of ownership in USG in which USG Holdings Pty Ltd (USG Holdings) acquired 100% of the shares in USG; that USG Holdings has two shareholders, Millward Investments Pty Ltd (51%) and Trunzo Investments Pty Ltd (49%); and that Mr Millward held all the shares in Millward Investments Pty Ltd, and that Mr Trunzo held all the shares in Trunzo Investments Pty Ltd; and that USG had not informed SLED of the change of ownership of USG. The respondent alleged that the actions in failing to disclose USG Holdings becoming sole shareholder of USG were purposefully misleading and deceptive.

24 The response of USG was that the failure to inform SLED of the corporate restructure in March 2020 was an oversight; and that Sandra Millward Pratt is the current director of Millward Investments Pty Ltd, and arrangements were being made to transfer the shareholding of Mr Millward to her. USG provided Close Associate Nomination Forms for Luigi Trunzo and Matthew Conway.

25 On 19 February 2021 a further Show Cause Notice was issued, with a further five allegations.

Allegation 2

- 26 Allegation 2 was that Mr Millward continues to be a close associate of USG since July 2019 in that he has a relevant financial interest, a relevant position and a relevant power as defined in s 5(2) of the SI Act, based on the following: that he identifies himself as Director of National Operations of USG, he provided evidence to the Victorian Hotel Quarantine Inquiry on behalf of USG, he had identified himself to journalists as the “head” and “boss” of USG, and he is identified in USG’s October 2019 Tender for inclusion in the panel of service providers under the Whole of Government Integrated Security Services Standing Offer Contract as Proponent Representative and Proponent Enquiry Contact person. The respondent alleged that Mr Millward was not eligible to be a close associate of USG due to the operation of cl 13(1)(b) of the Regulation, having regard to the appointment of a liquidator on 5 October 2018 to Guardsplus Security Pty Ltd and on 6 February 2018 to Guards Plus Security Pty Ltd.
- 27 In response, no admission was made as to whether Mr Millward is a close associate or had been in the relevant period. USG submitted that cl 13(1)(b) of the Regulation does not apply to Mr Millward’s situation. It proposed that Mr Millward cease work with USG on 30 April 2021. USG submitted that if cl 13(1)(b) of the Regulation applied, Mr Millward’s ineligibility period would expire on 5 October 2021 for Guardplus Security Pty Ltd, and had expired on 6 February 2021 for Guards Plus Security Pty Ltd.

Allegation 3

- 28 Allegation 3 was that USG provided security services to Hornsby Ku-ring-gai Hospital (the Hospital) which is a facility of Northern Sydney Local Health District (NSLHD) including during the period 20 December 2018 to 21 July 2019, and on 9 June 2019 in breach of s 39 of the SI Act provided a person to carry on security activities at the Hospital when that person was no longer the holder of a security licence, his licence having been revoked on 19 December 2017.
- 29 In response USG submitted that the supply of an unlicensed person must have been a failure on the part of a former employee who was employed as

Compliance Manager and who took the lead in arranging for the attendance of guards at the Hospital.

Allegation 4

- 30 Allegation 4 was that USG had provided services by subcontracting without prior approval of the customer, in breach of the Whole of Government Integrated Security Services Standing Offer Contract (Contract) and s 38A of the SI Act. That allegation relates to the provision of security services at the Hospital including during the period from at least 20 December 2018. The respondent alleged that USG had a subcontractor arrangement with Ontrack Security Pty Ltd (Ontrack) under which the persons provided to carry out security activities at the Hospital were in fact provided by Ontrack; that those persons wore uniforms that identified USG and not Ontrack; that on or about 4 July 2019 USG responded to a request from NSLHD for confirmation that all staff provided by USG were direct employees of USG and not subcontractors, providing confirmation that was the case; that at no time did USG seek or was provided with approval by NSLHD to provide persons to carry out security activities through a subcontract with Ontrack; and that Ontrack was not one of the subcontractors nominated by USG in its tender for the work.
- 31 USG responded that any error or non-compliance was attributable to the former employee responsible for managing service delivery at the Hospital and the email of 4 July 2019 was not sent with the authority, knowledge or permission of USG.
- 32 Allegation 4 included a further allegation of unauthorised subcontracting for security services at various Ausgrid sites between 1 August 2018 to 13 November 2019, alleging that USG had a subcontractor arrangement with Fletcher Holding Pty Ltd (Fletcher) under which the persons provided to carry out security activities at Ausgrid sites were in fact provided by Fletcher, that USG did not have approval of Ausgrid to provide persons through a subcontract with Fletcher, and that Fletcher was not one of the subcontractors nominated by USG in its tenders for the work. No submission was made by USG in response to that allegation.

Allegation 5

- 33 Allegation 5 was that in its response to a notice issued on 24 July 2019 under s 39O of the SI Act requiring the production of information about persons provided by USG in NSW both as direct employees and through subcontractors in the period 1 June 2019 to 30 June 2019, USG had not included details of the person who provided security activities at the Hospital on 9 June 2019; or provided information that would identify any individual who carried on security activities under any subcontract arrangement between USG and Ontrack; or identified Fletcher as a subcontractor to USG; or provided information that would identify the individuals who carried on security activities under any subcontract arrangement between USG and Fletcher; or provided information that would identify the individuals who carried on security activities under any subcontract arrangement between USG and any other subcontractors of USG. The allegation included an allegation that after receiving the s 39O Notice USG had sent an email to Ontrack requesting that any employee of Ontrack who had worked at the Hospital under the subcontract arrangement complete and return an application for employment with USG including relevant certificates and licences.
- 34 In response USG submitted that the response to the s 39O Notice was prepared by its former employee, and that to the extent that any information provided was false and/or misleading such information was not provided with the authority, knowledge or permission of USG.

Allegation 6

- 35 Allegation 6 was that Mr Luigi Trunzo has been a close associate of USG since 2012 and that until 5 December 2020 when USG provided a Close Associate Nomination form, his involvement with USG had been undeclared.
- 36 USG responded that to the extent that Mr Trunzo's interest in USG was undeclared it was not an intentional or deliberate error.

The decision

- 37 The decision to revoke the licence was based on findings that all the allegations set out in the Show Cause Notices were proven, as follows:

- (1) USG had breached a condition on its master licence imposed under cl 30 of the Regulation (notification of close associates) – Allegations 1 and 6: a ground for revocation under s 26(1)(a)(iii) of the SI Act;
- (2) USG had contravened a provision of the Act or Regulations – Allegations 1, 3, 4, 5 and 6: a ground for revocation under s 26(1)(a)(ii) of the SI Act;
- (3) Section 26(1A) of the SI Act which provides that a licence must be revoked if satisfied that, if the licensee were applying for a new licence, the application would be required to be refused, applied because:
 - (a) Mr Millward is subject to the operation of cl 13(1)(b) of the Regulation until 5 October 2021;
 - (b) Not being satisfied that Mr Millward is a fit and proper person to be a close associate of USG, having regard to findings in Allegation 1 of a deliberate failure to notify SLED that he was a close associate and that the restructuring of USG was a deliberate attempt to permit him to exercise a controlling role, and the finding in Allegation 2 that he continued to be a close associate after 5 November 2020, s 15(1)(a) of the SI Act, which extends to close associates, applied;
 - (c) Not being satisfied that Mr Trunzo is a fit and proper person to be a close associate of USG having regard to the findings in Allegation 6 that he has been an undeclared close associate of USG since 2012, s 15(1)(a) of the SI Act, which extends to close associates, applied; and
- (4) Clause 25 of the Regulation, which provides that a licence may be revoked if considered that it would not be in the public interest for the holder to continue to hold the licence, applied having regard to the findings in relation to Allegations 1, 2, 4 and 5, and the general lack of candour and engagement in the process of providing information in response to the Show Cause Notices.

Evidence on the stay application

38 The following affidavit evidence was admitted on the stay application:

- (1) The applicant USG relied on:
 - (a) affidavits of Mr Matthew Conway, Chief Executive Officer, 29 March 2021 (ex A1) and 21 April 2021 (ex A2);
 - (b) affidavit of Mr Manu Mathen, Finance Manager, 29 March 2021 (ex A3).
- (2) The respondent Commissioner relied on the following affidavits:
 - (a) Lisa Stockley, Assistant Director (Industry Regulation), SLED, 14 April 2021 (ex R1), 22 April 2021 (ex R2), and 23 April 2021 (ex R3);

- (b) Bianca Comina, Senior Assessment Officer SLED, 15 April 2021 (ex R4) and 22 April 2021 (ex R5);
- (c) Stephen Limebeer, Manager Protection Security and Critical Infrastructure, Ausgrid, 15 April 2021 (ex R6);
- (d) Jason Elderhurst, Senior Manager Building Services, Public Works Advisory (PWA), 14 April 2021(ex R7) and 22 April 2021 (ex R8);
- (e) David Macpherson, Investigator SLED, 15 April 2021 (ex R9) and 23 April 2021 (ex R10);
- (f) Darren Swan, Investigator SLED, 16 April 2021 (ex R11).

39 Mr Mathen and Mr Conway gave oral evidence. An order was made under s 49 of the *Civil and Administrative Tribunal Act 2013* (the NCAT Act) for part of the hearing of the evidence of Mr Conway be conducted partly in private, excluding members of the public.

40 An order was made under s 64 of the NCAT Act prohibiting publication of evidence or matters contained in the documents which are exhibits R1, R2, R7, and R8 and in documents marked for identification MFI 1, MFI 2, MFI 3, and evidence given in private session on 26 April 2021. A further order is made under s64 of the NCAT Act prohibiting publication of the material behind tabs 2 and 3 in exhibit R12, the respondent's cross examination bundle.

Submissions of the parties

USG's submissions

- 41 USG submits that a stay ought to be granted because it will suffer irreparable harm, financial loss and damage without a stay; the final determination will be futile if a stay is not granted because its business will collapse; and there are serious questions to be tried in relation to the revocation. USG submits:
- (1) It is the employer of 745 persons in NSW who would lose their income and need to find new work. If it loses its Master Licence it will not be able to service the ongoing projects it is currently involved with, valued at approximately \$55m per year, or projects due to commence imminently and projects for which it is currently tendering, worth approximately \$37.5m;
 - (2) There are reasonable arguments in favour of the applicant overturning the revocation and there are serious questions to be tried. The respondent has misinterpreted the relevant provisions in the SI Act and the Regulation and mistakenly revoked the licence on a mandatory ground when the provisions relied on do not apply; and the remaining

grounds consist of isolated allegations or incidents which relate to the discretionary power of the respondent. The incident involving alleged unauthorised subcontracting and an alleged misleading response to a notice issued by the respondent was the result of an error on the part of a former employee who acted without the authority, knowledge or permission of USG;

- (3) It is now effectively a new entity with the change in shareholding and steps taken since the interim order was made on 30 March 2021, and USG has taken positive steps to extricate the two individuals concerned from its business; and
- (4) The matters alleged against USG are technical, based on matters that are not current, or not serious or significant, so that they could be dealt with by penalty notices.

42 At the time of the application for administrative review and for the stay, USG's position was that 530 of its 745 employees in NSW were engaged in providing security services for the NSW Hotel Quarantine program. USG submitted that it had performed services for that program to an exemplary standard and it was not in the public interest for an overhaul of those security services to take place at this critical juncture.

43 By the time of the hearing on 26 April 2021, as discussed below, that position had changed, and USG had no ongoing work under that program. USG submitted that it employs 215 employees in NSW who do not work on the Hotel Quarantine program, and those jobs will be lost if a stay is not obtained. If some of those employed in the Hotel Quarantine program are able to pursue their own opportunities with competing security companies, that would benefit those individuals but not assist USG as a business, as it would lose a substantial portion of its workforce and also its entire book of contracts as well as the further business for which it is currently tendering.

44 USG submits that the public interest would not be served by allowing its business to collapse because:

- (1) There is no evidence that USG, or the manner in which it conducts its business, present a risk to public safety;
- (2) The decision is based on an error of law;
- (3) The conduct relied upon by the respondent concerns mostly administrative or technical alleged breaches of the SI Act;

- (4) Other conduct on which the respondent relies is attributable to a former employee who acted alone and without the authority or knowledge of USG; and
- (5) The individuals of potential concern to the respondent have now departed the business and hold no power, influence or interest in USG.

Commissioner's submissions

- 45 The Commissioner opposes the grant of a stay, submitting that the claimed potential economic loss is exaggerated; that Mr Trunzo and Mr Millward have not divested themselves of relevant interests and powers in relation to USG and remain close associates; that USG has engaged in unauthorised use of subcontractors; and that there has been a lack of candour in USG's dealings with the Tribunal, by not disclosing the arrangements made to accommodate a large number of USG's employee security guards should a stay be refused.
- 46 The Commissioner submits that USG has not met its practical onus of establishing its claim that it will go out of business in three weeks if a stay is not granted, as:
 - (1) funds have been siphoned off from the company by way of loans and dividends;
 - (2) large payments are due from large government and commercial clients; and
 - (3) 93% of the cost of the business is wages: expenses for subcontractors will go with the revocation, and there has been a stand down of the 530 employed staff working in NSW Hotel Quarantine due to ongoing work not being allocated to USG.
- 47 The Commissioner submits that:
 - (1) there has been no real distancing of Mr Trunzo from USG and he remains a close associate;
 - (2) USG has engaged in unauthorised subcontracting;
 - (3) there has been a lack of candour with the Tribunal, by seeking to avoid scrutiny of its catastrophic loss claim, or in disclosing the state of play with its participation in the Hotel Quarantine program; and
 - (4) the Tribunal can have no confidence that USG will abide by the terms of the legislation if allowed to operate until the determination of the administrative review.
- 48 The Commissioner submits that the public interest considerations raised by the stay application are that:

- (1) The Commissioner has revoked the licence and the decision should stand unless there are sufficient and appropriate reasons to modify its implementation pending the determination of the review application;
- (2) The SI Act establishes a system of public regulation designed to protect public safety, and that system is endangered by the continued operation of service provision under a licensee deemed to be unfit; and delay compromises the public safety objective;
- (3) The licensee has deliberately flouted a clear statutory prohibition on the unauthorised use of subcontractors in the provision of services, and its prospects of maintaining its licence in the face of this breach are low;
- (4) USG has not demonstrated that Mr Millward and Mr Trunzo have divested themselves of relevant interests in, and powers in relation to, USG; and
- (5) USG has exaggerated its claim of catastrophic economic loss, and it attempted to hide the fact and the broad content of the negotiations relating to employees working in the Hotel Quarantine program from the Tribunal.

Discussion and findings

49 The Commissioner's opposition to the grant of a stay was based on four factors: that the claim of catastrophic consequences for USG because it will suffer irreparable harm, financial loss and damage, is not made out; the continuation of Mr Millward and Mr Trunzo as close associates of USG; the deliberate and extensive use of unauthorised subcontractors by USG; and USG's lack of candour in particular as to the financial issues and the state of play with the NSW Hotel Quarantine program. The evidence relevant to each of those factors is considered below.

USG's financial position

50 USG has held a NSW Master Security licence since 10 October 2009. Mr Conway's evidence (ex A1) was that it operates in NSW, Victoria, Queensland, South Australia, ACT, Western Australia and Tasmania, and that it provides security services to 75 clients in NSW on an ongoing basis, including the NSW State Government; is in the process of tendering for approximately \$37.5m worth of security work; and is due to commence supply of security services to a large Sydney based fashion retailer, a contract worth \$250,000 per year to the business. Mr Conway's oral evidence was that USG had a turnover of \$68m last financial year.

- 51 At issue is whether, as stated by Mr Mathen in his affidavit of 29 March 2021 (ex A3), and as Mr Conway agreed, USG would be able to operate for no more than three weeks following the loss of its licence in NSW. The Commissioner disputed that proposition. The Commissioner submits that the financial claims made by USG are supported only by two unaudited, draft financial documents; and that the evidence of Mr Mathen and Mr Conway should be treated with caution, both being appointed to their positions after the end of the 2020 financial year.
- 52 Mr Mathen annexed to his affidavit (ex A3) a Draft Profit and Loss Statement July 2020 to February 2021, and a Balance Sheet in draft as of February 2021. The former document records that Wages and Salaries Expenses, not including superannuation or long service contribution, account for 58% of total expenses, and Subcontractors-Guards for 24% of total expenses. The latter document records the amount of \$15m for trade debtors.
- 53 Mr Mathen was cross examined on the USG Financial Statements for year ended 30 June 2020 (ex R12, tab 5), prepared by external accountants, which he agreed show \$9m in associated loans to USG Holdings Pty Ltd. He was cross examined on the USG Management Accounts for the period ended 31 March 2021 (ex R12, tab 6), which he agreed show an amount of \$5m paid in dividends, and \$14.7m for trade debtors. Mr Mathen's evidence was that he had not reviewed financial records before October 2020 when he was appointed Finance Manager of USG. To his knowledge, USG has made loans to USG Holdings since October 2020, and there are 4 to 5 loans recorded. He was unable to say how much the loans were. He was not aware of any attempts to recover money loaned, or of loans being written off or forgiven. He is not involved in the company's dividends and does not know who decides dividends, or to whom they are paid. There have been 5 to 6 dividends declared since July 2020. Two have been declared since he joined USG. Mr Mathen agreed that if dividends were repaid to USG, and if loans were brought back, that would affect USG's cash position. He agreed that there is some \$11m owing from the Victorian government for services provided over a year ago which he would expect to come in, but he does not know when, and there is some \$2.8m owing from the NSW government.

- 54 Mr Conway in oral evidence agreed that it was possible USG would be paid for the services provided to Victorian hotel quarantine; he stated that legal proceedings have been commenced. He agreed that if USG's licence is revoked, and there was no work, the cost of subcontractors would cease, and that some 93% of the cost of the business would cease. Mr Conway did not agree that the claim of catastrophic collapse of the business was exaggerated, or that USG would be able to pay its bills over the next two to three months.
- 55 It is not possible on the present state of the evidence for the Tribunal to reach other than a tentative view as to whether USG's claims of irreparable harm or financial loss and damage if a stay is not granted are made out, for several reasons:
- (1) The financial records provided by USG in support of its application are, as contended by the Commissioner, limited in scope and in draft, and neither Mr Mathen nor Mr Conway, as recent employees of USG, were able to elaborate on those records to any significant extent. The position as to current earnings is not clear, the accounts prepared by external accountants as at March 2021 showing an amount of \$6.5m which is a significant increase from the \$3.28m shown in the February 2021 balance sheet, a difference explained by Mr Mathen as attributable to a reversal of some expenses;
 - (2) It is clear, and accepted by Mr Mathen and Mr Conway, that substantial funds have been paid out of USG since the end of financial year 2020 by way of dividends in the order of \$5m, and as loans to USG Holdings, \$9m in financial year 2020, and \$5m in the current financial year based on the Management Report. However the evidence does not establish the extent to which any or all of those funds could be recovered by USG to support ongoing operations should a stay not be granted.
 - (3) The evidence is that USG is owed a substantial amount of money by trade debtors, however there is no indication as to when those amounts may be paid: Mr Mathen and Mr Conway differed as what USG's regular terms of payment are, and based on Mr Conway's evidence, there are issues with recovery of a substantial part of the money owed; and
 - (4) The financial records on which USG relies show that the significant majority of the costs of the business comes in wages and subcontractor costs, and in that regard the stand down of Hotel Quarantine employees since the application for the stay was lodged means that a large proportion of the wages expenses are no longer incurred; and if a stay is not granted and USG is not able to provide security services, it would not be incurring the cost of subcontractors.

USG's workforce

- 56 In his first affidavit of 29 March 2021 (ex A1), Mr Conway stated that USG has 745 employees in NSW. In his second affidavit of 21 April 2021 (ex A2), he stated that as at 28 March 2021 USG employed a total of 530 guards who provided security services to the NSW Hotel Quarantine program, and who were employed on either a permanent part time basis or full-time basis. Mr Conway referred to contingency plans for guards working in the Hotel Quarantine program to transition across to other security providers if a stay is not obtained, stating that those guards are being offered only casual shifts with another security provider. His evidence was that if 530 of its guards transfer over to a competitor USG will lose a substantial portion of its workforce which it may not be able to bring back and on which it relies in servicing its contracts.
- 57 The Commissioner noted in his written submissions filed on 19 April 2021 that the involvement of USG in the NSW Hotel Quarantine program has changed since the application was lodged. Since the making of the initial revocation decision on 19 March 2021, USG has been engaged in negotiations with the NSW government and an alternative provider of security services (the Step-In Deed Negotiations), with the objective of minimising disruption to the security services on the Hotel Quarantine program, providing for the continued employment of USG staff with the alternative provider on a temporary basis should the stay application be refused, and providing USG with an opportunity to re-enter the program if successful in the application.
- 58 The detail of those negotiations is provided in the evidence of Mr Elderhurst, Senior Manager, Building Services, Public Works Advisory (PWA) (ex R7, R8), and the evidence of Ms Lisa Stockley, Assistant Director (Industry Regulation) SLED (ex R1). In his oral evidence Mr Conway confirmed that he had been involved in the conversations with PWA after 19 March 2021. The detail of the timing and substance of those negotiations was discussed in evidence given in the absence of the public.
- 59 By the time of the hearing of the stay application on 26 April 2021 the position concerning USG's participation in the NSW Hotel Quarantine program had changed. In evidence is a stand down notice dated 21 April 2021 addressed to

“Dear Unified Security Team Member”, signed by Mr Conway (ex R12, tab 4). In oral evidence Mr Conway confirmed that on 20 April 2021 USG had been notified by PWA that USG was not required to deliver services for the Hotel Quarantine program in the current round. He explained that USG has worked on the Hotel Quarantine program since the beginning, and the amount of work has been up and down as demand has required. He confirmed that USG had served stand-down notices to its employees doing the hotel quarantine work under the *Fair Work Act 2009* (Cth) for the period 23 April 2021 to at least 7 May 2021. The notice in evidence advises that employees will not be paid but will continue to accrue annual leave and personal leave entitlements and will remain an employee of USG during the stand down period.

60 Mr Conway acknowledged that he had not annexed to his affidavit of 21 April 2021 a copy of the email of 20 April 2021 notifying USG that it was not required to provide services, or provided a supplementary affidavit to update the position.

61 Based on the evidence of Mr Mathen and the financial documents in evidence, the Tribunal accepts that a substantial proportion of the business expenses of USG as at the date of the application for the stay are the salaries and wages paid to employees, a total of between approximately 82% (based on the Draft Profit & Loss Statement provided by Mr Mathen), to 93-94% (based on Mr Conway’s affidavit evidence). The Tribunal accepts that a substantial proportion of those persons provided for security activities by USG have been employees engaged in the NSW Hotel Quarantine work, where it is a requirement of the NSW government that security work not be provided by subcontractors. The change in arrangements for that work and the stand down of those employees means that the business costs no longer include ongoing cost of wages and salaries for those individuals, while retaining liability for leave and other entitlements. Mr Mathen accepted in oral evidence that if a stay is not granted, the cost of subcontractors would cease.

62 The Tribunal accepts that that change in the number of employees engaged in provision of services for the Hotel Quarantine program has implications for consideration of the harm likely to be suffered by USG if a stay is not granted.

What is not clear on the available evidence is how many of its remaining workforce are employees of USG rather than subcontractors. In oral evidence Mr Conway disputed that there would be hundreds of subcontractors engaged by USG, and could not say whether it was more than 100. In his second affidavit Mr Conway stated that there are 215 people employed in NSW who do not work on the Hotel Quarantine program whose jobs would be lost if a stay is not granted. Even if the Commissioner's contention that USG has been engaging in unauthorised subcontracting is made out, and the evidence does not support a figure for employed security staff as high as 215, the claimed number presumably includes USG's administrative and other support staff in addition to security guards employed on a part or full time basis.

Involvement of Mr Trunzo and Mr Millward

63 In his affidavit of 21 April 2021 Mr Conway stated that the steps taken to comply with the undertaking of 30 March 2021 were:

- (1) USG had locked both Mr Millward and Mr Trunzo out of their email addresses, and office 365 and OneDrive accounts, and directed that both email accounts go to Ms Sandra Pratt;
- (2) Authority to approve staff expenses was transferred from Mr Trunzo to him;
- (3) Mr Trunzo and Mr Millward were removed as authorised signatories to USB's bank accounts, and authority transferred to Mr Mathen and Ms Pratt.

64 Mr Mathen confirmed in oral evidence that control of USG's bank account was transferred from Mr Trunzo and Mr Millward to him 20 days ago.

65 In her affidavit of 22 April 2021 Ms Bianca Comina (ex R5) provided charts based on ASIC searches of companies linked to USG, and the director and shareholding history of Mr Trunzo and Mr Millward. In summary, those charts record that USG Holdings Pty Ltd holds 100% of the shares in USG. USG Holdings was registered on 12 January 2020, with Trunzo Investments Pty Ltd (49%) and Millward Investments Pty Ltd (51%) as shareholders, and with Mr Trunzo and Mr Millward as sole shareholders of those corporations respectively. On 31 March 2020 Mr Millward ceased to be a director of Millward Investments, and Ms Sandra Millward Pratt, sister of Mr Millward, was appointed director. In May 2020 Mr Millward transferred his 100% shareholding

in Millward Investments to Ms Millward Pratt. On 1 April 2021 Trunzo Investments Pty Ltd transferred its shares in USG Holdings to Millward Investments Pty Ltd, and the ASIC records state that the consideration for the transfer of 100 shares in USG Holdings was \$100.

- 66 The Commissioner disputes that Mr Trunzo and Mr Millward are no longer close associates of USG, submitting that the share transfers in April 2021 (sale by Trunzo Investments Pty Ltd) and May 2020 (sale by Mr Millward) occurred at a significant undervalue. The Commissioner submits that on Mr Mathen's evidence, USG is a company that had net assets/equity of \$11.717m as at February 2021, and that the 100 issued shares in USG Holdings are worth more than the \$0.00 to \$1.00 recorded as the consideration for the transfers.
- 67 The Commissioner relies on the evidence of Mr Elderhurst that Mr Millward participated in meetings with PWA regarding the performance of USG's obligations under the contract for the provision of security services to the Hotel Quarantine program in 2020-2021, and in the negotiations in March 2021. Based on that evidence, the Commissioner submits that Mr Millward continues to exercise executive and managerial powers on behalf of USG through his participation in meetings with PWA regarding the provision of security services to the Hotel Quarantine program in 2020-2021, and in the negotiations for a Step-in Deed in March 2021.
- 68 On the Tribunal's assessment of the available evidence, there is no direct evidence of involvement of either Mr Millward or Mr Trunzo in the ongoing management of the business of USG since the Tribunal orders of 30 March 2021. The affidavit evidence of Mr Conway confirms the removal of their access to emails, the return of phones, and the change in access to bank accounts. Mr Conway's oral evidence was that he has not spoken to Millward concerning management or finances of the business, only client interactions, he has not spoken to Mr Trunzo about the finances or management of the business, and as far as he is aware neither is involved in USG Holdings. Mr Mathen confirmed that Mr Trunzo and Mr Millward had control of the bank accounts until 20 days ago, and he now operates them on his own. He does not accept direction from Mr Trunzo. Mr Conway said that he has been

involved in the negotiations concerning the Hotel Quarantine work since March 2021.

- 69 The Commissioner submits that the documents required by the Tribunal orders of 30 March 2021 to be lodged by 1 April 2021 to transfer control were not filed until 9 April 2021, which was a failure to comply with the order. Whether or not that is so, the evidence is that there has been a formal transfer of involvement and control in the operation of the business, and there is no evidence as to involvement of either Mr Trunzo or Mr Millward since the negotiations concerning the Hotel Quarantine program in March. The definition of “close associate” in s 5 of the SI Act is broad. It will be a matter for determination in the substantive review application whether either Mr Trunzo or Mr Millward have been, or remain, a “close associate” of USG as defined. On the evidence before the Tribunal at this stage, the Tribunal is not able to make such a finding.
- 70 If it is ultimately found that either Mr Trunzo or Mr Millward is or has been a “close associate” of USG, the issue of whether cl 13(1)(b) of the Regulation applies so as to represent a mandatory ground for revocation under s 26(1A) of the SI Act will need to be determined. USG submits that cl 13(1)(b) applies only in cases where the applicant for a master licence is an individual, and has no application in the present case, where the licence holder is a corporation. The Commissioner disagrees, relying on the decision of the Tribunal in *Coulthart v Commissioner of Police* [2016] NSWCATAD 297. In that decision the Tribunal held that an application by a corporation for a corporation master licence had to be refused because within the three years preceding that application a close associate of that company, Mr Coulthart, was concerned in the management of another company when an administrator was appointed to that company and Mr Coulthart failed to take all reasonable steps to avoid administration. No firm conclusion as to this issue can be stated at this interlocutory stage, as that will depend on full argument as to the competing interpretations of cl 13(3)(b) of the Regulation, and whether cl 13(1)(b)(ii) applies.

Unauthorised subcontracting

- 71 In support of the submission that USG has engaged in the unauthorised use of subcontractors with respect to the performance of contracts for the provision of security services to Ausgrid and Hornsby Hospital, the Commissioner relies on the following evidence:
- (1) Mr Stephen Limebeer, Manager Protective Security and Critical infrastructure, Ausgrid, annexed to his affidavit (ex R6) a copy of the agreement between Ausgrid and USG (August 2017) for provision of security services, a term of which is that the supplier must not, without the prior written consent of Ausgrid, subcontract its obligations to any third party. On 1 April 2021 and 7 April 2021 USG's Senior Client Liaison Manager notified Ausgrid of the subcontractors used by USG. The terms of that notification request the client to notify USG if they "wish to expressly stipulate" for the non-use of any of the named subcontractors, which the Commissioner submits is an "opt out" request and not express consent;
 - (2) In his affidavit Mr David Swan, Investigator SLED, provided records obtained from Fletcher confirming the provision of named security licence holder operatives to carry out security activities for USG at an Ausgrid Wallsend site from 3 June 2019 to 9 June 2019, and from 1 July 2019 to 3 July 2019;
 - (3) In his affidavit Mr David Macpherson (R9) annexed email communications between USG's National Compliance Manager and Ontrack between April to September 2019 in which USG requested guards to work at Hornsby Hospital; tax invoices issued to USG by Ontrack on 8 July 2019 including for provision of guards at Hornsby Hospital in June 2019; and an email from USG's National Compliance Manager on 24 July 2019 to Ontrack, requesting that it get "anyone that has worked at Hornsby Hospital ... to fill out the application form and provide me with all certificates and licenses", attaching a USG employment application form. Mr Macpherson transcribed notes of responses given by Ontrack Operations Manager on 10 February 2021 to a number of questions, including the statement that instructions for Hornsby Hospital came from the USG accounts manager and that they were told to organise the guards, wear the uniform of Unified, and tell anybody who asks them they work for Unified Security.
- 72 On the evidence before the Tribunal, it would appear to be open for a finding to be made that USG had not obtained the consent of either of those clients to the provision of security staff through a subcontractor. If the allegations made in Allegations 4 or 5 are substantiated in the substantive review proceedings, and a breach of s 38A found, s 26(1) of the SI Act would enable the Tribunal on the substantive review to confirm the decision to revoke the licence.

Section 60(3) considerations

73 In determining whether an order should be made under s 60 the Tribunal is required to take into account the factors specified in s 60(3) of the ADR Act:

1. Interests of any persons who may be affected by the determination of the application: s 60(3)(a)

74 The interests of any persons who may be affected by the determination of the application for review include the interests of those employees of USG engaged in the security work remaining after the cessation of work on the Hotel Quarantine program; the interests of those employees on that program who while stood down, retain leave and other entitlements with USG; and the interests of other employees of USG not engaged in provision of security services. While the Tribunal is unable on the available evidence to identify a precise number of employees as opposed to subcontractors, the Tribunal accepts that those persons who are employees would be affected by the determination of the review, and any loss of work in the interim period before the review application is determined.

75 The relevant interests include the interests of any persons who have some financial or other concern with USG, which on the present evidence would include the ultimate shareholder, Ms Millward Pratt.

2. Submission made on behalf of the administrator: s 60(3)(b)

76 The Commissioner opposes the stay, and has made detailed submissions as to the grounds for that opposition, as summarised above at [45]-[47].

3. The public interest: s 60(3)(c)

77 The submissions made by the parties as to the public interest are summarised above at [44] and [48]. In the Tribunal's view the matters going to the public interest of particular relevance are that:

- (1) There is no evidence that the way in which USG has been conducting its business has raised concerns for public safety. That is an important aspect of the public interest: if it were otherwise, it would as discussed in *Re Pelling*, count against the grant of a stay;
- (2) There is evidence that may lead to an ultimate finding of breach of provisions of the SI Act intended to prevent unauthorised subcontracting. Compliance by licence holders with their obligations as

provided in licence conditions and contractual arrangements, goes to the public interest in ensuring compliance with the regulatory regime;

- (3) While steps have been taken to divest Mr Trunzo and Mr Millward of relevant interests and powers in relation to USG, those steps have been prompted by the commitments made in the consent orders of 31 March 2021; and
- (4) The Tribunal agrees with the Commissioner that the failure of USG to inform the Tribunal of the decision of PWA not to offer USG work on the current round of NSW Hotel Quarantine work, and its decision to stand down the employees engaged in that work, shows a lack of candour; it was not appropriate that that change in operational and financial position should emerge in the course of cross examination of USG's witness Mr Mathen.

78 The prospects of success on the review application cannot be gauged with certainty. On the present evidence the Tribunal considers that there is a strong possibility that the allegations of unauthorised subcontracting for provision of security at Hornsby Hospital and for Ausgrid may be made out. In contrast, the question of whether Mr Trunzo or Mr Millward have been, or remain, close associates of USG, or are prohibited by cl 13(1)(b) of the Regulation from being so, are live issues. The Commissioner asserts that USG has engaged in a deliberate flouting of the regulatory requirements including those applicable to close associates. Resolution of those questions will require detailed examination of the various transactions, and consideration of the financial and other interests and the role of Mr Millward and Mr Trunzo and others associated with USG, including its director Mr Ben Demsitz.

79 The ultimate outcome if some or all of the allegations are found to be established on the substantive review will depend on whether any of the mandatory grounds for revocation are established, or if discretionary grounds are enlivened, how the discretion is exercised.

Conclusion

80 The Tribunal may make an order to stay or otherwise affect the operation of the decision to revoke USG's security licence if it considers it appropriate to secure the effectiveness of the determination of the application for review of that decision. As *Loveday* confirms, the power to grant a stay under s 60 is not confined to a situation where a hearing would be pointless because the applicant will go out of business if a stay is refused. In this matter the

circumstances are not as they were when the decision was made to revoke the licence or when the application for the stay was lodged, not least because USG has stood down the majority of its employees since the loss of work for the Hotel Quarantine program. The reduction in ongoing wage commitments for the business needs to be balanced against the loss of income and employment for those employees who remain, which is a harm for which no recompense could be obtained even if the application for review is successful and USG retains its licence. Against that is the possibility identified in AVS that the decision to revoke the licence may ultimately be confirmed, and the business will have been allowed to continue operation in the meantime. It is relevant in that regard that while there are serious allegations made of breaches of the regulatory requirements, there is no evidence of concerns for public safety in the way in which USG has been conducting its business. No issue has been raised as to the quality of the security services provided or that there has been any risk to public safety.

- 81 While the matter is finely balanced, having taken into account the matters specified in s 60(3), and in particular the effects on remaining employees if a stay is not granted and the steps taken to distance Mr Trunzo and Mr Millward from ongoing management and involvement in USG, the Tribunal considers that it is desirable to make an order to stay the operation of the decision. That should be subject to conditions which will continue the limitation on involvement of the two individuals the subject of Allegations 1, 2 and 6, and confirm the ongoing obligation to comply with the requirements of the SI Act including in particular that in s 38A prohibiting unauthorised subcontracting.

Orders

- 82 The orders of the Tribunal are:

- (1) The operation of the decision of the Commissioner of Police to revoke the Master Security Licence 410068657 issued to Unified Security Group (Australia) Pty Ltd is stayed until determination of the application for review or until further order of the Tribunal, subject to the following conditions:
 - (a) That Luigi Trunzo and David Millward will not:
 - (i) Hold any relevant financial interest in the business of the Applicant;

- (ii) Be entitled to exercise any relevant power (whether in his own right or on behalf of any other person), in the business of the Applicant;
- (iii) Exercise a significant influence over or with respect to the conduct of the business of the Applicant; or
- (iv) Hold any relevant position, whether in his own right or on behalf of any other person, in the business of the Applicant.

For the purposes of this condition, the terms 'relevant financial interest', 'relevant power' and 'significant influence' have the same meaning as the equivalent terms in section 5 of the Security Industry Act 1997.

- (b) That all employees of the Applicant used to provide a security activity hold a current Class 1 or Class 2 Security Licence;
 - (c) That all subcontractors providing services on behalf of the Applicant hold a Master Licence;
 - (d) That the Applicant will provide a 'security activity' (within the meaning of s 4 of the Security Industry Act) to a client through the use of subcontractors only in circumstances where the Applicant has obtained the written consent of the relevant client to the use of the nominated subcontractors.
- (2) Pursuant to s 64(1)(c) of the Civil and Administrative Tribunal Act 2013, publication of:
- (a) evidence or matters in documents exhibits R1, R2, R7, R8, and tabs 2 and 3 in exhibit R12, and documents MFI 1, MFI 2, and MFI 3, and
 - (b) evidence given in private session on 26 April 2021 subject to an order under s 49 of the Civil and Administrative Tribunal Act 2013, is prohibited.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

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