INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

MATTER NO. IRC1880 OF 1995

REFERENCE BY THE MINISTER FOR INDUSTRIAL RELATIONS

PURSUANT TO S.345(4) OF THE INDUSTRIAL RELATIONS ACT 1991

REGARDING

THE TRANSPORT AND DELIVERY OF CASH

AND OTHER VALUABLES INDUSTRY.

REPORT TO THE MINISTER

28 FEBRUARY 1997

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CORAM: PETERSON J

DATE: 28 FEBRUARY 1997

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Reference by the Minister for Industrial Relations pursuant to s.345(4) of the Industrial Relations Act 1991 regarding the transport and delivery of cash and other valuables industry.

REPORT TO THE MINISTER

On 18 August 1995 the Minister for Industrial Relations, the Hon. J.W. Shaw, Q.C., M.L.C., pursuant to s.345(4) of the *Industrial Relations Act* 1991, made the following reference to the Industrial Relations Commission of New South Wales (See Annexure 1) for investigation and report:

> "Pursuant to section 345(4) of the Industrial Relations Act 1991, the Minister for Industrial Relations hereby refers to the Industrial Relations Commission of New South Wales the following terms of reference regarding the transport and delivery of cash & other valuables industry:
>
> 1. the adequacy of Government regulation of occupational health and safety standards in the industry;
>
> 2. the adequacy of industrial regulation of the industry in relation to all issues;
>
> 3. the adequacy of training and licensing procedures for workers in the industry;
>
> 4. employers' employment and recruitment procedures;
>
> 5. safety practices and procedures in the industry;

6. the adequacy of equipment used in the industry, including firearms, body protection and the armoured vehicles; and

7. the role of all parties (including clients) in enhancing safety in the industry.

The matter was allocated to me. Since the reference was made, the *Industrial Relations Act* 1991 ('the 1991 Act') has been repealed by the *Industrial Relations Act* 1996 ('the 1996 Act') which came into effect on 2 September 1996. The transitional provisions contained in clause 31(2) of Schedule 4 of the 1996 Act have the effect that the proceedings are to be determined by me, sitting as the new Commission, but the substantive law is that of the 1991 Act (See *G.I.O. Australia limited & Anor v. O'Donnell* per *Hill, Hungerford* and *Marks* JJ.; 13 November 1996 (No. CT1038 of 1996 - Unreported)).

The Commission was provided with the services of Mr. Michael *Walton* of counsel to act in the role of counsel assisting the Commission in the proceedings, on the instructions of Mr. Ian *Hill* of the N.S.W. Crown Solicitor's Office. From time to time the role of counsel assisting was either performed or enlarged by Mr. Brendan *Docking* and Mr. Peter *Menadue*, both of counsel. The office of counsel assisting also operated with the participation of Mr. Sean Flood, Mr. Nicholas Elvin, Mrs. Dorothy Curtis, Ms. Leonie Glasby, Ms. Sharon Turner, and Ms. Liliana Torresan, and also Inspectors McDonald, Shume and Batty who were seconded from the WorkCover Authority of N.S.W. to the proceedings. Further, the services were obtained, again by way of

secondment, of Senior Constable Craig Stuart Donald of the N.S.W. Police Service, who undertook a number of enquiries and interviews on behalf of counsel assisting, particularly in areas where it was perceived that the presence of a police officer would conduce to the acquisition of relevant information, and who also contributed oral evidence.

I record my appreciation of the efforts of all those persons appointed to assist the proceedings. The proceedings assumed proportions which were perhaps unforeseen at an early stage and required constant and unswerving application by many of the persons I have mentioned to ensure that the substantial volume of material relevant to the terms of reference was brought forward. The report which I now make is largely due to the efforts of these participants. However, I particularly note the efforts of Mr. *Walton*, who applied himself assiduously in his onerous role.

The mode of conduct of the proceedings was that evidence was adduced through counsel assisting. Therefore, parties and others wishing to place before the proceedings any information were required to provide the material to counsel assisting who determined, sometimes in consultation with the Commission, whether it would be called and then put it in a form, often after extensive further inquiry, which was suitable for presentation to meet the purposes of the proceedings.

The proceedings achieved a substantial participation otherwise by parties to the industry which occurred through

the appearance of counsel and a number of advocates. Again, the efforts of all of the participants is appreciated. The principle advocates and those for whom they appeared are listed in Annexure 2 hereto.

This first section of the Report attempts to condense the substance of the subject matter to a manageable length; it makes a number of observations on various issues and then lists all recommendations made. It is followed by a series of appendices including one for each term of reference in which will be found the evidentiary and other references to the details of the particular subject matter. Those appendices are based on the submissions of Mr. *Walton* but have been amended to refer where necessary to the submissions of other parties and, more particularly, to reflect my own conclusions taking into account all of the material before the Commission.

The Scope of the Reference

The terms of reference were conceived at a time of industrial turmoil in the armoured vehicle industry, manifested as strike action, following a series of armed robberies which involved both death and injury to crew members. While this is not referred to in those terms of reference, it was accepted in the proceedings that they should be understood in part in the light of that background. The relevance and effect of this obvious feature arose as two issues which required interlocutory rulings. On 31 August 1995 the Commission, at the inception of the proceedings, had adopted a preliminary view of the breadth of the terms of

reference which did not confine those terms to "fee for service" transport but extended them also to "in-house" transport, which was intended to embrace the transport of relevant goods by employees of the owner of the goods, or by the owner himself. On 15 December 1995 that preliminary view was reconsidered in the light of submissions which had been advanced by all concerned with the point. The ruling then made was that the phrase in the terms of reference "the transport of cash and other valuables industry" should be confined to persons knowingly engaged in the industry of transporting such goods on a fee-for-service basis. This had the effect that the carriage of cash or valuables by an employer or his employees incidentally to the conduct of a business of a different character was outside coverage. This excluded, by way of example, the banking of business takings by retailers and others; banking of cash by T.A.B. operators or staff; and others who receive and carry cash as an incident of ordinary business or social activity.

Further, on 23 May 1996 it was necessary to rule upon the question whether the terms of reference required the Commission to investigate:

- the regionalisation of policing, particularly the Armed Hold-up Squad, and

- sentencing policy with respect to persons convicted of armed hold-ups of armoured vehicles.

Armaguard, a division of Mayne Nickless Ltd. ('Armaguard'), had contended positively that those matters were within the terms of reference and should give rise to recommendations. Whilst this view was rejected by the ruling, the question of regionalisation of policing is nevertheless a matter of undoubtedly substantial significance to the industry. It is that significance which causes me to later express views on a related matter, and no doubt caused the submissions to be advanced by the Australian Bankers' Association ('the ABA') to the effect that the Commission should recommend the creation of, a permanent recidivist offenders squad within the NSW Police Service targeting those who commit armed robberies.

The interlocutory rulings given in the course of the proceedings including those to which I have adverted are Annexures 4 - 6 hereto.

The substantial effect of the rulings is that the specific heads of the terms of reference are to be inquired into in the context of work which involves the carriage for hire or reward of cash and valuables. Valuables are defined as including jewellery, art, drugs, cigarettes, negotiable securities, bullion, precious metal, precious gems, instant lottery tickets, credit/debit transactions, smart cards and casino chips. For convenience, I will use commonly the generic term "CIT Industry" (meaning "cash in transit") to refer to the whole of the work coming within the terms of reference.

The August 1995 Industrial Dispute

On 2 August 1995 the Transport Workers' Union of Australia, New South Wales Branch ('the TWU') held a meeting of delegates from all yards of Brambles Security Services Ltd. ('Brambles') and Armaguard throughout New South Wales. This led to a 24-hour stoppage of work on 4 August 1995. After unsuccessful conciliation the strike resumed on 8 August 1995 and continued for eight days.

The causes of the industrial dispute were the armed robberies committed upon employees of Brambles and Armaguard in July 1995 at Miranda Shopping Centre and Warringah Mall Shopping Centre, Brookvale, respectively. At Miranda, Mr. Robert Jones received a fatal wound to the chest from a shotgun in the course of an attempted robbery. The attempt occurred in a public street while a delivery to a bank was being executed across a footpath on the edge of which the armoured vehicle was parked. At Warringah Mall, Mr. Walid Abdallah was wounded by shotgun pellets in a successful attack which arose whilst he and another employee were approaching an automatic teller machine ('ATM') which they were to service.

The stoppage of work was motivated by a perception amongst members of the TWU that, in armoured vehicle operations, they were being required to deliver and collect cash in circumstances which exposed them unduly to the risk of armed attack. The dispute was ultimately resolved on the basis that Armaguard and Brambles would provide an additional

person to undertake surveillance of deliveries at particular sites which were to be identified. These sites were referred to variously in the course of the proceedings as "hot spots" or "black spots". The identification of such locations was undertaken by the companies in concert with delegates and, not to put too fine a point on it, were selected consensually. Armaguard provided the additional surveillance through officers who were regarded as members of staff whereas Brambles utilised certain members of car crews who were accepted as appropriate to the function. An issue arises whether or not it is appropriate that such surveillance ought be undertaken by car crew members or by staff employees who, in addition to undertaking the guarding function, may be required to exercise a degree of supervisory responsibility.

These arrangements were implemented pending the conduct of and conclusions arising from these proceedings. They have prevailed over the ensuing period.

Confidentiality Considerations

In October 1995 the Commission adopted an approach to the receipt of evidence which allocated to evidentiary material provided by parties and that sought out by counsel assisting, various classifications of confidentiality. Class A evidence was to be available without restriction. Class B evidence was to be available to all those given leave to appear, but not otherwise. Class C evidence was to be limited to only those parties approved to receive it and Class D evidence was to be confined to counsel assisting and the Commission.

The means by which the appropriate classification was afforded to particular evidence was that the person providing the evidence would indicate the classification claimed. If counsel assisting agreed with that classification it would be so accorded, alternatively it would be accorded a different classification nominated by counsel assisting. In the event that the party providing the material or any other party wished to contest that classification the matter was dealt with in chambers and an appropriate ruling was given.

That process put some of those appearing in a position where they were denied access to material they regarded as appropriate for their receipt. An example is that of Kunama Securities Pty. Limited, trading as National Armoured Express and ASAP Security Services ('ASAP'). Although an operator of three armoured cars in New South Wales, Kunama was denied access to certain evidence provided to the Commission by Armaguard and Brambles which was confined to those parties and the Transport Workers' Union of Australia, New South Wales Branch ('the TWU'). That ruling was given on 22 November 1995 (transcript p.613). On 28 February 1996 Kunama renewed its application for access to this material but for reasons which were given shortly and ex tempore on that date the December ruling was adhered to (T.1315-1316). On 29 February 1993 Kunama announced that it no longer wished to appear in the proceedings and sought leave to withdraw. Certain grounds, rather outlandish in character, were advanced for this application. The grounds were rejected but the application for leave to withdraw was granted. I note that Mr. John

Dyrhberg, the founder and Managing Director of Kunama, later gave, on two occasions, lengthy and helpful evidence.

These confidentiality ratings are a matter of significance for another reason. Much of the material presented is quite unsuitable for publication, in any form, beyond those in the particular employment or operation, who "need to know". This is information which often could, if exposed, put life and property in a higher degree of danger. I note that the parties were prepared to accept that the proceedings should be conducted with varying degrees of confidentiality and, despite my request, no party advanced any position on how the report might be formed to take into account this problem. Although the Commission has had access to this evidence, which remains on file, I consider it inappropriate that I should prepare a report to the Minister, which in due course will enter the public arena, containing any detailed reference to confidential material. I intend, therefore, to refer to evidence in a general way only when dealing with such confidences and in a more detailed fashion from time to time when dealing with less contentious material.

Summary of the Industry

The CIT industry is but one part of five categories falling within the class 1 licence issued under the *Security (Protection) Industry Act* 1985 ('the SPI Act'). Those classes are in summary:

(a) Guarding property (including cash);

(b) acting as a bodyguard;

(c) installing, maintaining or repairing safes or vaults etc.;

(d) installing, maintaining or repairing electronic or acoustic equipment related to security;

(e) the sale of safes, vaults or any mechanical, electronic, acoustic or other equipment related to security.

It will be seen immediately that category (a) includes the guarding of property generally as well as the transport of cash and valuables in a secure way. Within that limited extension, however, there is encompassed a considerable industry.

The range of work in the CIT industry is:

1. Armoured vehicle operations, involving larger and smaller operators, as follows:

Larger	-	Armaguard
	-	Brambles
		(230 vehicles - 1,000 guards).
Smaller	-	Kunama Securities Pty. Ltd. trading as National Armoured Express:
	-	Roden
	-	Brinks Australia
	-	Bushlands
		(10 vehicles - 29 guards)

2. Non-armoured, referred to within the industry as 'soft-skin', operators:

> there are over 200 firms in this part of the industry. Some of the larger firms are Wormalds, Kunama Securities Pty. Ltd. trading as ASAP, Ultimate Security Services, Security Cash Transport and Roden Security.

It is not possible to identify with any precision the numbers of persons engaged in the soft-skin side of the industry.

These first two divisions of the industry exhibit some overlapping features and also some distinctions. For example, the armoured vehicle operations are high profile, utilising vehicles which carry company signage, with personnel being uniformed and armed. In soft skin operations precisely the same approach may be taken although the vehicle, marked with company signage and colours, will not be armoured. On the other hand, the soft skin sector incorporates what are sometimes referred to as "covert" deliveries where an unmarked vehicle will be used; the person effecting the carriage will be in plain clothes and sometimes armed, although not obviously. These services are referred to in this report as discreet operations for the reason that there seemed to be a widely held view in the evidence that such operations are unable to remain truly covert if they are conducted on a regular or repeated basis.

3. Courier operations, whether by van or truck, sedan or station wagon, motor cycle or bicycle. Couriers, although sometimes carrying cash and valuables, generally appear to carry such goods on the basis that security is not a particular or central feature of the service. The goods are not under guard, beyond the usual supervision afforded in general transport operations. Indeed, often the courier is strictly unaware of the nature of the goods carried, although in the case of some collections, for example from jewellery houses, it must be obvious. The carriage by courier tends to be dove-tailed into the day's operations without any special regard for the nature of the goods carried.

One feature common to the industry as a whole is the requirement stemming from s.8(2) of the SPI Act that any person

> "..... intending to carry on the business of, or to be employed in:
>
> (c) patrolling, protecting, watching or guarding any property ... may apply for a Class 1 licence."
>
> "Property" is defined to include money. (s.3).

It is an offence to carry on, for fee or reward, any security activity without an appropriate licence (s.18(1)).

Accordingly, guards in both armoured and soft-skin divisions of this industry are required to hold such licenses.

Another feature is that the licence entitling a holder to protect money also permits that person to engage in work in the security industry generally - the training for the licence in fact is directed to general security rather than secure transportation. One effect of this is that, in the soft-skin side, transport is often undertaken by guards who engage in the provision of both transport and non-transport security services, or by companies which supply both services.

Thus 'secure' transport is sometimes an add-on, and perhaps minor, service rather than one which is the principal purpose of the operator. This, coupled with the non-directional nature of the training for a security licence, produces a form of service delivery which is cheaper and thus attractive to the customer but from a number of points of view more dangerous for employees and subcontractors.

For so long as there is a need in society for the utilisation of cash in volume, there will inhere in this industry an element of risk of robbery which is not able to be avoided completely. At present this danger is met by a number of responses, including

- the use of armoured vehicles
- standard operational procedures
- the carrying of weapons, particularly firearms
- the level of manning.

It appears that developments overseas may cause in the future the introduction of armed devices in which cash may be carried more safely both in vehicles and across the footpath. The evidence in this regard was limited and permits no conclusion presently that such devices will succeed in this environment, but the equipment demonstrated appears to be a major advance on that tested some years ago by Armaguard and rejected by crew members, apparently from fears related to their safety. Cost is a question; however, it appears the equipment is being received favourably in a number of countries and there is clearly enough information of interest now available to cause this equipment to be evaluated appropriately in the near future.

The present methods used to make deliveries secure require the employees involved to hold security licences, for which they must be trained and, where applicable, firearms licences for which they must undergo separate training.

The need to focus upon the adequacy of this training has led me to the view that the training is not only inadequate for the CIT industry but is equally inadequate for general security work. In accordance with the terms of reference, the recommendations I make will be confined necessarily to the CIT industry but it would seem inevitable that they should have an impact on some aspects of general security training.

There are many aspects of the proceedings which lead to the conclusion that changes are required in the interests of

employees, contract workers and the public. However, my conclusion is that the armoured vehicle sector, while sustaining a relatively higher experience of armed attack than the soft-skin sector, largely works according to operational and training precepts which are creditable. The attitude to training and the pursuit of a fairly rigid adherence to operational procedures, devised with employee safety to the forefront, is a feature of the evidence in the armoured vehicle sector which distinguishes Armaguard, Brambles and Kunama from virtually the rest of the CIT industry.

The proposed changes are designed to achieve a purpose-directed system of training and licensing for the CIT industry, with improved standards which will lift the level of training and the resultant abilities of graduates so as to better befit them for their roles. I anticipate this will have an impact mainly in soft-skin operations, where company training is virtually non-existent, but also in the smaller armoured vehicle operators.

The recommendations also require the adoption of standard operating procedures which are to be available to employees but in a controlled manner so that confidentiality is reasonably maintained.

Some Discovered Problems

Some of the matters identified in the proceedings which present as problems requiring a reaction may be summarised:

1. The present system of regulation has operated ineffectively in that it has permitted individuals with serious criminal convictions and others with insufficient qualifications or training to obtain licences entitling them to work in the security industry.

2. The present system of pre-entry training for security guards is seriously inadequate, and there is no specific pre-entry training for CIT guards.

3. The present system of firearms training for CIT guards is inadequate. Again, there is a lack of specific training for CIT guards.

4. Companies and sole traders are able to obtain business licences to work in the industry without having any qualifications or experience.

5. Insufficient checks are made on directors of companies seeking business licences.

6. Managers and supervisors appear sometimes to be unqualified and inexperienced.

7. There is very often, particularly in soft-skin operations, a lack of the minimum operating conditions needed to maintain adequate safety standards for employees and the public.

8. Many employers and employees adopt unsafe operating procedures.

9. Many employers provide their employees with little or no post-entry training, even in safe operating procedures.

10. Many operators' avoid their obligations under awards by utilising a system of sub-contracting which operates to the disadvantage of subcontractors.

11. Industry clients (such as banks, local councils, shopping centres and retail stores) have had, and have desired to have, little input into improving the safety of CIT guards, and there is no, or inadequate, consideration of the risks to CIT operations when planning, designing or building major shopping centre developments. It follows that there has been no particular care taken with respect to the safety of members of the public in the vicinity of relevant CIT operations.

12. Additional factors suggest changes. These are that:

(a) Armoured vehicle operations are an obvious target for serious criminals because of their high visibility, the large amounts being carried and the ease with which surveillance can be carried out.

(b) Soft-skin operations can be, and some are, in the words of one witness, "robberies waiting to happen".

13. Even where employees are adequately trained, there is a requirement for constant vigilance which the evidence suggests is the vital element in the matter of security.

An example of the problem which failure in this regard can create for employees is the recent decision of the Full Commission (*Peterson, Marks* JJ. and *Patterson* C.) of 20 December 1996 in *Brambles Security Services Ltd. v. The Transport Workers' Union of Australia (NSW Branch* (Matter No. IRC1772 of 1996, Unreported) where the Full Commission said:

> "It is undeniable that the employees are, whilst not confined within the armoured vehicle, potentially in danger. Not only is there a risk to their own safety but also the safety of members of the public who may unwittingly be caught up in any incident. The employees are almost always carrying valuable cargo and they are armed. Because they are armed the means which are likely to be used against them are accelerated. The deterrent effect of being armed is complemented by a requirement that at all times the employees concerned must appear to be alert and on their guard. This includes, in turn, an ability to have access to their firearms quickly if this becomes necessary. The conduct of the employees concerned observed on the video recorders at the Casino is in all respects inconsistent with the proper discharge of their responsibilities and demonstrates a blatant disregard for basic security requirements established by the Company for their own protection. We regard those requirements as being reasonable in all the circumstances."

There is an overwhelming need for supervision in the industry in the interest of the employees' welfare. Employees will need to accept that the supervision is essential not for the purpose of attacking them, but assisting to secure them from attack.

What Action is Appropriate?

In large measure, the objective of this Report is to make recommendations the result of which, if implemented, would be to improve the safety of guards working in the CIT sector and, as a consequence, the safety of the public and the security of the valuable property which they transport.

The proceedings have produced a conundrum difficult of resolution: the injury and death rate in the armoured vehicle sector occurs where organisation and care is at an industry peak, yet in the more casually-approached soft-skin sector, the occurrences are few and at a level which appears to involve less risk of mortal physical danger.

There is little reason to doubt this is a result in part of the expectation of a higher return for the criminal involved in attempting the robbery of an armoured vehicle, which causes the level of attack to match or exceed the capacity of members of an armed crew to defend themselves and the cash they are carrying. It is also necessary to maintain some perspective in relation to the incidence of attacks on armoured vehicles. There have been 88 attacks over 10 years to 1996, 32 of those being in relation to banks and ATMs. In the same period in excess of one million deliveries/ collections have been made to banks/ATMs under the Reserve Bank contract, performed by only one of the armoured car companies.

Central to the call for regulation is the fact that operators in the industry, once licensed, receive no inspection or assessment of their performance on an ongoing or periodic basis. The responsibility they have for their employees, clients and the public requires that they perform to a level which is satisfactory, yet the evidence discloses that often the method of work adopted puts one or more of these categories of persons at risk. For example, a single employee, uniformed in a marked vehicle, even though carrying a firearm, is clearly a "soft" target. The chance of an unseen attack from behind is greatly increased by the absence of another person in support. The vulnerability of the weapon to seizure is also a serious problem. In this form of collection or delivery the employee (or contractor) is at serious risk of injury. However, capacity to attack such lone carriers also puts at risk members of the public who may come into contact with the attackers; this group at risk may be constituted by office and retail staff, shoppers, pedestrian or vehicular traffic. Although no submission was put strongly to the contrary, these considerations seem to overweigh any perceived "right" an operator may have to manage his business untrammelled by some intervening regulatory scheme.

The objective must be to attempt to ensure that operations are conducted in a manner which minimises risk to the greatest extent reasonable in the circumstances, taking into account the likelihood that an excess of intrusion may render a service unviable.

While there are some small areas with room for improvement, the approach of Armaguard and Brambles to this problem has in large measure been appropriate; the same cannot be said for a large proportion of the soft skin sector. A notable segment of the industry which includes soft skin operators with higher standards of approach is the membership of Australian Security Industry Association Ltd. ('ASIAL'), the qualifications for membership of which are genuine and taken seriously.

How then can a system of registration and/or regulation, perhaps in conjunction with an industry code of practice, be adopted which meets the different needs of the two sectors?

Armaguard suggests improved licensing arrangements within the NSW Police Service; Brambles argues for industry self-regulation underpinned by statutory regulations (this view is preferred by Professor Paul Wilson), but rejects the Police Service as deserving continued participation.

The TWU submits that self-regulation will not work - there should be an enhanced licensing system with a general regulatory power, through which standard operational procedures can be established and enforced.

ASIAL suggests new licensing categories issued by the Police Service, with the establishment of an Advisory Committee reporting to the Minister for Police.

I am not persuaded that a major or grandiose step ought be taken at this stage in terms of regulation of the industry. In particular, I do not consider that it is appropriate to establish a security industry commission with far reaching powers to dictate to the industry a set of standard operating procedures, adherence to which would be necessary to retain licensing.

The multi-faceted nature of the industry and the very real doubts which affect the utility of an intrusive regulatory scheme require a more tentative approach. The evidence has established that the industry is populated by operators whose interest in providing a secure and effective service varies markedly. With those operators who pay only lip-service to security the effects of an intrusive approach could only be beneficial. However, where there is a serious and commendable approach by an operator to the problems of the industry, an intrusive approach may well introduce an element counter-productive to security.

The evidence in the proceedings does not support the conclusion that the major armoured vehicle companies should be subjected to any substantial further regulation beyond that which is imposed on their operations at present. Indeed, the nature of their operations is so delicate that the introduction of an excessive degree of regulation may conduce to increase the risks rather than reduce them for employees in the industry. For example, the concept of an industry regulator adopting general operating procedures for

application in the industry at large, whether on a sectional basis or more widely, would immediately introduce a publicity or publication factor - an ability to readily discover industry operating procedures - which could well facilitate the planning of criminals intending to perpetrate attacks on armoured vehicles. I have come to the firm conclusion that the major armoured car companies generally conduct their operations with an emphasis on security which need not, and ought not, be open to detailed interference from a centralised bureaucracy. It may be otherwise were the fact that there is a common disregard for employee or public safety, but that is not the fact.

The proceedings have not been able to provide any evidentiary basis for the conclusion that a regulatory body with power to dictate on operational matters will achieve any actual improvement in the safety of employees in the armoured vehicle industry. I am convinced that to remove to any marked degree the ability of major armoured vehicle companies to manage their own affairs and in particular to adopt operating procedures which they, with their experience and expertise, consider appropriate to the special business they are in, is unwarranted. That said, however, there is no reason why general directions cannot be imposed to ensure that those employers are obliged specifically to maintain those standards. The *Occupational Health and Safety Act* 1983 ('the OH&S Act') obligations are not necessarily adequate to achieve this objective.

The same conclusion against stringent intervention cannot be reached for a large portion of the soft skin sector, which operates often with no real or only haphazard regard for safety. The problems here include unreasonable workloads and time pressures which may require multiple collections on a round with only one deposit to bank at the end of the round; an employee or subcontractor working in a marked soft-skin vehicle, in uniform, alone and obviously engaged in cash collection; the carrying of a firearm, which is no defence to an attack from behind and, given the frequency of firearm loss in robberies, is possibly a target in itself; and low financial returns whether by way of a flat hourly rate ($10.00 per hour is a common level) no matter the number of hours worked or the day, on or time at, which they are worked.

What is required is a system which will produce an improvement in the areas where it is warranted, having regard to the failure of sections of the industry to adopt appropriate working practices, but will not interfere unduly with the freedom of the responsible sections of the industry to manage their affairs in a manner which they consider, responsibly, to best meet their operational requirements.

I consider that a case has been established for the enhancement of existing licensing procedures with upgraded requirements which are subject to scrutiny by an appropriate licensing body. I would accept the view widely, although certainly not universally, held within the industry that the Police Service remains the relevant body to undertake this

process. The infrastructure of the Police Service is available and appropriate to meet the needs locally of applicants for licences. The present arrangement is that each Area Commander (of which there are eleven) is delegated, by the Commissioner of Police, authority to approve or reject licence applications. Whether or not this has contributed to the ability of inappropriate applicants to gain a licence, it at least means that decisions are made by a number of persons with the potential for an inconsistency of approach. I will recommend that this arrangement be altered.

It is essential to bear in mind that the nature of the problems addressed in the course of this report makes them incapable of management or control by an external bureaucratic structure which could cause the risks to be markedly reduced if not eliminated. The risks will always remain that criminals will level attacks upon cash carriers. It is undesirable to create a response to the problems perceived in the industry which are capable of being superficial rather than of substance. The mix of cash, weapons and the criminal element suggest that there should be a very close connection between the regulation of the industry and the NSW Police Service. It is noted that two of three earlier reports into aspects of the security industry have come to different conclusions.

The Bartley Report on the Licensing Aspects of the SPI Act came to the view that a Registrar of Security Licences be appointed. No particular attention was paid to the armoured

car operators in this Report; indeed, that Report reads as though they were not a consideration.

The Interim Report of the Government Police Advisory Committee, the Chairman of which was the Hon. Stephen B. Mutch., M.A., LLB., M.L.C., in February 1993 reported to the Minister for Police in a review of the SPI Act. In regard to a regulatory body the Committee recommended the establishment of a Security Protection Industry Commission to "provide this growth industry with a focus and direction". That Commission would report directly to the Minister for Police.

In May 1995 Chief Inspector C.F. Wedderburn conducted a review into the security industry and recommended that the licensing and administration of the Act should remain with the NSW Police Service. This report, made in September 1994, noted that the NSW Police Service Firearms Registry had "positively addressed the concerns of the Mutch Report".

There is no doubt that the elimination of specialist licensing police officers has, over time, caused a reduction in the attention paid to the licensing process and the maintenance of a check upon licensed persons. Chief Inspector Wedderburn said in this regard:

> "The abolition of the specialist licensing Police officer was a reason given in the Bartley Report for the low priority being given to the enforcement of the Act. Later, in the Mutch Report it was said, inter alia:

> "The Police Service has placed little priority on administration and enforcement under the Act, and does not evidence any great desire to improve this commitment."

These comments and observations were valid at the time they were made and remain, to some extent, valid today. The Patrol Police officer generally displays a scant knowledge of this legislation (ie. Security (Protection) Industry Act & Firearms Act and their attendant Regulations) and as a result is wary of involvement.

With the advent of a current education program initiated by the Director of the Firearms Registry focussing on licensing legislation and now a recognised priority in the training of Patrol Police, it will better educate Police and place more pressure on the security industry licensee to comply with the requirements of the law or risk licence cancellation.

During the lengthy discussions with the personnel and management involved within the security industry it was evident that there was a willing and eager response for more Police involvement in their industry. This response by them is seen as being the most efficient method of ridding the industry of the medley of shabby individuals who are presently providing great disservice to the image of the security industry."
(p.iv of C.I. Wedderburn's Report)

This problem was referred to in evidence by one operator this way:

> "You ... have to go to a local police station and if there's no licensing sergeant there you've got to tell the constable how to renew the licence yourself."

Having considered the problems established in the evidence, the existing licensing scheme, the earlier inquiry reports and the submissions of the parties in these proceedings, I consider the proper course is to permit the licensing function to be maintained within the control of the Commissioner of Police, with an enhanced role for the Firearms Registry on an appropriate delegation of authority, to grant or refuse licence applications. The delegation of the licence approval function to Area Commanders should cease accordingly.

The Commissioner should establish minimum operating standards which would apply to applicants for a business licence. The terms of those standards should be incorporated in an industry Code of Practice, determined by the Commissioner on the advice of an industry advisory panel, the creation of which I now recommend, which should consist, at least, of representatives of the Firearms Registry, the TWU, Armaguard, Brambles, Kunama and ASIAL. Consideration should be given to including representation on the panel of smaller employers outside the membership of ASIAL. The panel should be chaired by a representative from that group, nominated by the Commissioner of Police.

I consider these operating standards would not impact to any serious degree on the armoured vehicle companies and responsible soft-skin operators.

In relation to applications for security licences I also consider that the right of a failed applicant to appeal to the Local Court should be altered. At present, if an applicant is rejected by the NSW Police Service on the basis that the tests imposed by s.101 of the SPI Act have not been satisfied (for example, that the applicant is "a fit and proper person") an appeal may be made to the Local Court, where the practice is that a magistrate hears the appellant, usually through a legal representative, and has access to the Police Commissioner's file but has no representation of or input by the Commissioner.

In one such case, the materials from which were placed before me, the order was that the class 1 security industry licence would be granted from the expiry of the applicant's current custodial sentence, on conviction for armed robbery. Not only is there no rationale evident in the facts for such a generosity of approach, there was none in the reasons for decision. This applicant would be authorised, on receiving his licence, to engage in the work of a security guard in relation to premises (for example, a bank) or as a guard for a cash delivery operator. While some consideration may be given to the rights of a person who has paid a debt to society through imprisonment, the effect of a 'fit and proper person' test would appear to be rendered nugatory by an approach as in the case cited. I cannot see any basis for the view that a convicted armed robber would, or should, qualify as appropriate to be granted a security licence for this industry.

Despite that illustration, I believe the weakness is not so much in the test but in the procedure relating to appeals. The fact that the Commissioner of Police has no role in an appeal I consider extraordinary. It introduces the certainty that the applicant will be presented in the most favourable light with any criticism of appropriateness only to be discovered by the Court. It is necessary that the Commissioner be represented to ensure those matters against the application are put before the Court.

Further, there should be an appeal available to the Commissioner from the decision of a Local Court. Given that the licence is virtually a work qualification, I consider that this Commission, in Court Session, would be more suitable as the appellate tribunal than, for example, the District Court. The question whether a person satisfies the test is analogous to the question the Commission determines in relation to 'refusal to employ' issues (s.6(2)(e) of the Act). I would recommend that an appeal be able to be brought to the Industrial Relations Commission of New South Wales in Court Session, constituted by a Full Bench. I recommend the Court Session rather than the Commission in its non-court guise because it is appropriate that an appeal from a court be to a court. Such is consistent also with the provisions of the 1996 Act concerning existing appeal rights from the decision of a Local Court (s.197). This recommendation will provide two appeal steps which some might see as excessive. However, I consider this to be a critical stage of entry into an industry which must have only persons who are both fit and proper to work in it; the great importance of weeding out undesirable elements at this stage offsets any detriment perceived in two appeal steps.

I consider that applications for licences should continue to be made to, and the right of approval should remain that of, the Commissioner of Police subject to that power being capable of delegation not to regional operations but to the central licensing registry itself. However, it is essential to strengthen the service beyond the existing two-man central

operation to one more able to cope with the volume of business. Consideration should be given to the allocation of licensing revenue to meeting the costs associated with enlarging this service.

This approach would also obviate the need for any person or institution external to the Police Service to be conferred a right of access to police records for the purpose of assessing the history, particularly that of criminal convictions, of an applicant. It also retains the obvious advantage of having firearms and security industry licensing, which really go hand-in-hand, together in the one, relevant, registry.

Firearms

In the CIT industry, firearms are utilised basically for their deterrent value - they deter minor or opportunistic criminals from attacking a crew in the course of a delivery. That effect is desirable, at least whilst existing methods of delivery apply.

There is no question that the retention of firearms by armoured vehicle crews is necessary. The evidence is overwhelming to the effect that a withdrawal of firearms would make armoured vehicle crews soft targets and thereby more susceptible to attack. The high probability is that attacks would in fact increase whether by persons armed with firearms or not. This would not appear to conduce to the maintenance

of employee safety in the course of work but rather to an increased exposure to danger.

However, the consequence of the presence of firearms is that persons prepared to engage in an attempt to rob must upgrade their level of attack, putting a heavier burden of risk upon the car crew members. Overall, the opportunity risk appears to favour this higher burden, with relatively rare instances of attack, as against a lower level of defence with an accelerated rate of attack. One factor which supports this is the clear fact that crews are not selected on the basis that they possess an ability to engage in a physical confrontation, that is, to fight off an attack. Apart from the fact that the requirement in practice is that such is to be avoided, in many cases age and physical condition would positively militate against such an engagement.

The position with firearms in soft-skin activities is somewhat more contentious. The evidence shows that single guards, particularly when in uniform, are readily susceptible to attacks, especially from behind, and experience such events on a reasonably frequent basis. Firearms are often stolen in the course of such attacks. Nevertheless, there is an argument to the effect that the retention of the right to carry firearms by such guards is still necessary to deter an even higher rate of attacks. Although there is a serious doubt about this, on balance I prefer to recommend, as I do in Term 6, that such guards should be required to satisfy the

licensing authority that their usage is relevant in the context of the particular operations.

The qualification I made at p.32 about existing methods of delivery relates to the availability of technology which may reduce to a marked degree the central problem of the industry, the risk of attack. The reaction of the employers to the evidence of new across-the-pavement devices was, at best, lukewarm. It matters not whether this was motivated by Armaguard's past experience, where a large expenditure on alarmed containers was met with a refusal by the employees, after a very limited trial, to use them; a perception that the supplier was, in giving the Commission evidence of these devices, as counsel suggested, "touting his wares"; cost (approximately $5,000.00 per container of large briefcase size) or even a genuine pessimism or doubt about their utility. The evidence is that such devices are slowly spreading through a number of European operations with the effect that rates of attack are being reduced markedly and firearms are being found unnecessary. This results from the device's ability to ensure, through the use of an internal incendiary device, that the bank notes contained therein are rendered unusable when a container is opened without authorisation. The publication of that ability has been made through the media, including by television advertisement, with the intention of informing potential attackers of the futility of attempting a robbery thereon.

Further, it appears some insurers may be tending towards either requiring the use of such devices because of their inherent security and lowered insurance risk, or refusing CIT insurance cover. An inability to obtain insurance cover is a virtual disenfranchisement of an operator.

The British experience of Armaguard, attested to by the company's National Security Manager, Mr. Robert James Bruce, is that the absence of firearms has produced a higher rate of attack than that in countries where the crews are armed. This is supported by other credible evidence, particularly Detective Senior Sergeant Dein ('Det. Dein'). There is some correlation between the fact that the operation formerly conducted by Armaguard in the United Kingdom has introduced the use of armed containers, namely containers which are fitted with a device which will activate upon the improper opening of the container, in which the goods are carried between the armoured vehicle and the point of delivery, and the absence of weapons in that country. The trial of armed containers, although a different and inferior type, experienced resistance from employees based, it appears, upon misconceptions that they may in some way be endangered by the containers.

It seems difficult to accept that an armed guard carrying an unarmed container of, for example, cash would be exposed to less risk than an armed guard carrying an armed container of cash. The comparative risks are being stained by a dye as against being shot. I am unable to conclude that there is any

sound basis for the view that the introduction of the new type of armed containers would provide some detriment to employees which should militate against their introduction. On the other hand, it seems obvious that the effect of such introduction, if properly managed, would be to diminish the degree of risk to which employees are subjected when transporting cash between an armoured vehicle and the point of delivery or collection.

Another consequence may be that the criminal element is thereby induced to focus attention upon other areas. This does not seem to me to be a sound basis for the view that the armed container should not be utilised because of remote consequences. The proper approach is to deal with the consequences themselves on a step-by-step basis.

These devices and any comparable equipment require in-depth study. If their various attributes are as presented by their makers, they would represent a giant step forward in terms of security of carriage. Equally, the improvement in security, with an anticipated reduction in attacks, would produce possibly the greatest imaginable improvement in security of employees and any members of the public who might otherwise be embroiled with them in a violent situation.

It is impossible to ignore a number of side effects. If these devices are as successful as the evidence tends to suggest they may impact on the armoured vehicle operators indirectly but quite significantly. Their successful use may

indeed cause a question to arise about the need for armoured vehicles: this too is discussed in the evidence of Mr. Dukes, the representative of the maker of one such device.

It is essential that there be a full assessment of the utility of those across-the-pavement devices now available. That assessment should include not just physical features and practicability of operation, but also cost with a focus on their effect on the viability of operators.

The Role of Clients

The *raison d^etre* of the CIT industry is to satisfy the desire of a customer or client to have cash or valuables transported in a secure way by another whose business it is so to do. The virtually universal attitude of clients appears to be that the responsibility for the carriage, including safety of goods and personnel, is that of the CIT operator.

In the case of the banks, the ABA accepts that its members do seek to transfer responsibility in this way. However, overwhelmingly they engage either Brambles or Armaguard, who are regarded by the banks as the experts in this field, with an experience and ability the banks lack. The banks rely on the operators' ready acceptance of the responsibility the banks transfer to them. The ABA has submitted that responsibility ought lie where the expertise is.

Assuming either an adequate assessment of the operator as satisfactory for that purpose or an operational regime which itself ensures so far as possible that operators are conducting their operations in a satisfactory way, there appears to be no good reason why the responsibility might not be passed off in that way, subject always to the ordinary constraints or obligations of the law.

If the existing provisions of the OH&S Act do not, as I understand it, impose any duty on banks in relation to crew members outside the bank premises, including the footpath or other delivery routes, is there any reason to impose such a duty? The ABA says, I think with some force, that it is difficult to understand how the banks can take more responsibility. Apart from changes in building structure, there are no obvious steps the bank could take in current circumstances of delivery which the law ought impose as a duty.

There can be no efficacy in the imposition by statute of a duty to care for contractors, particularly crew members, unless the means by which the duty may be, or is intended to be, satisfied is understood. If, for example, a cash delivery to a bank across a public footpath was thought to oblige the bank to make the delivery crew secure outside the bank while on the footpath, presumably that might be met by the bank's provision of security staff to assist the delivery crew. But the security of the crew is already the responsibility of

their employer; it is the employer who must make adequate the response to the obligation imposed by s.15 of the OH&S Act.

The examples given in the appendix concerning Term 1 (see p.49) illustrate the practical difficulties in trying to determine the response from a client which the law would deem satisfactory if a statutory burden was placed in those circumstances. Those examples arose diversely in the context of attacks on crew whilst on a public footpath between the armoured vehicle and the bank branch and also while en-route to service an off-site ATM installed in a bunker. There seems to be no reason why a burden should be placed on banks in those circumstances with the predictable consequence that they would invoke a s.53 defence of impracticability, with every chance, I would have thought, of success.

Financial institutions have been in somewhat sharper focus in the proceedings due to their obvious prominence as major clients of the armoured car companies. However, their circumstances are not inherently different, in terms of their need for delivery and collection of cash, from many other clients including major retailers and shopping centres.

In this respect I have come to the conclusion that there should be no extension of liability of clients beyond that presently applicable under the OH&S Act.

The third example in the Term 1 appendix, the credit union office, is of less importance. Section 16 of the OH&S

Act applies directly to impose an obligation on the institution in respect of visitors, which includes car crew in the course of their duties. It needs no elaboration or extension.

Armed Robbery Squad

It remains finally to deal with the question adverted to on p.6, the formation of a special centralised squad within the NSW Police Service to target armed robbers and particularly recidivists.

This topic arose in the context of submissions by Armaguard, Brambles and the ABA that the terms of reference were wide enough to permit, indeed to require, an examination of the effectiveness of the regionalisation of policing in NSW.

On 23 May 1996 a ruling was given to the effect that the terms of reference were not so extensive as to embrace this subject matter. Accordingly, the subject was not a matter of further enquiry.

Nevertheless, not to overstate it, the matter is seen by the major armoured car operators and the banks as perhaps having as much, if not more, significance in meeting the threat from the criminal fraternity as any other matter under investigation in the proceedings.

The view than an examination of this matter ought occur is not taken only by the employers and the banks. In May, 1994 the Australasian Armed Robbery Seminar was held at Coffs Harbour, hosted by the New South Wales Standing Committee on Armed Robbery and Kindred Offences. The attendees included representatives of all Australian State and Territory Police Forces, the New Zealand Police Force, Armaguard and Brambles. The Report of the Seminar contains the conclusion that "most armoured van robberies are committed by recidivist offenders". The General Recommendations included:

> "Each State give consideration to an implementation plan being drawn up for the formation of a permanent Recidivist Offenders Squad".

The proposition is made sufficiently in the evidence of Mr. Bruce of Armaguard:

> "In my experience there is a direct and dramatic correlation between levels of armed hold ups and levels of pro-active policing. Where police structures permit and encourage a centralised, vigorous response to major crime there is a significant reduction in the occurrence of such crime.
>
> Following the Walsh Street shootings in Victoria a systematic attack on major crime took place in Victoria and the incidence of armed robberies has reduced dramatically. In New South Wales, following a decision to disband the CIB and regionalise the major crime squads the incidence of armed attacks on Armaguard crews rose alarmingly but has responded positively to the formation of each Task Force dealing with armoured vehicle hold ups and negatively to the disbandment of such Task Forces." (Ex. 171)

The seriousness with which this view is held by the relevant parties and by obviously many other experienced members of the Australasian police forces causes me to refer to the matter here with the intention of achieving an

examination of the effectiveness of the proposal by the appropriate authority. I so recommend.

The balance of this Report consists of the appendices for each term of reference; the Minister's reference; the annexures listing the main appearances and the witnesses; the interlocutory rulings and, finally, a schedule containing recommendations made (which are also located in each relevant appendix).

The Hon. Mr. Justice R.J. Peterson

TERM 1: THE ADEQUACY OF GOVERNMENT REGULATION OF OCCUPATIONAL HEALTH AND SAFETY STANDARDS IN THE INDUSTRY

The purpose of the OH&S Act 1983 is to provide effectively for the safety, health and welfare of all persons in all workplaces, including those of the Crown, and those of self-employed persons, under the umbrella of one statute. The OH&S Act and its regulations are designed to embrace every aspect of the work environment, every hazardous occupation and every use of dangerous substances and chemicals. It is designed, also, to keep pace with technology insofar as it relates to the workplace: Second Reading Speech of the Minister for Industrial Relations and Minister for Technology, the Hon Mr P.D. Hills, Legislative Assembly, Hansard, 1 December 1982, pp 3683-3684.

The objects set out in s.5 include *'to secure the health, safety and welfare of persons at work'* and *'to protect persons at a place of work (other than persons at work) against risks to health or safety arising out of the activities of persons at work'*.

In order to secure the objects of the OH&S Act, Parliament has cast on every employer, pursuant to ss.15 and 16, certain duties of an absolute nature. The word *'ensure'* when used in the phrase, for example *"Every employer shall ensure the health, safety and welfare at work of all his employees"*(s.15(1)) has been construed to have its ordinary

meaning of *'guaranteeing, securing or making certain'*: *Carrington Slipways Pty Limited v. Callaghan* ([1985] 11 IR 467).

Sections 15 and 16 relevantly provide:

Section 15

a. Every employer shall ensure the health, safety and welfare at work of all his employees.

b. Without prejudice to the generality of subsection (1), an employer contravenes that subsection if he fails -

(a) to provide or maintain plant and systems of work that are safe and without risks to health;

(b) to make arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage or transport of plant and substances;

(c) to provide such information, instruction, training and supervision as may be necessary to ensure the health and safety at work of his employees;

(d) as regards any place of work under the employer's control -

(i) to maintain it in a condition that is safe and without risks to health; or

(ii) to provide or maintain means of access to and egress from it that are safe and without any risks;

(e) to provide or maintain a working environment for his employees that is safe and without risks to health and adequate as regards facilities for their welfare at work; or

(f) to take such steps as are necessary to make available in connection with the use of any plant or substance at the place of work adequate information -

(i) about the use for which the plant is designed and about any conditions necessary to ensure that, when put to that use, the plant will be safe and without risks to health; or

(ii) about any research, or the results of any relevant tests which have been carried out, on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when properly used.

Section 16

(1) Every employer shall ensure that persons not in his employment are not exposed to risks to their health or safety arising from the conduct of his undertaking while they are at his place of work.

(2) Every self-employed person shall ensure that persons not in his employment are not exposed to risks to their health or safety arising from the conduct of his undertaking while they are at his place of work.

The effect of ss.15 and 16 was summarised by the Industrial Court of New South Wales Full Court in *Haynes v. C I & D Manufacturing Pty Limited* ((1994) 60 IR 149 at 157) as follows:

"Sections 15 and 16 of the OH&S Act are both concerned with failures to ensure the health and safety of persons at workplaces in terms inter alia of 'risks'; thus, the sections, even absent any actual accident causing death or bodily injury, nevertheless comprehend the commission of an offence where the relevant 'detriment to safety' (as spoken of in *Dawson and McMartin*) is but a risk, or in other words, where the circumstances are such that an employer's act or omission has created a situation of potential danger to the health and safety of persons at his workplace."

The mere fact that an accident occurs involving an employee, but without more, does not establish any liability in the employer. Although ss.15 and 16 create absolute liabilities, it is still necessary for a prosecutor to prove, according to the criminal standard of beyond reasonable doubt, that there is some causal nexus between the breach of statutory duty and the relevant detriment occasioned to the employee: see *State Rail Authority of New South Wales v.*

Dawson ([1990] 37 IR 110 at 120-121) and also, for example, where those comments are applied by Hungerford J in *Craig Andrew Corbett v. Raymond Borg* (Unreported, 29 March 1996).

The construction of s.15(1) is aided by the definitions of certain words, appearing in the s.4(1) of OH&S Act. First, *'employer'* is defined to mean a corporation which, or an individual who, employs a person under contracts of employment or apprenticeship. Therefore, the absolute duty under s 15 does not extend to persons engaged as independent contractors, agents, franchisees, or subcontractors. The definition of *'employer'* necessitates the establishment of the common law relationship of employer/employee.

The same point is made by the definition of *'employee'* as an individual who works under a contract of employment or apprenticeship. The same comments apply to the construction of this word as already discussed for *'employer'*.

Thirdly, the expression *'at work'* is defined by s.4(3) to mean that an employee is at work throughout the time when he is at his place of work, but not otherwise. The meaning of *'place of work'* is defined in s 4(1) to mean premises, or any other place where persons work. In *Inspector Richard Charles Clarke v. W L Meinhardt & Partners Pty Limited* (Unreported, 30 June 1992), *Fisher* CJ considered the meaning of *'place of work'* in a case involving a building and construction site where it was recognised that such a site involves many classes of employees, manual workers, tradesmen, contractors,

subcontractors, skilled operators, engineers, consultants and professionals. Further, it was recognised they commonly may work on one or more sites a day. *Fisher* CJ said:

> "I consider this specialised Act should be interpreted in industrial terms as a practical document applying to the customary organisation and industrial circumstance of the building and construction industry, of which Parliament would have been aware."

and later on

> "I consider the phrase 'at work' in s 15(1) of the Act has temporal connotations. It applies equally to all kinds of work. On a building site it would include entering, moving about and leaving a site, as well as here, inspection, or reinspection, maintenance and periodic checks. Whilst this work was being performed, the employer is subject to the duties cast upon him by the Act." (at pp 11-12)

Accepting the approach that the OH&S Act is interpreted in industrial terms as a practical document applying to the customary organisation and industrial circumstance of those in the industry affected, and given it applies equally to all kinds of work, the absolute duty in s 15 would apply to any employee transporting cash and valuables. Furthermore, this would appear to be the case whether the employee is on the road in a vehicle, on a cycle or on foot, in a context where he is known to be at particular risk.

Section 16(1) concerns the failure of an employer to ensure the health and safety of persons who are not employees of the employer while they are at his place of work. It therefore potentially imposes liability on employers for their subcontractors, independent contractors, agents and

franchisees; it also extends to the employees of those persons (whether natural or corporate). Moreover, it potentially applies where there is a detriment in the form of a hazard to the health and safety of members of the public.

The second issue in s.16(1) is whether the exposure to risks to health and safety arise from the conduct of the employer's undertaking. There is no definition of *'undertaking'* in the OH&S Act.

The third issue in s.16(1) is when persons, not employees of the employer, are considered to be at the employer's place of work. In *Raymond Borg* a question arose as to whether the public footpath and roadway in the front of a demolition site were within the place of work of the employer so as to satisfy this requirement of s 16(1). Hungerford J agreed with *Fisher* CJ in *W L Meinhardt & Partners Pty Limited* *Fisher* CJ held:

> "With respect to the duty under s 16(1) I consider the employer's conduct of his undertaking includes here the design of the facade retention structures, the safe retention of the facade and residual maintenance inspection as discussed above. I consider the place of work includes every area which may be affected by the work being done which would include in this case the hoarding, external scaffolding above the hoarding and the area of the street beneath the hoarding and the site upon which the facade collapsed." (p 12)

On the evidence in *Raymond Borg*, *Hungerford* J was satisfied to the requisite degree that the prosecutor had shown a causal nexus between the breach of s.16(1) and to the detriment to the safety of persons using the public thoroughfares at or near the demolition site (at pp25-26).

For the purposes of this inquiry, and in particular in considering term 1, there is raised the question whether clients, such as financial institutions and retailers, who subcontract out their delivery and collection of cash and valuables to operators in the industry affected, are subject to the absolute duty in s.16(1). Take the example of a financial institution, such as a bank, which clearly falls within the meaning of *'employer'*. The conduct of this type of employer's undertaking involves, typically, the need to replenish ATMs away from the financial institution's branch premises or the transport, delivery to, or pick up from, the relevant branch premises of cash. If this type of work was not subcontracted to an operator in the industry affected, it seems that employees of the financial institution itself would be required to perform this type of work.

This therefore leads to a consideration of the third issue in s.16(1), namely, where the financial institution subcontracts the work; is a person engaged by a subcontractor at any time at the employer's place of work? In considering this issue, it is useful to consider this issue by reference to some examples:

(a) On 25 July 1995 two members of the Brambles armoured vehicle crew were out of the armoured vehicle parked only metres outside the Westpac branch in Kiora Road, Miranda, next to Westfield Shopping Centre. The two

crew members were required to walk between the armoured vehicle and the front door of the bank premises;

(b) On 28 July 1995 two members of an Armaguard armoured vehicle crew in order to replenish an off-site Commonwealth Bank ATM at Warringah Mall were required to leave the armoured vehicle and walk over 80 metres on a pedestrian thoroughfare in order to reach the ATM;

(c) In September 1995 two members of an Armaguard armoured vehicle were subject to an armed robbery when they were within the premises of a credit union at the former Camperdown Children's Hospital;

(d) When a security guard, whether engaged by an armoured vehicle operator or a soft-skin operator, is in transit in the vehicle either before or after performing a cash movement service for a client.

When corporations have committed an offence under ss.15 or 16 there is a prospect that criminal liability can be sheeted home to those natural persons involved in the corporation as either a director or being concerned in the

management of the corporation. Section 50 of the OH&S Act provides:

> (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, shall be deemed to have contravened the same provision unless he satisfies the court that -
>
> (a) [repealed];
>
> (b) he was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
>
> (c) he, being in such a position, used all due diligence to prevent the contravention by the corporation.

There are, of course, statutory defences to prosecutions under ss.15, 16 and 50 of the OH&S Act set out in s.53, which provides:

> 53. It shall be a defence to any proceedings against a person for an offence against this Act or the regulations for the person to prove that -
>
> (a) it was not reasonably practicable for him to comply with the provision of this Act or the regulations the breach of which constituted the offence; or
>
> (b) the commission of the offence was due to causes over which he had no control and against the happening of which it was impracticable for him to make provision.

The onus of proof to make out either of the s.53 offences is on the defendant on the balance of the probabilities. The first defence requires a defendant to prove it was not reasonably practicable for him to comply with the provisions of the OH&S Act or the regulations the breach of which constitute the offence. The meaning of *'reasonably practicable'* was considered in *Carrington Slipways*. *Watson* J

applied what was said by *Asquith* LJ in *Edwards v. National Coal Board* ([1949] 1 KB 704) where it was said:

> "'Reasonably practicable' is a narrower term than 'physically possible' and seems to me to imply that a computation must be made by the owner, in which the quantum of risk is placed on one scale the sacrifice involved and the measures necessary for averting the risk (whether in money, time or travel) is placed on the other: and that if it be shown that there is a gross disproportion between them - the risk being insignificant in relation to the sacrifice - the defendants discharge the onus on them ..."

In *Carrington Slipways* it was found the defence was not made out as there should have at least been some form of effective instruction given either prior to or at the time the request was made to the worker. In that case there was a course likely to be taken in lieu of a safer way, and its use should have been prohibited or prevented ((1985) 11 IR 467 at 471).

The second defence in s.53(b) has two parts and has been considered in a number of cases as follows:

(a) the commission of the offence was due to causes over which the defendant had no control: see *Cullen v. State Rail Authority* ((1989) 31 IR 207 at 218) and *Haynes v. C I & D Manufacturing* at 182; and

(b) against the happening of which it was impracticable for the defendant to make provision: *Cullen* at 211.

The Role of WorkCover

The *WorkCover Administration Act* 1989 (NSW) by s.4 constitutes as a the WorkCover Authority of New South Wales ('WorkCover'). Section 12 sets out the general functions of WorkCover and subs.(2) requires WorkCover in exercising its functions, to promote the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces.

Section 13, Miscellaneous Functions, also gives WorkCover the following functions:

> (a) To initiate and encourage research to identify efficient and effective strategies for the prevention of occupational injury and disease and for the rehabilitation of persons who suffer any such injury or disease;
>
> (b) to ensure the availability of high quality education and training in such prevention and rehabilitation;
>
> . . .
>
> (c) to foster co-operative consultative relationship between management and labour in relation to the health, safety and welfare of persons at work;
>
> . . .
>
> (i) to provide assistance in relation to the establishment and operation of:
>
> (i) occupational health and safety committees at places of work;
>
> . . .
>
> (j) to investigate workplace accidents;
>
> . . .
>
> (l) to monitor the operation of occupational health and safety, rehabilitation and workers' compensation arrangements;
>
> . . .

Mr James Wilton Cox, the Manager of WorkCover's Regional Operations Division, gave evidence in the proceedings. As to whether there have been any prosecutions by WorkCover under the OH&S Act of operators in the industry affected, the evidence of Mr Cox, supplemented by other sources, is as follows:

(a) WorkCover has not been involved in the investigation of particular armed robberies or attempted armed robberies with respect to security guards working in the industry affected (T3978.1-5). The only prosecution Mr Cox could remember arose out of the death of a guard inside an 'Armaguard' armoured vehicle in about 1991 (T3990.36-58) (this was a reference to a guard who was fatally trapped by an automatic door within an armoured vehicle);

(b) Mr Cox could not point to any activity or investigation which WorkCover has undertaken concerning non-armoured car operators prior to the institution of this matter (T3992.1-4);

(c) Mr Bruce of Armaguard was not aware of Armaguard being investigated by WorkCover for any other occupational health and safety matter other than the fatality in its armoured vehicle (T3559);

(d) The response of WorkCover to the complaint by Mr. Andrew Peters, a Brambles employee, was to convene a meeting between WorkCover, Brambles and the TWU. Mr. Peters had

> complained, in part, that he had been exposed to the risk of a likely armed robbery within the knowledge of Brambles and the Police Service. Mr Cox said in the course of these discussions, WorkCover indicated that knowingly sending employees into an environment where they would be subject to an armed robbery and an armed police response, without providing them with any warning of the fact and without taking active steps to minimise the risk to such employees, could amount to a breach of the OH&S Act. Brambles was warned at that time that any future repetition of such conduct may result in prosecution by WorkCover. Brambles indicated during the meeting that it perceived difficulties in providing warnings to its employees in such circumstances, as it believed the New South Wales Police Service could view such advice to its employees as compromising police operations. Further, Brambles was of the view that if police intelligence was passed on to the crews of Brambles, the police might not pass on such information to Brambles (Ex.202 para 7).

In cross-examination by the TWU, Mr Cox would not agree with the proposition that WorkCover had a reactive system in that it was left to employers to try to fulfil their legal obligations under the OH&S Act. His relevant evidence included:

Q That is reactive in this sense: that it initially leaves itself up to employers to try to attempt to fulfil their obligations under the Act. The event of their failing to do so is generally only when there is generally only when there is perhaps an accident or injury is that WorkCover would step in and investigate and perhaps initiate a prosecution. What do you say about that?

A I say that that is not exactly correct, that there are many cases where employers are instructed to do things by way of a notice. Either in approving a prohibition notice which hasn't at all arisen from an accident and may have arisen from a workplace inspection that is carried out by the Authority's inspectors by way of a targeting program; a random inspection and a range of other things. And no, I wouldn't agree with that proposition.

Q You referred to targeting programs and random inspections?

A Yes.

Q Do you know if anything of this sort has happened in relation to the industry that is being inquired into here?

A I don't recall any. (T3989.29-51)

Mr Cox explained the normal trigger mechanism or source for WorkCover undertaking an investigation was the notification to WorkCover of an accident. WorkCover have an internal process to select which accidents are investigated. The other ways WorkCover may become involved in a matter is the police notify where there is a workplace fatality, an anonymous complaint may be made to WorkCover, or a complaint like the one made by Andy Peters concerning the Eastgardens incident may be received from WorkCover. WorkCover receives approximately 150 complaints per month from people about health and safety issues and most are investigated and resolved without going to prosecution level(T3979.46-T3980.44).

The primary reason given by Mr Cox as to why WorkCover had not previously investigated any armed robbery or attempted armed robbery in the industry affected was that WorkCover was concerned about investigating when there was a concurrent police investigation which might lead to *Crimes Act* 1900 charges. As a result of the fatality of a worker at a youth refuge on 13 June 1994, an advice was sought by WorkCover from the Crown Solicitor's Office which was subsequently received in October 1994. The effect of the advice is that WorkCover has taken the view that it will conduct its own investigations in appropriate cases into workplace accidents which are the subject of concurrent police investigations for non-OH&S Act criminal offences (Ex.202 paras 4-6 and T3978). On this particular issue, the evidence of Mr Cox includes:

> "HIS HONOUR
> Q Would it oversimplify things to suggest that historically WorkCover has taken the view that occurrences such as the North Shore death within an armed vehicle that you mentioned were to be regarded as a workplace accident properly within WorkCover's province; whereas injuries or deaths sustained in the course of criminal attack were not?
> A That would be correct, and that is why we went to the Crown Solicitor's advice over a particular incident where this dilemma arose. We had the criminal proceedings on foot. We had concerns which were raised with us about the health and safety standards at a particular establishment and our advice, as I said, is that we have an obligation from that day onwards. Our thinking about what we should do has changed." (T3993 L 52-T3994 L 8)

Mr Cox has stated that WorkCover, once the Inquiry is completed, proposes to investigate the armed robberies of 1995 (Ex.202 para 12 and T3992 L45-48).

Mr Cox said WorkCover is not qualified, authorised or empowered to design safe systems of work for employers in every branch of industry. In his oral evidence, relevantly for the industry affected, the statement of Mr Cox was clarified as follows:

(a) as a general proposition, WorkCover is not qualified, authorised or empowered to design safer systems of work for the industry affected (T3977 L54-57);

(b) the only persons who WorkCover currently employ who have any specialised knowledge or training or qualifications or experience in the industry affected are Inspectors Batty and McDonald. Those inspectors are so qualified as a result of their role in investigating matters for counsel assisting in the Inquiry (T3983.47-T3984.10);

(c) it is impossible for any organisation to have specialised people in every facet of industry. The strategy is to have people involved who have health and safety qualifications, training and experience who are well-trained, well-managed to ensure that employers have in place systems of work which are safe and appropriate (T3984.L30-43);

(d) it certainly is an asset to have a person with specialist knowledge and ability within the industry affected (T3989.6-12);

(e) WorkCover can, and in fact does, employ consultants from time to time. If it were appropriate, WorkCover would consider employing consultants for the purpose of any code of practice or investigation into this particular industry (T3993.14-23).

Future Directions

The dilemma posed by the circumstances of the industry is the application of safety and accident-related legislation to the central problem of securing cash etc. from criminals in a way which affords appropriate protection for the employees and also the public. The core concern is the sending out into the community of persons whose very task will cause the risk of an incident - not an accident in the usual workplace sense, but an armed assault by persons unknown, with whom lies the element of surprise. It is likely to occur in or near a public place but could (and has) occurred in a myriad of situations. For example blockaded on a roadway; in the client's premises; on the public footpath outside the delivery point; within shopping centres in all public areas; and outside ATM bunkers.

It is the management of this risk that is vital. It is relatively easy to see that some methods of operation are

blatantly insecure: one person, armed and overt is a case in point. Where the person involved is an employee there appears to me to be no good reason why the employer would not be open to a charge under s.15(1) of the OH&S Act, for failing to ensure the safety of the employee. Both the obvious risk and the experience in the industry show that a single person in such circumstances is open to an unseen attack from behind and will probably forfeit the weapon in the process.

I consider it is not appropriate that an arbitrary ex post facto assessment be made in relation to operations which are, on proper grounds, considered by operators and employees in the armoured car industry to be a satisfactory means of meeting or managing the risk. This may be illustrated by the increased use of a fourth man in Sydney metropolitan "hot spots" after the August 1995 industrial dispute. All concerned considered this to be a response which was either adequate (the employee/union view) or indeed excessive (the employer view). As Mr. Dyhrberg, the Managing Director of Kunama suggested in evidence, it would be possible to provide a platoon of Gurkhas, but there would be no clients and thus no business.

I consider that no basis has been established for a conclusion that a substantial change of approach is required in respect of the armoured vehicle sector of the industry. In particular, I do not subscribe to the position that the changes which are recommended will produce a universal remedy to the inherent risks identified herein. Car crews will

remain at risk so long as they continue to carry cash. That risk increases as the perceived value increases; the scale goes from the mugger on the street after a wallet, through a higher level of assault on an armed guard working alone to the seriously planned and organised attack on an armoured car crew. I accept the universal view of all witnesses, on this point, that the manner of performance of the work by crew members is the most vital consideration which affects their safety. Matters such as the adherence to trained operating methods are of great significance. Constant alertness and awareness is required Measures must be, and in the armoured vehicle sector are, directed to the constant reinforcement of such attitudes. The evidence demonstrates that criminals will always look to the weakest link in the security chain, whether it be an appearance of lack of fitness to deal with an attack or a slack approach to security.

No party to the proceedings took the view that the regulation of OH&S matters in the industry is deficient. Counsel assisting identified four possible options:

(a) introduce no change whatsoever and rely upon the general absolute duties in ss 15 and 16 of the OH&S Act;

(b) supplement the general statutory duties by prescriptive minima in some type of legislation or regulation;

(c) supplement the general statutory duties by a code of practice by either regulation or, alternatively, formulated and prepared under s 44A by WorkCover.

(d) replace the general duty under the OH&S Act with a code.

Counsel assisting submitted that the first option was inappropriate given the difficulties under which WorkCover labours including a lack of specialist knowledge and finite resources. However, as earlier noted, WorkCover now regards itself as having a role in the investigation of workplace assaults as described above.

Turning to the first option identified above, a number of pragmatic considerations militate against this option being considered the appropriate choice. Those factors are as follows:

(a) hitherto WorkCover has played no real role in ensuring the effective provision of the safety, health and welfare of all persons in the workplaces of the industry affected. However, it should be noted that WorkCover has expressed its intention to become more involved in the industry affected and apparently to be proactive rather than reactive;

(b) WorkCover, other than arguably for the three inspectors who have assisted the inquiry, does not

currently possess the requisite specialist knowledge and ability concerning the industry affected;

(c) the prevalence of hazardous systems of work in the industry affected, despite there being in place the absolute duties in ss.15 and 16, by itself demonstrates prima facie there is a need for at least a supplementation of the current position;

(d) Mr Cox from WorkCover readily conceded that WorkCover has a finite level of resources. There is not unlimited WorkCover resources so there is a limitation as to how WorkCover can respond to complaints as they come in to WorkCover (T3989 L53-T3990 L1).

The second option, of Parliament providing for minimum prescriptive requirements, does not seem particularly viable. Mr Cox said the rigid formulation of prescriptive minimum regulatory requirements as to such matters as minimum crew levels, the circumstances in which armoured or soft-skin vehicles may be utilised and so on, in the view of WorkCover, would be counter-productive and inconsistent with the philosophy underlying the OH&S Act. The particular concerns expressed by Mr Cox are that any such regulation would need to be voluminous, he could not possibly cover every occupational health and safety contingency encountered in day-to-day industry operations, you may distract employers from the performance of their obligations under the OH&S Act, and it

may give criminals a blueprint as to how to beat the system (Ex.202 para 13 and T3982 L10-20).

In cross-examination on behalf of the Labor Council, the evidence of Mr Cox included:

> "Q I accept your answer although I suggest, what I am asking you about is not about a code of practice as such but about potential for legislative prescription to be counter-productive from the point of view of occupational health and safety?
> A The history of this area is one of prescription. From the industrial revolution times it was 'a guard shall be this size', 'a fence shall be that high'. History has shown in the normal industrial environment that there is no way in which the prescription legislation can keep up with changes in technology and therefore hampers development of industry and safe practices and, in fact, there would be many examples of the description being inadequate and unsafe work practices developing around inadequate systems so it is that sense of being counter-productive in that way. The modern approach has been a general duties approach and guidance material and giving industry partners flexibility in the way they produce safer workplaces.
>
> Q Is it not also the case that where the fact that a prescription exists that that prescription although it may be expressed as a minimum tends to become a standard beyond which industry does not go?
> A Yes." (T3980 L22-45)

A good historical example of minimum prescriptive legislation is in the factories and shops area.

As for the third option set out above, namely, a code of practice to supplement the general absolute duties in ss.15 and 16, if it is accepted that the first option of in effect doing nothing is inappropriate, this option is the most appropriate.

In Term 3 I will recommend the establishment of an industry registrar to perform the functions of a licensing authority. It will be seen below that such a specific industry position would be able to contribute to the attainment of more appropriate systems of work if there was a code of practice introduced for the CIT industry. In part, the control that the Registrar would have over the licensing system and the application of standards in the industry can act directly for the betterment of occupational health and safety in the industry affected.

The evidence of Mr Cox concerning this option is as follows:

(a) WorkCover believes that the current provisions in the OH&S Act, coupled perhaps with an appropriate industry code of practice, would be more likely to ensure the maintenance of an appropriate industry's safety standard and still be entirely consistent with the approach taken to industrial safety in other branches of industry;

(b) under this option employers at all levels in the industry being principals, contractors and franchisees, can design their own work systems, according to the code of practice. If they fail to reach the required standard, there is then the sanction of potential WorkCover prosecution (Ex 202 para 13);

(c) training is a legitimate feature of the code of practice and also a fundamental part of the obligations under the OH&S Act (T3974 L35-58);

(d) a code of practice is the best mechanism when coupled with the current legislative provisions to ensure the maintenance of appropriate industry safety standards (T3993 L1-10); if there was an accident where WorkCover believed that the code of practice was being complied with or was being followed, then WorkCover would be very hesitant to prosecute (T3986 L22-30);

(e) findings made by this Inquiry relevant to the establishing of occupational health and safety standards would be matters taken into account in the formulation of a code or other standards and regulations pertaining to the industry affected (T3975 L11-20);

(f) there are standards which are applicable to a particular industry or to a specific hazard which exists in a number of industries.

A breach of either a s 44AA code of practice or a standard imposed by a regulation is commonly used as evidence by WorkCover in a prosecution under the OH&S Act. An advantage of the second means of implementation is that the

benefits of what has been established by the Inquiry are capable of being implemented in the short term.

Notwithstanding the limitations on WorkCover's earlier involvement in this industry, it is obviously desirable and necessary that the exercise of its statutory function be able to be undertaken in the future. However, I make these further observations.

The provisions in ss.15 and 16 of the OH&S Act apply in a context which appears hitherto to have been concerned with risks arising fundamentally from lawful conduct. The OH&S Act has not been sought to be enforced in a case where a person, engaging in a lawful activity, has been threatened by a criminal. Examples of everyday occurrences abound: robberies, whether armed or otherwise, of shops, service stations, restaurants and offices. Money or valuables are often an inherent aspect of these operations and it might readily be presumed that there is an attendant risk to the precences thereof. Does the OH&S Act operate to put an employer, perhaps of a shop employee, to his defence under s.53 if the employee is subjected to robbery? It might quickly be answered that s.53 supplies a good defence, but is the intention of the Act to expose virtually every retailer in N.S.W., as we know them to be, in constant breach of the law by the very nature of the undertaking? I would think the employer would feel little comforted by the proposition that s.53 will aid him, once "guilt" is established.

Delivery Locations

I turn now to the relevance of particular locations of delivery and the facilities which are provided therefor in the context of the impact those areas and facilities may have upon the occupational health and safety of car crew members. This raises the question whether there should be amendments to the *Local Government* Act, the *Environmental Planning and Assessment* Act or any other legislation, or whether new legislation should be created, to ensure that:

1. Shopping centre developers/designers build shopping centres

2. Shopping centre managers manage shopping centres

3. Councils supervise, regulate and control the development of shopping centres

so as to enhance the safety of workers involved in the transport and delivery of cash and valuables and the public.

The proceedings have focussed upon a number of relevant aspects:

- Shopping centres

- The need for secure loading docks?

- The need for secure ATM bunkers?

Allied to these questions is the attitude of shopping centre managers and developers towards safety and also any role local councils play in that regard. Reference will also be made to the evidence of Senior Sergeant McCamley who for the purposes of the proceedings conducted a number of inspections and then in evidence detailed various suggestions he would make which would improve the safety of car crew members making deliveries in shopping centres.

The move away from strip shopping towards large suburban shopping malls has created environments which are possibly the most hazardous in which CIT crews work. The major incidents in recent years which have involved gunfire, with injury or death resulting to armoured vehicle crew members, have arisen at Sydney metropolitan shopping malls.

The statistical material before the proceedings was interpreted by both Mr. Jennings, the security industry specialist called by the TWU, and Prof. Wilson as showing that shopping centres involve high risks for CIT guards affecting deliveries. This was also the view of car crew members themselves.

Mr. Blake, an employee of Brambles Armoured, said that shopping centres are hazardous because:

"(a) The distance ... walking from the truck to the bank branch. This is usually longer than with the street-front branches;

(b) The number of people around, which makes it easy for criminals to mingle in, and ... leads criminals to believe that we would be much less likely to use our firearms;

(c) The number of places where criminals can hide;

(d) The number of escape routes which are usually [on] offer"

(Ex.106 para 20; Blake T2066.9-16)

A feature of shopping centres, particularly multi-storied versions is that height restrictions in multi-level carparks often mean that armoured vehicles must park at the ground level. The presence of retail offices, bank branches or ATMs throughout a centre means that there is usually an absence of a clear line of sight between the armoured vehicle and the client's premises. The crew members will be required to effect their deliveries or collections on foot, sometimes being required to utilised escalators and lifts.

One of the major difficulties in this regard concerns the way in which shopping centres are developed. The evidence shows that at the time plans are drawn and submitted to council for a shopping centre often the position of tenants will not be known. Sometimes a centre may be designed around a major retailer such as David Jones or Grace Bros. or a large supermarket such as Coles or Woolworths. There will be an expectation that with the presence of a large store of that kind other tenants will wish to occupy the centre. They may

be provided with space according to flexible arrangement which may not crystallise until well into the development process.

Financial institutions including banks are tenants for whom no special provision is made in the design process. They will occupy space which is available and suitable to them but which has no particular location fixed by reference to the nature of the institution's services. This leads usually to a distribution of such services throughout a centre. The only example of such services being grouped in what is described as a "Financial Court" is the Eastgardens Shopping Centre at Pagewood. The concept was described by the Manager of the Centre as unsuccessful. It has not been replicated in the development of subsequent centres.

It appears that the preference of both centre operators and financial institutions themselves is to be distributed through a centre so as to facilitate the ready access of customers to such services.

It is noteworthy that the Eastgardens Shopping Centre involved an incident in 1993 where a Brambles armoured vehicle was subjected to an armed attack in the course of deliveries to the Financial Court. The attack actually took place on a verandah between a carpark and the actual entrance doors to the mall in the vicinity in the Financial Court.

Each of these centres has been designed without any regard for the safety of car crew members when making

deliveries or any members of the public in the vicinity. In the course of the proceedings a number of means of attempting to adapt existing premises in a way which would provide more secure access between the entry to the premises and the delivery points, particularly of banks, were examined. These included the use of rear service corridors but as I have noted elsewhere the effect of such treatments appears to involve merely the substitution of one problem for another. These considerations apply also to the notion of the establishment of secure loading docks. For example, at the Eastgardens Shopping Centre, Pagewood, there is available a disused loading dock only metres away from the point at which the attack occurred in 1993. It has a roller shutter door and a rear door which gives access to the service corridor running behind most of the institutions in the Financial Court. If that dock were utilised for cash deliveries it would be necessary to install some form of video surveillance equipment which would permit the crew members to exit the dock into an area they have been able to identify as safe. However, then being in the rear corridor, which the financial institutions not unreasonably regard as areas of danger to their operations, the only alternative would be to move from that corridor into the public area in the vicinity of which the 1993 incident occurred.

Illustrations of this kind suggest that there is little than can be usefully done with existing centres by way of structural conversion. Although many witnesses preferred them, there would appear to be little point in providing a

secured delivery bay unless delivery can be effected in, or directly from, the bay. A stand-alone security bay which places the employee in only temporary security and from which egress must be made, cash-laden, into a non-secure area, is only a sop to the idea of security. What is needed is an integrated approach, all aspects of which go to markedly improving the overall position. In that way Sen. Sgt. McCamley's recommendations have commendable force. Senior Sgt. McCamley holds a Bachelor of Social Science (with distinctions) from Charles Sturt University, an Associate Diploma in Criminal Justice (with distinctions) from the Mitchell College of Advanced Education, and TAFE qualifications in Drafting and Management. He teaches Environmental Criminology on a casual basis at the University of Western Sydney, and has presented 'Crime Prevention through Environmental Design' at short courses and seminars in town planning, architecture and landscape design at the Universities of Sydney and New South Wales. He also teaches Crime Prevention through Environmental Design on a course offered through Amtac Educational Services, Queensland; and he is a crime prevention adviser to the Bachelor of Policing degree at Charles Sturt University.

He has performed exchange duties with the Royal Canadian Mounted Police where he studied Crime Prevention through Environmental Design which is the foundation for work he is now performing in Australia. In 1993 he developed a inter-disciplinary Community Safety Management Plan under which there has been developed a peak body to co-ordinate

intergovernmental and community crime prevention strategies which was launched in 1995 by the Premier; it is known as the Premier's Crime Prevention Council.

A principal aspect of the Plan is what is known as the 'Safer by Design' program. It has a pro-active arm in which local councils (Manly, Marrickville, Waverley, Wollongong, Fairfield and Gosford) have invited the trained officers to review safety and security implications of project designs, planning proposals and development and building applications. Other councils have since requested the services including Wyong, Bankstown, Goulburn, Ryde, Liverpool, Bourke, City of Sydney, Nowra and Parramatta.

The idea is that the police trained in this area will identify design features and activity management proposals which might reasonably lead to reduce crime risk or community fear. Decisions on the proposals are made by the consent authorities.

The reactive arm of the Safer by Design program focuses on existing urban form through the use of site audits to identify problem areas and where possible, to encourage amelioration.

Senior Sergeant McCamley, at the request of counsel assisting, conducted audits of the Miranda Fair Shopping Centre; the sites of alleged armed robberies in two spots in

Church Street, Parramatta and consequently made the following suggestions:

(a) Install push bar - shatter resistant/laminated glass doors at fire exit egress points to maximise natural surveillance.

(b) Install fire-rated doors (with 400 x 15 “Robax” fire resistant glass panels) at fire exit access doorways to maximise natural surveillance. Face-level laminated or “Georgian Wire” glass panels can also be installed in carpark stairwell doors to enhance pedestrian visibility.

(c) Install polished steel or aluminium mirrors in blind corridor corners to minimise the opportunities for concealment, surprise and community fear.

(d) Upgrade lighting (lux levels) in fire exits, corridors and stairwells (to the equivalent of lighting levels provided in retail pedestrian ways).

(e) Paint walls and ceilings white to maximise lux levels (and facilitate mirror reflection).

(f) Utilise CCTV in low/use distant access ways that are difficult to supervise.

(g) Security staff to actively monitor CCTV in higher risk areas (such as financial courts or along cash-carrying routes.

(h) Use and maintain fire exits in accordance with local government regulations (inoperable ‘self closing’ fire doors and one-way passage sets, and a faulty crash bar, were located during site evaluations).

(j) Alarm fire exit (egress) points. Such alarms to be monitored by centre security.

(k) Provide appropriate signage in pedestrian entrances, fire exits, corridors, stairwells and carparks. Such signs should outline accepted standards of behaviour and the nature and extent of security measures in place (to encourage proprietary behaviour).

(l) Centre employees/security personnel should police regulations/standards of conduct.

(m) Develop and routinely implement a shopping centre maintenance plan (ie removal of graffiti/vandalism in stairwells etc - to reinforce territorial cues).

(n) Cash carrying routes to be routinely assessed; and reassessed whenever it is reasonably believed that changes to the configuration of a centre or to human

activity on or near an approved route will impact on crime risk.

(o) Utilise CCTV to monitor approved cash-carrying routes.

(p) Installing polished steel mirror panels around night safes to facilitate rear view.

(q) Provide dedicated parking for security vans as close as possible to where CIT deliveries are being made.

(r) Where feasible, develop or convert shopping centre corridors into dedicated security access ways.

(s) Ensure identified crime risks are removed or minimised by responsible stakeholders.

Further, Sen. Sgt. McCamley said that the following procedures should be put in place:

1. Security transport contractors should review delivery methodologies and safe route assessment procedures.

2. Employers to ensure that all security personnel involved in CIT work are instructed in, and understand standard operating procedures.

3. Security personnel involved in CIT work to be required (under normal circumstances) to use approved safe routes.

4. Employers of personnel involved in the transportation of cash and valuables to ensure that Standard Operating Procedures are implemented. (Ex.196 para 76).

In relation to new shopping centres he made a number of suggestions. He recommended that local councils (under the *Environmental Planning and Assessment Act* 1979) be required to consider crime risk issues during the Development Approval process, and not merely on an ad hoc basis.

In particular, he recommended that the following approach be adopted with new shopping centre developments:

1. Project planners/designers promote designs which maximise natural surveillance, access control, territorial reinforcement and activity management.

2. ATMs and banks be located at low risk sites (ie well used - well supervised areas with high levels of natural surveillance and access control).

3. The ATM designs have reflective panels/mirrored surrounds which facilitate rear view.

4. Sites for ATMs and cash-carrying routes be evaluated by stakeholders responsible for the safety of: assets (ie banks and CIT operators), CIT guards and CIT clients (ie shopping centre owners).

5. Local council approval of Building or Development Applications for banks and off-site ATMs be dependent upon it being demonstrated that:

   (a) stakeholders (including CIT operators companies, developers/shopping centre owners and banks) were consulted;

   (b) all appropriate risk assessments were conducted; and

   (c) identified risks were removed or minimised.

6. Banks and like businesses (requiring *large* cash deliveries) be clustered in financial courts serviced by dedicated and bunkered delivery docks and security access ways.

7. Banks, like businesses and off-site ATMs (requiring *small* cash deliveries) could be located in low risk areas outside the financial courts.

8. Incentive packages which attract tenants to financial courts be developed (ie through Government

regulation, subsidised rent, privileges etc). (Ex.196 para 81)

Professor Wilson endorsed the methodology and approach taken by Sen. Sgt. McCamley and observed that "professional gangs and offenders are likely to be deterred by situational crime prevention strategies which reduce the risk and alter the opportunity structure".

SHOULD ATMs BE IN BUNKERS?

Introduction

A number of Automatic Teller Machines (“ATMs”) in shopping centres (as well as clubs and hotels) are front-loading. As a result, CIT guards have to service them from public areas. A significant issue is whether ATMs in shopping centres (and, possibly, elsewhere) should have to be housed in bunkers to increase the safety of CIT guards.

ATMs are controlled by three different groups. These are:

1. Banks;

2. non-Bank Financial Institutions like credit unions and building societies; and

3. licensed clubs, hotels and similar organisations. The ATMs in these places organisations are often

referred to as Cash Dispensing Units (“CDUs”). They dispenses cash through the banks’ electronic funds transfer point of sale (“EFTPOS”) system. This is the same system that allows retailers to provide customers with cash at check-out registers (Mr. Wright Ex.93A p1).

Mr Wright said that banks had little control over the location or servicing of ATMs in shopping centres, licensed clubs or hotels. It is for the management of the relevant shopping centre, club or hotel to decide upon the location and often the contract for service, not the banks (Mr. Wright Ex.93A p1; Mr. Cunningham T772).

Banks and non-bank financial institutions usually locate their ATMs:

1. Inside or just outside their branches. These ATMs can usually be serviced from inside the branch.

2. Off-branch, particularly in shopping centres. Some of these machines are housed in bunkers (see below). However, many must be front-loaded.

The ATMs in licensed hotels or clubs are usually located in public areas, like bars. Many of these also have to be front-loaded.

Mr Raisin, from the CBA, said that when CIT guards attend an off-site ATM they do two things. They:

1. Load a new canister or canisters of cash, and take away the existing canisters; and

2. Close off the terminal for the day so that it can't process any more. This provides a total that they can compare with the amount of cash they take away. (T1203.30).

Mr Cunningham said that Armaguard always ensures that ATMs are serviced by two guards, one of whom works on the machine while the other keeps watch. However, the one who keeps watch may, in certain circumstances, also note down meter readings (T742.15). During this operation, a third guard will remain in the armoured vehicle (Mr. Cunningham T742.40). A fourth person may also be in attendance if the area is a recognised "hot spot".

Until the cash is loaded into the ATM the risk is borne by the cash carrier. After that, it is an asset of the bank and the bank's responsibility (Mr. Raisin T1203.40-55).

Mr Raisin said that the ATMs included a duress alarm that security guards could use if attacked (T1204.35). However, Mr Cunningham said that, while he was not sure, he thought the number of ATMs with duress alarms was quite small (T776.55).

Mr Wright said that the reason why closed circuit video cameras were used on ATMs was to prevent fraud rather than as a security measure (Mr. Wright T1367.50. Mr. Rishman T1891.10).

What are Bunkers?

As already mentioned, a number of ATMs are housed in "bunkers". Mr Cunningham said a bunker was, typically:

> "... a concrete or brick structure either free-standing or within another building through which the front of the ATM machine protrudes but it provides a room behind one or more ATM machines into which service crews can enter and close the door and work in a reasonably secure environment". (T741.5-15).

Mr Wright said that bunkers were first introduced in the mid-70s. They were introduced because, at that time, off-site ATMs were serviced by bank staff who had to be accompanied by a security guard. The bunkers allowed the staff members to service the machines in isolation (T1381.10). Further, bunkers improved the physical security of ATMs. They formed a physical enclosure around the ATM with an electronic warning system which indicates when unauthorised access is being attempted (T1381.40-T1382.40; T1415.50-30).

Non-bunkered ATMs were developed later. They were put in shopping centres where the doors were closed at night and the centres were protected by security guards. It was felt that, in those circumstances, bunkers were not needed (Mr. Wright T1416.5-10).

Mr Wright said that banks are mostly likely to put a bunker around an ATM if it is:

1. Off-site;

2. in a shopping centre; and

3. in a part of the shopping centre which can be accessed by the public when the shopping centre is closed.

In that situation, the electronic alarms in the bunker provided an early warning that someone is trying to tamper with the ATM (T1391.5-30).

Mr Wright said that, in his experience, the majority of front-loaded ATMs are located in bank branches, where they supplement tellers. They are usually filled by bank staff before the bank opens in the morning and are emptied at night. There is no public access to them once the bank premises are closed (T1391.40).

However, Mr Cunningham said that there were dozens of ATMs in public areas like shopping centres which the banks controlled but were not housed in bunkers (T774.40-T775.25. Further, he said that most CDUs in public areas like clubs and pubs were not in bunkers (T775.20-30). An example of a front loading ATM located in a higher risk area is the ATM at Miranda Fair described by Sen. Sgt. McCamley (Ex 196 para 32).

Mr Wright conceded that there were some front-loading ATMs in shopping centres because there was no other suitable arrangement. Decisions to place such machines in shopping centres were made on purely commercial grounds (T1391.50).

Mr Raisin said that before the CBA established an ATM at a branch a security assessment was done. However, that was not done for off-site ATMs. He could not explain that discrepancy (T1196.5-25).

Thus it is clear from the above that, when deciding whether to put a bunker around an ATM or not, the banks (and, presumably, Non-Bank Financial Institutions, hotels and clubs, etc) give little or no consideration to cash in transit operations.

Arguments in Favour of Bunkers for ATMs

Mr Jennings said that all ATMs in shopping centres should be located in 'bunkers' so that the armoured car crew can enter the bunker and service the machines without being attacked from the rear. He said:

> "It is totally impossible for an escort officer to watch all angles when the machine is open in the middle of a public walkway in the centre of a major shopping centre, whilst his associate services the machine. Access to the bunker must be secured, ideally with adaptations to paths to allow direct vehicle access but only for authorised vehicles."
> (Ex.129 para 5.7)

Mr Byrne, from Brambles, said he would prefer it if all ATMs were housed in bunkers, but he was not sure if that was practicable (T839.35). He said that whether or not an ATM has a bunker is only one small factor in considering whether or not it can be safely serviced (T874.40). But it was a factor which Brambles considered when assessing a site (T875.35). Further, Mr Byrne said that when considering the safety of servicing an ATM it was difficult to have any hard-and-fast rules. It was more a matter of assessing the situation at each particular site (T874.50).

Mr Cunningham said that it can be argued that servicing an ATM from the safety of a bunker is safer than doing so in a bank branch, because a guard can lock himself inside the bunker while doing the work (T773.40).

Mr Sheldon, from the TWU, said he was concerned that his members were required to service ATMs in or outside banks with tens of thousands of dollars involved while fully exposed to the public, while at the same time counter employees in the same banks were protected by security screens (Ex.76 p5-6).

Mr Rishman, from the NAB, said that, properly constructed a bunker could protect people servicing ATMs off site (T1887.20).

Mr Dyhrberg, from Kunama, said that he considers that front-loading ATMs in shopping centres with the public around is a high-risk situation (compared with the use of a bunker)

(T2318.45-55). For that reason, Kunama attempts to service front-loaded ATMs early in the morning before the shopping centre is open (T2353.10-17).

Mr Dyhrberg said that, in his opinion, it was more likely that an offender will attempt a robbery on the pavement rather than directly in front of an ATM. But he also believes that steps need to be taken to ensure that employees have everything done to protect their interests. He said that guards have a genuinely held fear concerning ATMs (T2354.44-T3455.30).

Mr Stewart, a Brambles guard, said he believed that all ATMs should have bunkers, because a guard could not properly service the machines and keep watch at the same time (T1233.40-T1234.20). He said that sometimes, when servicing front-loading machines in shopping centres, Brambles used a fourth person to keep watch (T1233.55). Mr Dyhrberg also said that his firm intends to use pre-servicing surveillance by soft-skin guards when armoured vehicles service front-loading ATM machines (ROI-Q.136).

Mr Stewart said that at bunkered ATMs a guard usually enters the bunker to service the machine while the other waits outside (T1234). He said that in shopping centres the back-up from the shopping centre security was “null and void” (T1235.40).

Senior Sergeant McCamley states that bunkers will remove the risk of loading ATMs but the risk to travelling to the unit remains. Further limitations on ATM placement is an important factor (T3921.1-15).

Arguments Against Increasing Numbers of Bunkers

A bunker will lower the risk of the delivery in relation to the loading process but it does not necessarily follow that total elimination would be the suitable outcome in all cases (Sen. Sgt. McCamley T3921.45-58).

Mr Wright said it was "probably a perception" that it was riskier to replenish a front-loading ATM than an ATM situated in a bunker. He said he was not aware of any hold-ups occurring when an ATM was being loaded (Mr. Wright T1392.10 T1393.30, 50; T1429.10-20; see also Mr. Alderton T1097.24-30).

Mr Wright said there was no evidence to support the view that bunkers would enhance the safety of the servicing personnel "*in every instance*" (Ex.93A p3).

He said that:

> "Security company personnel would still be at risk while delivering cash, regardless of the existence of a bunker. I am not aware of any incident involving a hold-up on security personnel while in the process of servicing an ATM while the machine is open.
>
> The recent incidents have involved crews in transit to the ATM sites and the provision of a bunker would not assist in overcoming crews' 'in transit vulnerability' - that is, while traversing the distance from the security vehicle to the ATM. An example is the Warringah Mall incident where

> security personnel were attacked prior to arriving at the ATM.
>
> Each site is different, and safety measures should be specific to the individual site. There is no blanket solution, such as 'install bunkers around all ATMs'. Based on my experience within the security industry, many factors may affect the security of a specific site, and should therefore be taken into account in assessing the security of each specific site.
>
> The approach needs to be a holistic one, and it must be kept in mind that many factors are beyond the control of banks themselves, such as shopping centre design, parking restrictions, pedestrian malls and the versatility and ingenuity of criminals." (Ex.93A p3).

Mr Wright said it was possible that someone might be attacked while entering a bunker (T1416.35-50). However, he conceded that the time it takes a guard to enter the bunker and close it behind him would be less than that needed to replenish a front-loading ATM (T1417.15).

Mr Wright said that putting bunkers around all ATMs would result in cost increases and restrict the number of ATMs that banks could provide for customers (Ex.93A p3).

He said that it may be impracticable to erect bunkers around all existing ATMs because there:

1. May not be enough space for an appropriate bunker; and

2. There may not be large enough areas available for rent in off-site (non-branch) locations like shopping centres, petrol-stations, clubs and casinos (Ex.93A p4).

He said that if ATMs have to be moved elsewhere so that bunkers can be built, this could impact upon their viability because pedestrian traffic flows may be less at the new location. This could result in the bank having to abandon the site completely, which would inconvenience the public. The public would also be inconvenienced if ATMs had to be shut down while bunkers were built (Ex.93A p4). Mr Wright said that the higher the level of pedestrian traffic about an ATM, the greater the deterrent effect (T1393.40; T1394.5-50).

Detective Dein gave evidence that robbers did not usually attempt to hide by mingling with a crowd because they would, at some time, have to put on a disguise so that they could commit the robbery (T3903.35).

Mr Cunningham points out that there has never been an armed holdup on a crew which was actually servicing an ATM in Australia (Ex.187 para 4).

Mr Wright estimates that the cost of installing a bunker would be at least $20,000 per ATM (Ex.93A p4). He said that the bunker would probably have to be about three times bigger than the ATM. That is, about 8 to 10 square metres in size. He conceded that was not a particularly significant amount of space (T1417.30-40).

Conclusion

The bunker issue is a difficult matter. It is true that there have been no robberies of crews whilst servicing bunkers. However, there have been robberies of crews on route to service ATMs. The delivery to ATMs takes place in the area of critical risk that is between the vehicle and the point of entry or delivery. Furthermore, there are substantial increases in the number of ATMs. Overseas experience shows that there has been increased robberies both to the public and to security guards servicing ATMs (Mr. Solomon T1544.1-40). It should be noted that Mr Cunningham was asked for information concerning ATM robberies overseas trends but information was not available (T.3377).

It is inappropriate to approach occupational health and safety formulation policy upon the basis of merely present day indicators. By its very nature the OH&S Act compels and wider criteria that is the employer taking steps to prevent injuries to workers. Given the examples of robberies of crews attending to service ATMs; the growth of CIT work associated with ATMs (Ex.59 para 18); the heightened concern of employees carrying out ATM work and overseas trends, additional safety measures should be taken by an increased use of bunkers for ATMs wherever appropriate.

There needs to be a balancing of commercial interests, customer needs for ready access to cash machines and the interests of CIT employees and the public, bearing in mind the

duties on the employer under the OH&S Act. If a bank, for example, wishes to place an ATM machine in a location which best suits the needs of the bank and its customers, any consequential risk imposed on CIT employees must either be a burden to be borne by the bank so that the risk is suitably minimised, or the delivery should not be permitted. Whether the cost is one of additional crew members (where the cost may be easily seen as the bank's - or other client's) or a bunker, (where the cost might be borne by the centre in whole or in part), it ought be appreciated that a front-loading non-bunkered ATM has inherently greater security deficiencies which must be addressed.

I do not consider it possible to conclude that bunkers are the answer - it was not so at Warringah Mall. Bunkers may be part only of the required response in a given situation, and no part in another. Each site requires an assessment by a person suitably qualified (as I would consider Sen. Sgt. McCamley to be) to determine the overall risks of that site and whether the installation of a bunker is an appropriate requirement for that site.

RECOMMENDATIONS

1. **Section 90 of the Environmental Planning and Assessment Act 1979 should be amended so as to require the consent authority to take into account crime impact or risk including particularly the transport and delivery of cash and valuables in determining development applications.**

2. Shopping centre developers and managers, large financial institutions including banks and CIT operators should introduce as soon as possible the recommendations made by Sen. Sgt. McCamley as to existing and new or proposed shopping centres and malls (as well as other major developments).

3. Developers should be required to consider the introduction into all new designs of shopping centres requiring large cash deliveries, clustered financial courts serviced by secure delivery docks and secure access ways. The Environmental Planning and Protection Act should be amended to require this outcome.

4. The industry in consultation with the Registrar should monitor whether these changes have been introduced particularly in relation to existing centres. Where the changes have not been introduced, and where legislation has not already been brought into existence to regulate the matters, appropriate regulations should be made under the Environmental Planning and Protection Act or the Local Government Act to achieve the outcomes recommended by Sen. Sgt. McCamley.

5. Wherever appropriate after a proper security assessment offsite ATMs in shopping centres and malls should be contained within bunkers.

PARKING

As will be discussed in Term 5, it is imperative that armoured vehicles park as close as possible to client premises to minimise the time cash is on the pavement. However, councils have not co-operated in arrangements which would facilitate this access. Mr Byrne, from Brambles, said that councils have a role in influencing the safety of CIT work at shopping centres. He said that Brambles has, in the past, approached Local Councils in relation to shopping centres and parking issues generally. He agreed that the response received was both of *"resistance"* and *"indifference"* (T813.48-58).

Recently, Brambles approaching Manly Council and asked for access to Manly Corso. Access was denied (Mr. Byrne T814.11-19).

Mr Byrne said that:

> "councils by virtue of parking and other matters should ... be involved in consultation to ensure there is a greater degree of safety for the armoured car crew." (T3308.27-31)

Brambles

Mr. Foggarty claimed that crews from his Camperdown branch had received parking infringement notices from the NSW Police Service for parking the truck in a restricted area during deliveries or pickups. He placed the value of the

infringement notices as thousands of dollars. Brambles just pays for these infringements. He understood Brambles has spoken to the police previously and the police say that Brambles operate under the same laws as the rest of the public. In his experience, the crews from his branch have not received any parking infringement notices from local councils. However, they have been threatened, in particular by Manly Council. Mr. Peake gave similar information.

Armaguard

Mr. Alderton, Armaguard's branch manager for Artarmon, said crews from his branch have received parking infringement notices from the NSW Police Service for parking an armoured vehicle in a restricted area during deliveries or pickups. In his experience, if a parking fine has been by the police, for other than parking in a clearway, Armaguard has made representations to the police and the fine is usually quashed.

Furthermore, crews from his branch have received parking infringement notices from local councils for parking an armoured vehicle in a restricted area during deliveries or pickups. In his experience, although representations have been made to local councils, they have been very unresponsive to date. Mr. Alderton has spoken to the representative with Manly council in relation to parking on the Manly Corso, and he has written a letter to be submitted to a council meeting. As at the date of his interview on 1 November 1995, no response had been received. Mr. Carey in the course of his duties in

security operations also had liaison with local government bodies in relation to parking restrictions, mainly in malls where streets are closed. The purpose of the liaison is to get the armoured vehicle as close as Armaguard can to the client.

Kunama Securities

Mr Bishop received a parking infringement notice when working for Kunama when he parked in a loading zone. He requested lifting of the infringement because he was working for a security company delivering valuables and his vehicle was a commercial vehicle but this request was refused.

Wormalds

Wormalds has received parking infringement notices from police or councils. It has made unsuccessful representations to the Commissioner of Police.

CONCLUSION AND RECOMMENDATION

It is critical to the security of crew members that their time out of the vehicle is minimised; this usually calls for the shortest possibly carry. Apart from clearway situations, which may involve countervailing considerations which have not been explored in the proceedings, there seems to be no good reason why parking restrictions should not be lifted in a manner of which gives CIT vehicles reasonable access to the delivery point. Discreet operations cannot, and do not, make any such claim.

There should be a lifting of parking restrictions on armoured and overt soft skin vehicles, in a manner which meets their requirements, and wherever possible special parking should be allocated.

TERM 2: THE ADEQUACY OF INDUSTRIAL REGULATION OF THE INDUSTRY IN RELATION TO ALL ISSUES.

The Issues

The issues which emerged in the course of the proceedings relate to:

- Award coverage - demarcation.
- The issue of the discipline of employees and the operation of unfair dismissal provisions.
- Non-compliance with award provisions.
- The notion that the industry be described as an essential service for the purposes of the *Essential Services Act* 1988.
- The proposal from the armoured vehicle companies that the award should no longer provide for manning.
- Crew Leaders
- The fourth-person issue.

The manning provisions and the fourth-person issue may be thought to fall more appropriately to be dealt with in the context of Term 5, Safety Practices and Procedures. However, for convenience I deal with them here.

I deal with these matters in order.

AWARD COVERAGE - DEMARCATION

The two awards applicable to transport/security employees in the CIT industry are the Transport Industry - Armoured Cars &c. (State) Award (Vol. 232 NSW IG 1242) and the Security Industry (State) Award (Vol. 269 NSW IG 1314).

The former award applies to "employees of the classifications referred to herein employed in connection with armoured car services or payroll car services in the transportation of cash, bullion and other valuables in association with these services in the State, within the jurisdiction of the Carters, &c. (State) Conciliation Committee" (see (1984) 232 NSW IG at 1253). No special mention is made of such work in the industries and callings of the committee which, in paraphrase, extend to drivers of motor vehicles "engaged in the cartage of goods, merchandise and the like ...". This is the award most relevant to the industry.

The Security Industry (State) Award applies to "gatekeepers and all persons employed in or in connection with the industry or industries of security or watching" (an irrelevant exception then occurs) "within the jurisdiction of the Security and Cleaning, &c. (State) Conciliation Committee. The industries and callings of the Committee refer in part to "All persons employed in or in connection with the industry or industries of security or watching" (the same exception expressed differently then recurs together with an exception for typists, stenographers and the like) "but not excluding

persons employed in control rooms to monitor, respond to or act upon alarm systems". There are then a number of exceptions of persons within named conciliation committees and also employees of named employers and in identified industries. The Carters &c. (State) Conciliation Committee is not excepted. On its face this award, which is obtained on the application of the Australian Liquor, Hospitality and Miscellaneous Workers Union ('ALHMWU') would relate to static and mobile guarding and watching as opposed to the carriage or transportation of cash and valuables.

If the distinction between the two awards is significant it seems to be in an area where persons whose employment would normally fall under the Security Industry (State) Award, particularly as mobile guards, undertake cash transportation work. A good example of this activity is the work undertaken by a number of employees of or subcontractors (and perhaps their employees) to Chubb Security Services (formerly Wormald).

This award structure for the industry leaves outside the industry award coverage a particular area, which technically may be within the scope of the Carters &c. (State) Conciliation Committee. That is a person who for the major and substantial part of the working time is employed in a soft-skin vehicle transporting cash or valuables.

Neither the TWU nor the ALHMWU appear to desire one award with the two unions as parties; the TWU submitted that there

should be some re-arrangement of the award structures "so that there are two awards: one for specialist cash transporters and one for general security industry companies".

In Matter No. IRC910 of 1990 *Sweeney* J., in the course of a demarcation dispute between the TWU and the then MWU said:

> "As a result of those discussions and as a result of my knowledge of the transport and security industries I have no doubt that dual union coverage should not be permitted in the security industry: ... "

and

> "For these reasons I order as follows:
>
> 1. The Federated Miscellaneous Workers Union of Australia (NSW Branch) shall have the right to represent, cater for and protect the industrial interests of mobile patrol officers employed in the security industry to the exclusion of the Transport Workers Union of Australia, New South Wales Branch."

I consider that there is room for a fundamental distinction to be drawn between persons whose primary function on the major and substantial test, whether temporal or qualitative, of award application is in the transport industry on the one hand and in the security and watching industry on the other. An example of the problem which arises here is the claim in the proceedings by the ALHMWU that the fourth man or scout who operates in 'hot' or 'black spots' as a backup security person for the armoured car crews (the measure implemented to resolve the 1995 dispute) is within ALHMWU coverage because the role is not one of transporting but

rather the provision of security. I am unable to accept this view. The persons who perform the role of scout are selected either from staff persons in one case, or from car crew members in the other. Omitting the staff members from consideration, the car crew members are then mobilised in sedan-type motor vehicles. They will assess a delivery site before the arrival of the armoured vehicle and then assist in the making of a delivery. I cannot see how they could be viewed as performing any function other than assisting in the transport process. They are relevantly indistinguishable from the third man or escort who does not actually carry the cash but provides security coverage. In any event, to have union and award coverage vary within this type of confined operate would be absurd. The scope for industrial disputation would be enhanced and no discernible good purpose would be served.

RECOMMENDATION

There should be a single award covering the armoured car and soft-skin sides of the transport industry, within the coverage of the TWU.

DISCIPLINE OF EMPLOYEES

The question at the heart of this matter is the employer's contention that the dismissal of an employee for disciplinary reasons ought not be reviewable as an unfair dismissal in the ordinary way.

Armaguard submitted that the Commission should report that "industrial tribunals should give special weight to the need for employees carrying out CIT duties to comply with any procedures established for the performance of those duties".

Brambles submitted that:

> "As to discipline, BSS submits that there is a need for the award to be re-written so as to bring it up to date, and the award or an agreed industry code should contain room for graduated responses, including suspension without pay, other monetary penalties, and warnings. A great present weakness is that available responses at present are black (dismissal) or white (do nothing) which is absurd and has given rise to much difficulty."

Brambles went on to submit that the Commission "in its report should clearly state, as counsel assisting did in his closing address, that in this industry it is absolutely essential that procedures be strictly adhered to".

ASIAL adopted the view taken by counsel assisting regarding the harsh, unreasonable or unjust test as it is applied in reinstatement cases:

> "In my submission the test so formulated is more than adequate to deal with a situation where dismissal may occur for a breach of procedure and no modification to unfair dismissal laws should be made. Cases of dismissal in this industry should proceed on the basis of the operation of ordinary industrial jurisprudence".

The TWU took a similar approach and sought to demonstrate by reference to the evidence that there was no warrant for a change to existing circumstances.

It is clear from everything advanced on this issue that there has been from time to time a frustration felt by the major employers when attempts to dismiss car crew members for breaches of discipline have been interfered with by way of reinstatement order. That position is understandable; no doubt most employers, in many if not all industries, could feel that way in like circumstances. The question is whether a dismissal for breach of discipline raises considerations which should not be reviewable or, alternatively, should have special weight afforded them in an application for reinstatement.

I can find nothing of any substance to support the view that dismissal in such circumstances should not be reviewable. If it were so, then the alternatives would be either an acceptance by the dismissed person and other employees of the employer's decision or alternatively industrial action, whether lawful or unlawful, designed to persuade the employer's mind to change. An aspect of the employers' complaint is that too often resort is had to industrial action in relation to matters of discipline but the elimination of the review process would seem to present that response as the probability.

I take what I consider to be the only rational position on this matter: industrial action ought not be the response to a dismissal. There ought be a full appreciation within the industry that such matters are of the utmost seriousness and affect not only the dismissed employee but colleagues whose

security will have been endangered by the conduct and also members of the public who may well have been subjected to a heightened risk of exposure to armed attack. It is, frankly, ludicrous to think that if an employer of armoured car crews such as Armaguard or Brambles were to dismiss an employee for reasons thought sufficient to justify it in the knowledge that the dismissal would be reviewable in unfair dismissal proceedings, the employees should resort first to industrial action. If the employer has failed in some material way industrial action will be likely to achieve nothing but proceedings properly brought before the Commission should achieve something.

A case has been established in the evidence to the effect that there are failures with respect to operational procedures which affect the security of employees and that the employers have not only ongoing responsibility but also a continuing problem with staff in this regard. It is not good enough to simply accept that the problem will not go away. Employees should be required to appreciate that they must maintain the utmost diligence with respect to security. Some of the video evidence called in the proceedings suggests that, at least from time to time, some employees will pay only lip service to security procedures. It is too dangerous from the point of view of fellow crew and the public to permit that type of conduct to continue.

I consider that the Commission should, in dealing with reinstatement applications by or on behalf of employees who

have been dismissed for breach of operational procedures which involve security questions, give special weight to the consideration of security. It is not enough to merely raise the spectre of security as a satisfaction of some theoretical test; it will always be necessary for an employer in a reinstatement case to advance a case which is persuasive. I do not intend here to refer to questions of onus. I think employers in this industry do appreciate that the mere raising of security questions is insufficient; they must, in this respect, be able to counter the proposition that the dismissal was harsh, unreasonable or unjust, by effective reference to the allegations of breach of procedure.

NON-COMPLIANCE WITH AWARD PROVISIONS

There is no evidence of non-compliance in the armoured car sector, however, the position is quite different in the soft-skin sector.

There are two aspects of the problem, the first involving the repeated and apparently deliberate underpayment of employees and the second involving the payment of subcontractors at a rate lower than the award rate. In the second case the subcontracting arrangement appears usually to be effected between two corporations, the second of which is a small company which will supply the services of its principal.

In the first case the 1991 Act provided two avenues by which an employee of a subcontracting corporation might seek to recover an underpayment of wages. The employee could seek to recover the underpayment directly from the employer under s.151 of the 1991 Act, otherwise the person for whom the subcontracting employer carried out the work would, pursuant to s.154, be liable for the payment of wages due in the absence of the subcontractor's statement in writing that no wages were due at the time of the payment by the principal.

In the case of a small company which provides the purposes of its principal or sole active director (typically the husband in a husband and wife situation, for whom the corporation is perceived to provide advantages) there is no recovery provision within the 1996 Act other than as an unfair contract within the meaning of s.105 of the 1996 Act which may be the subject ultimately of an order in accordance with the provisions of s.106.

Whilst I consider this procedure should remain available for application in circumstances where it is thought appropriate it does not seem apt that it be the sole procedure by which rates equivalent to award rates might be recovered. Examples abound in the evidence of what appears to be institutionalised underpayments in these circumstances. I consider that a procedure, more convenient and accessible than s.106 proceedings, ought be made available to ensure that, by the adoption of corporate relationships, employers are not

able to maintain the provision of a service by ensuring that the subcontracting corporation is remunerated at a rate less, and often substantially less, than the aware rate. It may be suggested that the two corporations who contract with each other to ensure that the services provided on a subcontract basis are not involved in a contract of employment and should be free to negotiate their arrangement between themselves. However, even ss.105 and 106 belie that proposition. Here, the corporate structures are utilised as a means of attempting to avoid the obligations which attach to employment, thereby cheapening the cost of service, but at the expense of the security person.

To leave the present situation unaltered merely encourages the provision of services at rates which are not fairly competitive and which tend to lower the level of service and thus security which is provided. This has a propensity to lead to the lowering of the standard of service below that for which a client may be contracting. It smacks of unfair trading as between legitimate and illegitimate employers, potential for breaches of the obligation to provide a service for which the parties have contracted and the generation of a class of operation which is essentially contrary to the public interest. It must not be forgotten that security, and its impact on public areas, is at the heart of this matter.

I consider that it is necessary to ensure that services of this kind are provided at a cost level which permits the persons actually performing the work to receive in respect of their time no less than they would receive as employees under the appropriate award. One means by which this might be more readily achieved than relying solely on the provisions of s.106 of the 1996 Act would be to deem persons who undertake the actual work, although as principals of a small corporation, to be employees of the corporation with whom the small corporation contracts. Schedule 1 to the 1996 Act provides for a number of persons who would otherwise be treated as contractors to be taken to be employees. Clause 1(m) of Schedule 1 permits the incorporation into such categories of "Any person of a class prescribed by the regulations ....".

I would recommend that action be taken thereunder to deem such persons to be employees accordingly.

An example of the underpayment concerns an employee of one security service who was paid a flat rate of $13.00 per hour regardless of the time of the day or night or the day of the week on which the work was performed. Mr. J.J. Roser of the ALHMWU provided a calculation of the underpayment due under the Security Industry (State) Award and its splinter award, the Miscellaneous Workers Security Industry (State) Wages Adjustment and Redundancy Award which indicated an underpayment of $6,583.20 over a 27 week period. Other

examples in the evidence included payments of $12.25 per hour to casuals on night work, $576.00 per week to employees working around 50 hours per week, again all night work commencing at 6.00pm and another case where persons treated as subcontracters were paid by the security service at a flat rate of $10.00 per hour.

I further recommend that the Inspectorate of the Department of Industrial Relations should target the industry and commence a comprehensive audit of award compliance. There should be a critical appraisal of subcontract arrangements as part of this process. Licensed operators who are found to be wanting in this regard should be the subject of report by the Department to the licensing authority. It is inappropriate that persons who engage in practices of this kind on a regular and persistent basis ought be regarded as persons eligible and appropriate to obtain or retain a corporate licence to operate in the industry.

THE ESSENTIAL SERVICES ACT 1988

Armaguard submitted that the *Essential Services Act* "discloses that its mechanisms provide an opportunity to deal urgently and effectively with serious industrial action against the public interest: as its long title reveals, it is an Act to 'protect the community from disruption to essential services'". It argued that the consequences to the public interest of industrial action are no less severe or significant than industrial action in any or the services to

which the Act refers. Armaguard, as did ASIAL, relied upon the consequences of industrial action for clients. It submitted that the deprivation of the security that armoured vehicles give may appreciably increase the risk to clients, their employees and perhaps the public. These considerations, it submitted, require that special and urgent means be made available to deal with industrial action in this industry as in other industries providing essential services to the community.

There can be no doubt that during periods of industrial action there may occur a reduction in the supply of cash in the community. I am unable to perceive any real analogy between the availability of cash and the matters dealt with in the *Essential Services Act* such as the supply of water, health services, fire fighting services and the like. However, it is not that deprivation which is relied on as justifying a similar categorisation. It is the question of increased risk. It must be axiomatic that any increase in the storage of cash in the premises of clients might expose them to a greater risk of attack and similarly any increased transportation of cash by clients in an insecure way must increase the risk of attack. However, this is not measurable in any way. The evidence did not seek to demonstrate that there was an increased incidence of attack in such periods. It is thus a moot point upon which minds might take different views. My view is that the industry is properly distinguishable from the industries identified as 'essential services' by the Act

referred to and that there is no warrant for inclusion of the CIT industry therein.

MANNING CLAUSE

History of Industrial Regulation regarding Manning - Armoured Vehicles

Historically the Transport Industry/Armoured & (State) Award provided for manning levels in armoured vehicles. As at 1977, for example, the award provided in Clause 19(iv) as follows:

> (iv) The normal three-man crew shall be used on an armoured car on pay roll services, transportation of cash, bullion and valuables, except:
>
> (a) where one delivery is involved and a maximum of fifty thousand dollars ($50,000) is being carried then a two-man crew may be used.
>
> (b) On escort duties involving client personnel where a two-man crew may be used.
>
> [Vol 232 NSW IG 1242 at p1249]

In 1989 Clause 19 of the award was replaced with a new clause titled Definitions. This removed any description of minimum manning levels. However, clause 19(i)(a) provided:

> Where a two person crew operation is utilised an armoured vehicle shall have an accessible petitioned, secure area in which containers may be placed, allowing the crew members to access and leave that secure area without exposing the armoured vehicle operator or the remainder of the load.
> [Vol 260 NSW IG 897 at 906]

In the structural efficiency process which took place in 1990, the TWU and the major companies came close to an agreement whereby lower manning levels could be introduced for specific jobs where it was agreed that safety would not be

compromised. However following an armed holdup at Carlingford Shopping Centre which resulted in one employee being shot a mass meeting of union members rejected proposals relating to manning levels.

There was then an arbitration conducted before Mr Justice Sweeney in 1991, who amended clause 19 by inserting the following provision as clause 19 (iii):

> (iii)(a) Issues relating to the appropriate manning of vehicles shall be discussed by the parties to this award at the depot and/or company level as part of the ongoing restructuring. Such discussions may result in variations in existing procedures.
>
> (b) Such discussions shall at all times have regard to the following considerations:
>
> (a) the health, safety and security of all employees concerned;
>
> (b) the relevant aspects of the work concerned, including the value, the volume, the weight, the location and the method of pickup;
>
> (c) The availability and implementation of backup technology, such as tracking systems, drop safes etc; and
>
> (d) The need of companies in the industry to remain viable by attracting new work. [Volume 269 NSW IG 1366 at 1369-1370]

There was industrial action following the decision of *Sweeney* J. Despite attempts by the companies, no changes to manning levels were introduced in the metropolitan areas: the members of the TWU in the metropolitan areas maintained the view that anything less than three persons was unsafe unless

it was a two person crew, both of whom were to leave the vehicle to make a pickup. The crews would not accept the position put by the companies that one person would stay in the truck and the other go out alone.

Two person crewing was introduced in most country branches of Armaguard in 1990 or 1991. The date of implementation varied from branch to branch. Initially, no agreement was signed; a payment was offered but Armaguard company insisted on one crew member remaining in the vehicle at all times. All country branches except Orange eventually accepted the proposal, introduced one man out/two crew operation. Orange accepted two person crews but would not employ the one person out operation. Orange moved to a one person out operation in 1995.

About 70 per cent of three person crews operate in the Sydney Metropolitan Area and about 30 per cent operate outside it. In relation to four person crews, the current position is that 97 per cent are in the Sydney Metropolitan Area with approximately 3 per cent outside it.

In the result all country branches of Armaguard, except Orange, are now covered by registered enterprise bargaining agreements.

However, it must be noted that there have been continuing disputes about the two person operations. At Tamworth there was a dispute about whether the two persons in a two person

crew operation should leave the vehicle. At Grafton there was a demand to revert to three person operations from a two person operation.

Current Operational Considerations

Armaguard

Armaguard does not generally operate two person crews in the Sydney Metropolitan area. In Victoria there are fourteen branches of which twelve have agreements to operate two person crews. Three always operate two person crews. Nine use two person crews for some work. In Queensland Armaguard has thirteen branches of which nine have agreements to operate two person crews. Four almost always use two person crews and five use two person crews for some work. In Western Australia there are three branches all of which have agreements to operate two person crews and all use two person crews for some work. In South Australia and Northern Territory there are eight branches administered as one business unit. All have agreements to operate two person crews. Four branches almost always use two person crews. Three branches use two person crews for some work. One branch, while it has a flexible manning agreement, does not operate two person crews due to the nature of the particular work performed. In Tasmania there are three branches of Armaguard; all have agreements to operate two person crews. Two branches almost always use two person crews. One branch uses two person crews for approximately 50 per cent of its work.

Brambles

A normal Brambles armoured car operation is a three person crew, with two persons doing the work outside the truck; the third person remains in the vehicle. Two person crews are used on occasions to perform one-off services where both crew will alight from the vehicle; a two person crew may also be used to transport cash from branch to branch, or secure area to secure area. Two person service crews are used in soft skin vehicles for service and repair of ATMs and TVMs.

After negotiations had failed on the manning issue, in 1994 Brambles filed an application for an enterprise award. It was based upon the need to compete with soft skin companies although ultimately Brambles withdrew its application. The application referred to crews consisting from one to four persons and gave Brambles the sole right to determine manning levels. Brambles told the union at the time of withdrawing its application that if there was a bona fide belief by the employees that they felt unsafe under those conditions it would withdraw the application. It was advised by Mr Justice Marks that if it wished to compete with soft skin operations then it should set up a separate division.

Kunama (National Armoured Express)

National Armoured Express always uses three person crews and has never attempted to introduce two person crews with one employee remaining in the vehicle. It will not do so in the

future as it would result, in the view of Mr. Dyhrberg, in a significant increased risk of holdups.

Roden Security

Roden usually operates its armoured vehicles with a two person crew. Both men alight from the vehicle, one carrying the assignment, the other providing surveillance from a distance behind. A third person is provided on larger consignments. This person acts in a secondary surveillance role, also outside of the vehicle whilst the first two crew members carry out their usual functions.

Bushland Armoured

Bushlands usually operates with a two person crew. The exception is where a $40,000 consignment is transported twice a year. On these occasions an unmarked car will escort the armoured vehicle.

Brinks Australia

Brinks has recruited three full time employees to operate one vehicle. Casual employees will be engaged to operate the other vehicle on an ad hoc basis.

Company policy requires that the armoured vehicles be crewed by three persons and it operates on the basis of one member of the crew remaining inside the vehicle with two exiting onto the pavement.

The Issue

The issue is whether there should be an entrenchment recommended of existing manning provisions or, alternatively, that manning be left free for determination either by the employer, in consultation with and perhaps with the consent of the employees, or by some other method.

The views of Armaguard and Brambles are that:

(i) Safety considerations do not require two persons out of the vehicle at all times;

(ii) there is a need to ensure their operations remain competitive in the face of competition from soft-skin operators; and

(iii) manning ought to be capable of determination according to the job and the security assessment for it.

Another feature of significance to the employers is their requirement that one person must always remain with the armoured vehicle. This means that for the two-person crew, in the case of Armaguard and Brambles, only one person would ever leave the vehicle and safety considerations need to be examined in that light.

The final factor to which I refer is the perception of the employers that the TWU and its members have approached the question of manning as an industrial issue rather than simply

a security issue. Effectively, this means that the resort to industrial action by employees with a view to either preserving or increasing numbers is perceived to have some industrial motivation as opposed to safety consideration.

The members of the TWU take the position that there should be a retention of the existing arrangement whereby three-person crews operate in order to provide them appropriate protection in the course of their work.

Conclusions

Dealing first with the last point, I am of the opinion that it is not appropriate to regard the strength of feeling which employees bring to bear on the crew numbers issue as purely industrial. The need for crew out of the vehicle is patently for the purpose of transporting the cash or valuables between the vehicle and the client's collection point. The delivery requirements do not impose weight problems and so the presence of the second person out of the vehicle is purely for the purpose of guarding the first person. The need for the second person is a function of circumstance and this is reflected by the discrimination in current staffing practices between metropolitan and country areas. If it could be demonstrated in relation to some metropolitan delivery or deliveries that one person out of the vehicle could perform the work alone with proper security, the need for the second person would be obviated. There has been no such illustration in these proceedings; the matter has been approached in the evidence by way of principle only.

Therefore, I am unable to conclude that, in areas where three (or four) person crew operate, a case has been established to permit one-out operation. However, I note Mr. Cunningham's indication in evidence that Armaguard's intention would never be to introduce one-out operation, for example, in Sydney, except by consent. I can see no reason why the position should not be permitted to remain fluid so as to permit that possibility should circumstances demonstrate that to require a three-man crew would be excessive. The employees and the TWU well understand the considerations in this regard and I have no compunction in taking the view that it is appropriate not to regulate manning in a fixed way but to leave the matter open to examination from time to time by the parties and if necessary by the Commission.

This approach applies with equal force to the provision of the fourth person. The sole purpose of the fourth person is to add an element of security which is perceived (although often disputed) as required for particular sites. Experience of attacks on two-person crews at some of the sites examined suggests that from time to time a fourth person will be desirable. An example is Warringah Mall where by virtue of the distance walked from the parking spot to the ATM involved in the 1995 attack, its openness to the adjacent carpark, are the variety of access points to the line of walk would favour this. On the other hand, the Miranda Shopping Centre was designated a "hot spot" after the tragic incident of 1995 yet that delivery is merely an across-the-pavement between the truck and a streetfront bank branch. The factor which

operated to detriment in 1995 was the ability of the criminal to utilise the carpark exit doors nearby. These are now opened by the fourth person who attends prior to the delivery. I appreciate that emotive issues may influence the reaction to this site but one might have thought that if the car crew were to open those doors before effecting the delivery, the site would become no different to any other site and quite reasonably capable of being undertaken by a normal crew without a fourth person. On the other hand, considerations going to the shopping centre may mean that a fourth person would be made necessary by other circumstances in which case of course the presence of that person could be utilised in the way it now is.

This approach is predicated upon the finding that the number of crew required is dictated by circumstances. It follows that where the parties are unable to reach agreement on such a matter they should be able to bring the matter to a third party for determination. I consider the Commission is appropriate in that regard.

I express the view that given present circumstances the status quo with respect to crew numbers should be maintained subject to the right of the parties to seek alteration thereto on proper grounds with resort if necessary to the Commission. This means that there should be no need to resort to industrial action on staffing issues.

CREW LEADERS

The present position in Armaguard and Brambles is that crew members are rotated between functions and each crew of three has no leader. The fourth person at Brambles has no supervisory responsibility whereas at Armaguard that person is a staff person and reports to management. Brambles would wish to have the fourth person categorised as staff. The rationale for the employers' position that within a three-person crew there should be a crew leader is based upon the contention that there is a need for a person within the crew to be responsible for the co-ordination of work and to ensure compliance with procedures.

The position of the employees is that the rotation of crew members is necessary in order to share exposure time on the pavement so that all are treated equally in that respect.

What the employers seek in this regard is no different to that which operates under the Federal Award which applies in states other than New South Wales. That person replaces the position currently called the passport who carries the cash and carries out the transaction with a customer. The other two members of the crew are the driver and the escort.

There are reasons for concern in the absence of supervision in armoured vehicle crews. Apart from the obvious prospect of the crew members feeling free to operate according to the lack of supervision, it seems on the evidence, that

crew members actually do react that way. The evidence of the interview with the criminal codenamed Cook and a video recorded by the Police Service of deliveries which demonstrate a failure to comply with procedures are illustrations.

I do not consider that the objection of the employees to the adoption of a crew leader concept is properly or soundly based in safety considerations. Those considerations do not prevent the work being undertaken in this fashion in every other state in the country and there is no basis made out for distinguishing New South Wales in that regard. In my view the attitude here is truly an industrial one which should be rectified by the adoption of the concept in the fashion urged by Brambles and Armaguard.

RECOMMENDATION

I recommend that the structure of car crew provide for one person to be designated, and paid as, crew leader.

THE FOURTH-PERSON ISSUE

The fourth-person issue arose after the armed holdup of Brambles at Miranda Shopping Centre on 25 July and Armaguard at Warringah Mall on 28 July 1995.

The issue was defined at that time as being a desire for "extra scouts" to be allocated to jobs which were particularly

dangerous and regarded as "hot" or "black" spots. The term "scout" was used to describe employees whose task was to attend a nominated delivery or pickup location in advance of the armoured crew to check security and then to act as a fourth guard for a three-person crew.

The question as defined by Mr. Sheldon of the TWU was whether the persons should be staff or award employees. This was not merely an industrial issue but went to the role and function of scouts. Mr. Sheldon said:

> "We have made it clear that we believe the principal purpose of these scouts is to act as security personnel in addition to the road crew and working in co-operation with them. We have a concern that by making the scouts staff, their principal function will be looking over rather than working in with the armoured car crews."

Armaguard and Brambles have had different practices. Armaguard, prior to the industrial dispute, had employed field service officers whose duties Mr. Cunningham described as follows:

> "Their principal duty is to provide additional security support to road crew in the performance of their duties. They are actually on the road for virtually the entire period of their employment providing support to armoured car crews."

In relation to the security role, the field service officer carries out the duties in a very similar way to the escort. He attends sites as directed which are either assessed by the company or assessed by the employees (not necessarily with the agreement of the company) as being of a higher risk.

After the dispute, additional field service officers were engaged. Armaguard has not and does not regard the field service officers as supervisors. However, the field service officers do have a responsibility to assist in the supervision of correct procedures.

Brambles made little, if any, use of field service officers prior to August 1995, and have since employed, against Brambles desire, armoured crew members as scouts, who remain a part of the car crew grouping and members of the TWU.

It is not possible to come to the view that the additional staff employed since the August 1995 are not necessary additions to security. There remains an uncertainty between the parties to that dispute that the extra staff are necessary in some cases, but they are being supplied. The problem appears to me to be that there is no principle involved in determining whether a particular site ought warrant additional security. If a site does, according to some principle or standard of measure, require that extra support, it must of course be given. No measure has been suggested in the proceedings; it is thus impossible for me to take the matter further beyond recommending that there should be some attempt, new or renewed, by the parties to come to an agreed basis for measuring the need.

There remains the question of the fourth person's role in supervision.

The position with both Armaguard and Brambles is that, generally, road crew activities are unsupervised. Usually at least one crew member will have some seniority of experience, which permits training or guidance, but without authority. Armaguard's field security officers supervise by viewing activities on an ad hoc basis.

Brambles management perceives a real reluctance in road crews to accept and respond to supervision; this is of concern to Brambles. On the other hand, the road crew delegates' evidence was that supervisors often are less qualified or experienced than crew members and can compromise their safety.

Mr. Foggarty expressed his view in relation to the supervision issue as follows:

(a) Brambles would like to introduce more supervision because it is their belief that it will increase safety standards and reduce complacency, but the TWU is vigorously opposed to such action. At present street security is at a minimum with the hope of Brambles that it will be able to increase it at the end of the inquiry.

(b) Without supervision it is very hard to monitor the road crews;

(c) You could say that there is supervision in that the despatch supervisor has direct contact via telephone

and radio, but there is no supervision apart from this type of communication;

(d) The TWU's view is that provided supervision occurs not from within the car crew or the fourth man, it has no objection to supervision;

(e) Brambles would like to develop the fourth person position to a staff position with the view of carrying out on-the-road supervision.

Mr. Sheldon indicated that the road crews' performance is monitored at the present time by management. They are also monitored by each other. He said that he had no objection to supervision save that the objection was to the supervision being carried out by the fourth man. He also agreed that the adherence by crews to procedures is a matter relevant to improving safety.

The rationale for the TWU position is stated by Mr. Sheldon as follows:

(a) The supervisory role being adopted by the fourth man places a barrier between the fourth man and the car crew so that the fourth man might be distracted from carrying out his important security function in checking for criminal activity.

(b) There is a conflict involved in trying to balance the security function or detection function and a

supervision function looking at the functions of current crews.

There is a deal of merit in the position on both sides of this argument. Firstly, there is ample evidence that the employers have a degree of difficulty maintaining the adherence to procedures by employees. Yet it is that adherence which is seen by the employers, the experts, the police, the criminals and, I think, even all employee witnesses as vital to their safety. If supervision is necessary to achieve adherence then supervision there must be. An illustration of the problem is the conclusion of Commissioner Redman, endorsed, on appeal by the Full Commission (*Peterson, Marks* JJ. and *Patterson* C.) in *Brambles Security Services Ltd. v. The Transport Workers' Union of Australia, NSW Branch* (Unreported, 20 December 1996 - Matter No. IRC1772 of 1996):

> "... the 'buddy system' and the absence of staff supervision on the Casino job contributed to the breaches of safety or awareness. All of the evidence strongly suggests to me that this case is a glaring example of the potential danger in having an unstructured system devoid of responsible supervision given the inherent hazards and the pressures at a job site which has been agreed to be a 'hot spot'. It is
>
> my assessment that had a staff supervisor been present on the Casino job on the 2 February then it is most likely that this case would never have arisen."

On the other side, the use of the fourth person as a "supervisor" should not be permitted to detract from the security role which is to be performed.

These two functions are not mutually exclusive. I can see no reason in theory why they could not be performed together. There is no such reason evident in practice: the F.S.O.'s at Armaguard achieve this successfully, as they should.

There is no logical or practical reason why the role of ensuring compliance with procedures cannot be given to the "fourth" person, but with security being the primary function. Indeed the purpose of the overseeing is security. Employees must appreciate that they are not to be troubled by this system if they comply with procedures in place for their own security. If they are troubled or resistant, they will need to review for themselves whether they are in the right employment. There can be no room in this industry for a slack approach to standard operating procedures.

RECOMMENDATION

I conclude and recommend that the role of the fourth person ought be able to be performed by a staff supervisory person where required by the employer.

TERM 3 : THE ADEQUACY OF TRAINING AND LICENSING PROCEDURES FOR WORKERS IN THE INDUSTRY

INTRODUCTION TO LICENSING AND TRAINING

The issues of security industry licensing and training are inter-related. A large amount of evidence was received which suggests that individuals:

(a) of low moral character; and

(b) insufficient qualifications or training

have obtained, and continue to be able to obtain, licences to work in the security industry and its CIT sector.

Sergeant Dawson gave evidence that:

> "Today's Security Industry has become a 35,000 strong "Private Police Force". They may not possess the same legislative powers as a police officer, but in many instances they possess privileged information and are placed in control of money and valuables worth many thousands of dollars.
>
> If we are to curb crime and reduce the risk of death or injury to those working within that industry, then surely our first concern must be the integrity of personnel and the quality of their training." (Ex.16 p14)

Sergeant Dawson's comments apply with special force to the CIT sector.

There is undoubtedly a need for reform of licensing and training in the security industry.

The Role of the Firearms Registry

The body responsible for regulating the security industry in NSW is the Firearms Registry of the NSW Police Service.

A point made often in the submissions was that the regulation of the industry has been deficient. That failure appears to have resulted from a variety of factors, including the insufficient resources which the Police Service has devoted to the task. Certainly, the current regulatory model has not been successful. Most of the inadequacies are long-standing. They are a result of the weak legislative regime which governs the security industry and the inadequate resources which the police force has devoted to regulating it (Sgt. Dawson T203.50-55).

Mr. Colin Nayda, the manager of Mid-state Security, a firm which does CIT work, said:

> "I just believe that probably because the police force is not staffed or geared for the security industry... there is absolutely negative control on the industry... The only time we get police involvement is for renewing our licence... You... have to go to a local police station and if there's no licensing sergeant there you've got to tell the constable how to renew the licence yourself. I believe that visits by the licensing police are only to inspect our firearms when they have to, to comply with their firearms regulations. But as far as their regulating the security industry as such, I don't believe there is any involvement whatsoever with them, unless there is a problem and then they may go and investigate that particular security company. But as far as regulating the industry, other than saying the Act is to be enforced by the NSW police, there's no enforcement." (Ex. 192 Q.48)

LICENSING

I. THE PRESENT LEGISLATIVE FRAMEWORK

Licensing Requirements

The principal legislation governing businesses and employees engaged in the delivery and transport of cash and other valuables is the SPI Act. The long title of the SPI Act provides it is:

> "An Act to provide for the licensing and regulation of persons carrying on, employed in, the business of providing security and protection for persons or property."

"Property" for the purposes of the SPI Act is defined to include money (see s.3(1)). The SPI Act regulates the security industry by a system of licensing. The licensing requirements are found under Part 3 of the SPI Act.

In summary:

A **Class 1** licence must be held by a person involved in various security activities, including "...*patrolling, protecting, watching or guarding any property*". In certain circumstances it must also be held by a business (s8(2)).

A **Class 2** licence must be held by a person or company intending to carry on a business of providing persons to carry on a Class 1 activity. So it must be held by any

person who, or any corporation which, employs guards in the CIT sector (s8(3)).

A **Class 3** licence is of less importance to the present inquiry. It must be held by a person intending to act as a security consultant (s8(4)).

Section 8(5) provides that the regulations may distinguish between categories of licence of any class. Regulation 6 of the *Security (Protection) Regulations* 1986 ('SPI Regulations', establishes five categories of Class 1 licence, as specified in Schedule 3, the only class of relevance for present purposes is **Class A.** Schedule 3 describes it as *"Patrolling, protecting, watching or guarding any property."*

There is *no* licence category which deals specifically with CIT operations. However, as “property” is defined as including “money” (and it obviously refers to proprietary rights with respect to physical objects (see Words and Phrases Legally Defined, pp445-448, and Stroud’s Judicial Dictionary, pp2057-2065) the reference in Schedule 3 to “*protecting, watching or guarding any property*” also refers to the secure transportation and delivery of cash and valuables. Thus those who perform that work, whether by hard-skin or soft-skin means, in a fee-for-service arrangement, must have a Class 1A, or if an employer a Class 2, licence.

While couriers often carry cash or valuables, it is generally the case they are not in the "*business*" of "*protecting, watching or guarding*" property. Courier companies and their employees have not been required to hold either Class 1A or Class 2 licences (Sgt. Dawson T120.10-30). However, there is evidence that some couriers carry on dedicated cash and valuable carriage work which has some aspect of protection and security associated with the activity. There appears no reason why such couriers should not be licensed under the SPI Act.

Licence Applications

The Commissioner of Police exercises various functions under the SPI Act, but is subject to the direction and control of the Minister (s6(1)). The Commissioner may delegate his functions to any member of the police force or prescribed person (s7(1)). No persons have been prescribed.

Applications for licences must be made, in the prescribed form, to the police station nearest the applicant's home (Regulation 7(a)(i)); the Commissioner may require that the applicant provide such supporting evidence as the Commissioner reasonably requires (s9(1)).

An applicant for a Class 1A licence must supply the Commissioner with his basic personal details, proof that he or she has completed *"a security industry course approved by the Commissioner"*, and a recent colour photograph. The

Commissioner must then satisfy himself that a person is entitled to a security industry licence. The adjudication is, in fact, made at the station where the application is lodged. This process will be discussed below.

The Criteria Which a Class 1A Applicant Must Satisfy

An applicant for a Class 1A licence must establish that he or she:

1. **Has the necessary qualifications (s10(1)(c) of the SPI Act)**

   Section 10(1)(c) of the SPI Act requires that an applicant have the "prescribed qualifications or experience", which Regulation 8 indicates are contained in Schedule 6. That schedule provides that an applicant for a Class 1A licence must have completed a "security industry course approved by the Commissioner."

   At present that course, the Security Industry Training Course, is conducted by approved private sector training providers and runs for 16 hours.

2. **Satisfies the probity requirements in s10 of the SPI Act**

   These requirements are discussed below.

The Firearms Training Course

Before being able to lawfully obtain custody of a pistol, a Class 1A licence holder must have also completed a two-day firearms training course of a kind approved by the

Commissioner (see regulation 77 of the *Firearms Regulations* 1990). Completion of that course is not, strictly, a *pre-*entry requirement.

The Criteria Which a Class 2 Applicant Must Satisfy

An applicant for a Class 2 licence is not required to have any qualifications at all (see Schedule 6 of the SPI Regulations).

The applicant only has to satisfy the probity requirements in s.10 of the SPI Act (although in the case of a company, the legislation does not specify which officers or directors of the company must satisfy the probity requirements).

The Probity Requirements (s10 of the SPI Act)

Applicants for both Class 1 and Class 2 licences must satisfy the probity requirements in s.10(1) of the SPI Act, which are that the applicant:

> (a) is a fit and proper person to hold a licence of the kind sought by the applicant;
>
> (b) being an individual, has attained the age of 18 years;
>
> (c) has the prescribed qualifications or expertise or, where the regulations so require, the prescribed qualifications and experience, to hold such a licence; and
>
> (d) has not, during the period of 10 years immediately preceding the lodgment of the application, been convicted of:
>
> (i) any indictable offence; or

(ii) any offence against this Act or the regulations,

of such a kind as warrants, in the opinion of the Commissioner, the refusal of the application

shall grant the application but, if not so satisfied, shall refuse to grant the application.

Section 10(2) provides that:

(2) the Commissioner may refuse to grant an application seeking a licence authorising the carrying on of any particular security activity if the Commissioner is not satisfied

that the applicant is competent to carry on that activity or

as to the adequacy of any security equipment, methods or practices to be employed; or

that the applicant (or, where the applicant is a corporation, each of the directors of the corporation) is of good fame and character.

Duration of Licences

Section 13 of the SPI Act provides that a Class 1A or Class 2 licence will remain in force for a period of one year and may be renewed from time to time for a period of one year. Thus the licences must be renewed annually.

Cancellation or Suspension of a Licence

Section 14 provides that if circumstances arise which would have constituted a ground for refusing an application for a licence, then the Commissioner may, by notice in writing, cancel or suspend the licence.

Appeals to the Local Court

The SPI Act gives a Local Court constituted by a magistrate the jurisdiction to hear and determine applications referred to it by the Commissioner under s.11 at the request of an unsuccessful licence applicant or a holder whose licence has been cancelled or suspended.

THE FIREARMS ACT 1989 AND FIREARMS REGULATIONS 1990

How Class 1A licensees obtain access to pistols

If an applicant is granted a Class 1A security licence then that person can possess and use a pistol in connection with his or her employment if:

1. He or she has completed the two-day firearms training course (see regulation 77 of the *Firearms Regulations* 1990); and

2. His or her employer (who must be a Class 2 licence holder) holds a Business Pistol Licence (see s.21(3)(2)(c) of the *Firearms Act* 1989).

In this way a Class 1A licence holder has been able to access a pistol without obtaining a shooter's licence in his or her own right. I will discuss below what the position will be when the relevant provisions of the *Firearms Act* 1996 commence.

To understand how the present situation has arisen it is necessary to first look at how Class 2 licence holders obtain Business Pistol Licences.

How Class 2 Licensees obtain Business Pistol Licences

Until the new *Firearms Act* 1996 commences, applicants for firearms licences (including Business Pistol Licences) will continue having to satisfy the probity requirements set out in s.25 of the repealed Firearms Act 1989, the probity requirements of which are far more stringent than those contained in s.10 of the SPI Act. As a result, someone could obtain a Class 1A licence (and so access to a pistol) even though he or she could not obtain a firearms licence under the *Firearms Act* 1989. Until the new Firearms Regulations are gazetted, it is impossible to know whether the new *Firearms Act* 1996 will alter the probity requirements in the repealed Firearms Act.

Section 25 of the Firearms Act 1989

Section 25 provides that:

> (1) A licence must not be issued to a person who it appears to the Commissioner of Police after making such inquiries as are reasonably practicable:
>
> (a) is not a natural person
>
> (b) has at any time or, if the regulations so provide, within a specified period before the application for the licence was made, been convicted in New South Wales or elsewhere of a prescribed offence, whether the offence was committed before or after the commencement of this section and whether or not the offence is an offence under New South Wales law;

(b1) is subject to an apprehended violence order or who has at any time within 10 years before the application for the licence was made been subject to such an order (other than an order which has been revoked)

(c) is subject to a recognisance, granted in New South Wales or elsewhere, to keep the peace; or

(d) is subject to a firearms prohibition order.

(2) A licence must not be issued unless

(a) the Commissioner of police is satisfied, after making such inquiries as are reasonably practicable, that the applicant is of good character and repute and can be trusted to have possession of firearms without danger to the public safety or to the peace; and

(b) if required by the regulations, the applicant has completed, to the satisfaction of the Commissioner of police, training and testing in accordance with the regulations.

(3) Without limiting the generality of subsection (2), a licence must not be issued if the Commissioner has reasonable cause to believe that the applicant may not personally exercise continuous and responsible control over firearms because of:

(a) the applicant's way of living or domestic circumstances; or

(b) any previous attempts by the applicant to commit suicide or cause a self-inflicted wound.

(c) the applicant's intemperate habits or being of unsound mind.

(4) ***

(5) A licence must not be issued for the purpose of authorising the possession or use of a prohibited weapon within the meaning of the Prohibited Weapons Act 1989.

(6) The Commissioner of Police may refuse to issue a licence if the Commissioner considers that issue of the licence would be contrary to the public interest."
[emphasis added]

Regulation 21 of the Firearms Regulations 1990

Regulation 21 provides that:

(1) For the purposes of s25(1)(b) of the Act the prescribed offences are those specified in Schedule 4 and the period specified is 10 years.

(2) The offences specified in Schedule 4 are prescribed whether or not they are committed in New South Wales.

Schedule 4 of the Firearms Regulations 1990

Schedule 4 sets out the offences which disqualify someone from holding a licence under the soon to be repealed *Firearms Act* 1989. They are:

1. (1) An offence under the Drug Misuse and Trafficking Act 1985, being an offence committed in respect of a prohibited plant or prohibited drug within the meaning of that Act.

(2) An offence committed before the commencement of the Drug Misuse and Trafficking Act 1985 under the Poisons Act 1966 or the regulations under the latter Act, being an offence committed in respect of a restricted substance prescribed for the purposes of the Poisons Act 1966 or in respect of:

(a) a drug of addiction; or

(b) a prohibited drug; or

(c) a prohibited plant,

within the meaning of the Poisons Act 1966

(3) An offence committed outside New South Wales which, if the offence had been committed within New South Wales, would be an offence prescribed by sub-clause (1) and (2).

Offences involving violence

2. An offence committed within or outside New South Wales by a person, being an offence:

(a) in the course of the commission of which the person wilfully caused or attempted wilfully to cause actual bodily harm to another person; and

(b) in respect of which:

(i) the person has been sentenced to penal servitude or imprisonment for not less than 28 days or for the term of the person's life; or

(ii) a penalty of not less than $200 has been imposed upon the person.

Other offences under Australian Acts

3. Any offence committed within or outside New South Wales under any of the following acts, and which relates to the possession or use of firearms..[Schedule 4 then cites various acts, including the Criminal Acts and Codes of the Commonwealth and the States, including New South Wales].

Offences under foreign laws

4. Any offence committed under a law of a State, Territory or country outside Australia which relates to the possession or use of firearms or of any articles or devices which are prohibited articles or prohibited weapons.

If an applicant for a Class 2 security licence satisfies the probity requirements set out above, then he or she is eligible for a Business Pistol Licence.

Part 7 of the Firearms Regulations 1990 regulates Business Pistol Licence holders. Part 7 is entitled "*Persons Engaged in the Security Protection Industry*." It regulates the safe carriage of pistols (Reg.73), the safe storage of firearms (Reg.74), the keeping of records of weapons (Reg.75) and the maintenance of firearms (Reg. 76).

How Business Pistol Licences Confer Authority on Class 1A Licence Holders

If a Class 2 security licence holder has a business pistol licence, then an employee with a Class 1A licence is

authorised to have access to and possession of a pistol for which the business pistol licence is issued (s21(3)(2) of the *Firearms Act* 1989)

However, the class 1A licence holder must have completed a firearms training course (Reg. 77).

Until April 1996, security guards were able to satisfy Reg. 77 by undertaking a one-day course for firearms instruction. That course now lasts two days. It will be described in greater detail below.

THE FIREARMS ACT 1996

The *Firearms Act* 1996 has been passed by the NSW Parliament. Section 89 of that Act repeals the Firearms Act 1989 and the *Firearms Regulations* 1990. However, the *Firearms Act* 1996 has yet to be proclaimed. When it is, existing firearms licences will continue to be valid for 12 months. At the date of this Report the provisions which would affect licensing had not come into operation.

The Gun Control Resolution

The *Firearms Act* 1996 is based upon resolutions agreed at the Australasian Police Ministers' Council - Special Firearms Meeting, held in Canberra on 10 May 1996. The meeting resolved that all jurisdictions should apply the following minimum standards when determining whether firearms licences are to be refused or cancelled:

(a) ...

* **General reasons** - not of good character; conviction for an offence involving violence within the past five years; contravene firearm law; unsafe storage; no longer genuine reason; not in public interest due to (defined circumstances); not notifying of change of address; licence obtained by deception;

* **Specific reasons -** where applicant/licence holder has been the subject of an apprehended Violence Order, Domestic Violence Order, restraining order or conviction for assault with a weapon/aggravated assault within the past five years;

* **Mental or physical fitness** - reliable evidence of a mental or physical condition which would render the applicant unsuitable for owning, possessing or using a firearm.

(b) that in regard to the latter point, a balance needs to be struck between the right of the individual to privacy and fair treatment, and the responsibility of authorities, on behalf of the community, to prevent danger to the individual and the wider community.

(c) that a Commonwealth/State working party, including health officials, police and medical representation, be established to examine possible criteria and systems for determining mental and physical fitness to own, possess and use a firearm. The working party should report to the second APMC meeting for 1996, but jurisdictions should not delay the introduction of necessary legislative changes while awaiting the report.

(d) that jurisdictions will establish an appeal from a refusal of a licence application and the cancellation of a licence.

The Impact of the New Firearms Act 1996

The New Probity Requirements

The new *Firearms Act* 1996 contains many of the probity requirements which could be found in s.25 of the *Firearms Act* 1989. In particular, s.11(5) provides that:

> A licence must not be issued to a person who:
>
> (a) is under the age of 18, or
>
> (b) has, within the period of 10 years before the application for the licence was made, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or
>
> (c) is subject to an apprehended violence order or who has, at any time within 10 years before the application for the licence was made, been subject to such an order (other than an order that has been revoked), or
>
> (d) is subject to a recognisance granted in New South Wales or elsewhere, to keep the peace, or
>
> (e) is subject to a firearms prohibition order.

Section 11(3) of the *Firearms Act* 1996 provides that before issuing a licence the Commissioner must be satisfied that the applicant is:

> a fit and proper person and can be trusted to have possession of firearms without danger to public safety or to the peace.

In his second reading speech, the Minister for Police, the Hon. P. Whelan, said that the Federal Government has not, as yet, determined the tests for a "*fit and proper person*" (Hansard, 19 June 1996, p43).

Under s.11(4) the Commissioner must not issue a licence if he or she has reasonable cause to believe that the applicant may not personally exercise continuous and responsible control over firearms because of:

(a) the applicant's way of living or domestic circumstances; or

(b) any previous attempt by the applicant to commit suicide or cause a self-inflicted injury, or

(c) the applicant's intemperate habits or being of unsound mind.

Section 11(7) provides that the Commissioner may refuse to issue a licence if it is not in the "public interest."

The End of Business Pistol Licences?

Section 23 of the old *Firearms Act* 1989 authorised the *employees* of:

1. Business Pistol Licence holders;

2. Government Pistol Licence holders; and

3. Scientific Pistol Licence holders

to possess and use pistols.

The new *Firearms Act* 1996 contains no similar provisions. Indeed, it contains no mention of Business Pistol Licences, or anything similar. Those who want to possess and use pistols must obtain a Category H licence. Section 8 of the new Act provides that a Category H licensee:

"... is authorised to possess or use a registered pistol, but only for the purpose established by the licensee as being the genuine reason for having the licence."

It is possible that an attempt might be made, in the new regulations, to erect a structure similar to the Business Pistol Licence. Section 88 provides for the making of regulations with respect to “security guards”.

However, security guards who, at present, are able to access a pistol because they hold a Class 1A licence may have to obtain their own Category H licence. If so, the security guard would have to satisfy the probity requirements in the new *Firearms Act* 1996. If the new regulations define “prescribed” offence in the same way as Schedule 4 of the *Firearms Regulations* 1990, then a number of security guards may find themselves ineligible to access a pistol, despite the fact that they were previously eligible because they held Class 1A licences and had completed a two-day firearms training course.

I would regard this as a very positive step. There is no reason why security guards should have to satisfy less stringent probity standards than other firearms licence holders.

However, there are advantages in the present Business Pistol Licence regime. They are that:

1. Employees can only access pistols when actually working as security guards. Thus they must have a clear *need* to access a pistol. They cannot merely obtain a weapon because they are security guards

(whether employed or not). They are not allowed to take it home with them.

2. The employer is responsible for storing, maintaining and keeping records in relation to the pistols.

There has been a considerable amount of evidence which suggests that besides making pistols available to employees, business pistol licence holders have been making pistols available to franchisees, licensees and sub-contractors. That practice must stop. The legislation should make it clear that “employee” refers only to someone engaged under an employment contract.

If security guards have to obtain their own firearms licences, that may have other positive benefits, including:

1. It will impose upon security guards an obligation to inform the licensing authority of any change of address. At present, they are not under any such duty.

2. It will clarify the grounds upon which a security guard can be refused access to a pistol. It will be possible to revoke his or her licence for any reason referred to in the *Firearms Act*.

3. It will be possible to deprive a security guard of access to a pistol without taking away his or her

security industry licence. Thus he or she may be able to continue to work as a security guard, albeit without access to a firearm.

RECOMMENDATION

The *Firearms Act* 1996 or Regulations should include a licence similar to the Business Pistol Licence (although with tighter controls on storage, maintenance and record keeping than at present, and with heavier penalties for non-compliance).

A security guard should not be allowed to access a pistol under his employer's licence unless:

1. **He has the proposed CIT Guard's licence;**
2. **He has also obtained a firearms licence IN HIS OWN RIGHT; and**
3. **He is an employee rather than a franchisee, licensee or sub-contractor.**

Mutual Recognition

The *Mutual Recognition Act* 1992 (NSW) is part of uniform legislation which has been passed by the Commonwealth and all States and Territories to recognise each other's different regulatory standards with regards to goods and occupations.

As a result, in certain areas of New South Wales, there are security guards in the CIT sector who are registered as security operators in Queensland, and therefore subject to Queensland (rather than NSW) licensing conditions.

The *Mutual Recognition* Act reinforces the need to find national, rather than just local, solutions to the problems of the security industry, and in particular its CIT sector.

II. THE LICENSING SYSTEM IN PRACTICE

How Applications are Processed

Until 1 December 1990, the Firearms Registry adjudicated on all applications for security industry licences. Then the adjudication system was decentralised so that applications for Class 1A and Class 2 licences (and, indeed, Business Pistol Licences) are now made at local police stations. An officer at a station will interview the applicant and make a preliminary decision, which is referred to the patrol commander for formal approval. No officers are specifically designated the task of dealing with licensing applications.

The Application Form

Applicants for Class 1A and Class 2 licences must fill out the same form, which is entitled: "Application for a Licence under the SPI Act." However, an applicant for a Class 1A licence has to supply more information than an applicant for a Class 2 licence.

Class 1A Applicants - Required Information

A Class 1A applicant must supply the following:

1. Personal details

His or her name, address, date of birth and NSW driver's licence number.

2. Evidence of Identity

The applicant must satisfy a 100-point identification check similar to that used by banking organization. For example, passports, driver's licences and birth certificates are each worth 70 points; pension cards are worth 40 points; Bankcards, Visa and Mastercards are each worth 35 points; a union record is worth 25 points. At least one primary document (ie, a document worth 70 points) must be supplied, unless that is not possible, in which case the 100 points can be reached using secondary proofs. However, if only secondary proofs are used a report setting out the circumstances must be attached to the application.

3. Proof that He or She has Completed a Security Training Course Approved by the Commissioner

I have referred above to the requirement that an applicant has completed the Security Industry Training Course. That course will be described in detail in the section on training.

4. Information about his or her character

The form asks the applicant whether he or she "or any partners" have:

> "5. ... been refused or prohibited from holding a firearms or security licence, or had one of these licences suspended, cancelled or revoked.
>
> 6. ... been referred for or treated in the last 10 years for:
>
> (a) Alcoholism?
>
> (b) Drug dependence?
>
> (c) A mental or Nervous Disorder?
>
> 7. ... been convicted of an offence, had an offence proven against you, or been fined for an offence in respect of:
>
> (a) Firearms?
>
> (b) Any other offence, other than minor motor traffic?
>
> 7A. ... within the last 10 years, been the subject of a:
>
> (a) Family Law or Domestic Violence Order?
>
> (b) Apprehended Violence Order (OTHER THAN AN ORDER WHICH WAS REVOKED?)"

Regulation 7(1)(b)(i) and Schedule 4 of the *SPI Regulations* also requires that an applicant for a Class 1A licence produce a:

> recent colour photograph (plain background, full face and without hat, measuring 45mm in height and 35 mm in width).

However, the Application Form does not require that a photograph be provided. Nor has it been suggested to the

Inquiry that, as a matter of practice, police require that an applicant supply such a photograph before they obtain their Class 1A licence.

Class 2 Applicants - Required Information

An applicant for a Class 2 licence does not have to provide evidence of any qualifications, because no qualifications are needed to obtain a Class 2 licence.

However, the Application Form does require that the applicant provide “proof of business registration”. It is not clear whether a sole trader must satisfy the 100-point test of identity.

Computer Checks

Apart from relying on the information supplied in the application form, the patrol officer who handles the application also does a computer search (comprising a Criminal Names Index (“CNI”) check and an Adverse Licensing System (“ALS”) check) to determine whether the applicant:

1. Has previously had a firearms or security licence which was granted, refused, revoked, suspended or is the subject of an appeal, etc;

2. Has a criminal record;

3. Is recorded as having a mental illness or suffering from alcoholism.

The Guidelines

To help station police decide whether to grant a security industry licence, they have been supplied with three short documents. The third merely restates the law without attempting to elucidate it. The first two:

1. Only list some, but not all, of the probity requirements in s10 of the SPI Act; and

2. Where they do list probity requirements, do little to clear up the vagueness of s10.

How Approved Applications are Processed

If, at the patrol level, there is a positive adjudication to grant a Class 1A or Class 2 licence then the application forms and an adjudication form are sent to the Firearms Registry so that:

1. The primary information can be entered into the police computer system which handles licensing ('the Integrated Licensing System');

2. The documentary material can be recorded on microfiche; and

3. The licence itself can be created. That licence does not contain a photograph of the licence holder.

As a general rule, the Firearms Registry does not review the decision made at the patrol level.

After a licence has been issued a police computer automatically checks the Criminal Names Index every 24 hours to see if the licence holder's name has appeared. Thus, every day, there is a check to see whether a licence holder has been:

1. convicted of a criminal offence for which cancellation proceedings are appropriate; or
2. is the subject of an Apprehended Domestic Violence ('AVO') order, and so should be denied access to a firearm.

If the computer throws out a licensee's name, the Firearms Registry determines whether action should be taken against the licence holder.

When Class 1A and Class 2 licences are renewed, the procedures followed are the same as those listed above.

How Police are Trained to Adjudicate on Licence Applications

So that police have sufficient information and skills in security, firearms and miscellaneous licensing, the Firearms Registry has developed a one-week training course which is delivered at the Goulburn Police Academy: the Liquor and

Miscellaneous Licensing Course. The course, which is conducted by personnel from the Registry, was first held in September 1994. Sergeant Dawson said that during the first twelve months over 200 police completed the course.

The course is restricted to officers up to the rank of sergeant (although occasionally senior sergeants attend). No patrol commanders have attended the course. Indeed, at present, patrol commanders are not given an specific training in relation to licensing.

A modified version of the course is conducted over one day for public service and General Support Officers who perform counter services at police stations. As at 20 September 1995, over 100 such persons had gone through that course.

As its title suggests, the Liquor and Miscellaneous Licensing Course does not deal exclusively with security industry licensing. The course manual suggests that applications for security industry licences and Business Pistol Licences occupies two sessions (approximately 4 hours) on Day 2. The manual has a section which sets out the law and the responsibilities of the police in these areas.

Sergeant Dawson said that the time devoted to security industry licences is in fact two days (Sgt. Dawson T190.40).

III. WHY THE WRONG PEOPLE GET LICENCES

A number of applications for Class 1A licences are refused. Senior Constable Donald said that during the 12 months to 25 June 1996 the following were the statistics for licences refused, revoked and issued after an appeal to the Local Court.

1. Licences refused: 1A (269); 1B (11); 1AB (2,595); giving a total of (2,875).

2. Licences revoked: 1A (22); 1B (1); 1AB (410); giving a total of (433).

3. Licences issued after appeal: 1A (3); 1B (0); 1AB (67); giving a total of (70).

A large amount of evidence was called which suggests that many people who obtain Class 1A and Class 2 licences have serious criminal records involving crimes of violence and dishonesty (Sgt. Dawson Ex.16 p8; Mr. Byrne T858.10; Snr. Const. Donald Ex.40 p4 and also Ex.159 p7-10).

Mr. Stephen Frost, the former Deputy Registrar of Private Agents in Victoria, in his evidence said that when he conducted a review of all licences in Victoria in 1990 he found that 25 per cent of current employees had relevant criminal histories. He said that:

> "Many companies insisted that this was a problem confined to 'backyarders' yet were surprised to find that some of their employees had suffered convictions during the course of employment which had never been discovered."
> (Ex.197 p14).

Mr. Colin Nayda, the contract manager with Mid-State, told the Inquiry:

> "I believe that anybody can get a security licence, even with a past history. I believe there's ... a period of years where if they haven't had an offence of a serious nature they can get their licence."
> (Ex. 192, p8)

Mr. Feuerstein, who conducts security industry training courses, said that his impression was that:

> "... most assault matters probably wouldn't hold you back [from obtaining a licence], but if you had a dishonest offence like a break, enter and steal offence last year you may not even get a licence ... "
> (per Snr. Const. Donald Ex.40 p4).

At present, the fact that someone holds a security industry licence is no guarantee to an employer that they do not have an unsavory criminal past (Mr. Cunningham T636.50-T637.15).

But the problem is not just that many security industry participants have criminal histories (that is, insufficient probity). There are also many people in the industry who do not have sufficient qualifications, skills, experience or financial backing (that is, insufficient competency).

There are various reasons why the wrong people are getting into the industry. In some cases, the problems are procedural or mechanical. The system does not effectively screen out people whom it intends to exclude. In other cases, the problem is more fundamental. The system, as a matter of policy, allows people into the industry who should be excluded.

It appears that criminals and others unsuitable people are getting Class 1A and Class 2 licences for at least the following reasons:

1. The SPI Act only has a narrow range of disqualifying convictions.
2. There are few non-probity requirements for Class 1A applicants.
3. There are few requirements for Class 2 applicants.
4. Police have too much discretion.
5. Computer checks are inadequate.
6. Magistrates are too lenient.
7. False Identities are used.

I will look at these in turn.

The SPI Act has a Narrow Range of Disqualifying Convictions

I have already quoted s.10 of the SPI Act. That section contains various probity standards which applicants for Class 1A and Class 2 licences must satisfy.

In my view:

(i) Section 10 ignores too many criminal convictions which should be taken into account when assessing an applicant;

(ii) section 10 gives police a very wide discretion; and

(iii) the guidelines which station police use when considering licence applications do little to clear up the problems created by (i) and (ii). Indeed, they appear to make them worse.

The two provisions of s10 which deal with convictions are:

1. Section 10(1)(a), which says that the Commissioner must refuse an application if satisfied that the applicant is not a "*fit and proper person*" to hold a licence;
   and

2. Section 10(1)(d) which says that the Commissioner must refuse to grant an application if the applicant

> has been convicted of "*any indictable offence*" or "*any offence*" against the SPI Act during the previous 10 years which is "*of such a kind as warrants, in the opinion of the Commissioner, the refusal of the application*."

Clearly, s.10(1)(a) is too vague. It does not say what character defects or types of convictions would make someone unfit to hold a licence.

Further, s.10(1)(d) requires that the conviction be for an "*indictable offence*" or "*any offence against this Act*" during the previous ten years. Thus it does not appear to catch a large number of summary offences. Further, it leaves it *entirely* to the discretion of the Commissioner whether a conviction should be a basis for refusing a licence. Indeed, the Commissioner *only* gets to exercise his discretion if an indictable offence has been committed during the last ten years.

The two guidelines which station police use when adjudicating upon security licence applications (Guideline One and Guideline Two) do not really clear up the uncertainty which the legislation creates.

Guideline One seems to accurately summarise the effect of subss.10(1)(a) and (d). However, Guideline Two:

1. States that a security licence will only be refused if the applicant had been convicted of:

(a) an offence involving violence, assault, stealing, fraud or narcotics, during the previous *five years;* or

(b) a "*serious* indictable matter" during the previous ten years.

The requirement that there be a "*serious*" indictable offence appears to significantly narrow the range of criminal convictions which may fall within the ambit of s.10(1)(a) and (d).

Further, the guideline does not explain whether the reference to an "*indictable*" offence refers to an offence which *was* dealt with on indictment, or *could* have been dealt with on indictment, but was dealt with summarily. This is an important distinction. Yet, neither s.10 nor Guideline Two give station police any hints about the answer.

In its letter to the Crown Solicitor dated 3 July 1996, the NSW Firearms Registry said:

> "if an offence can be dealt with indictably it is regarded as such, but refusal/revocation is still discretionary. The Firearms Registry no longer adjudicates on the issue of licences, but if it did all relevant facts of the matter would be called for and taken on their merit."

However, the guidelines do not make clear that this is how "*indictable*" is to be interpreted. Further, when police consult the Central Names Index, that does not make clear whether an offence was indictable or not. The relevant police officer would have to consult the legislation.

But most significantly, Guideline Two states that there should be revocation/refusal if there has been a conviction for any "*serious indictable matter*". Yet it makes no attempt to explain what "*serious*" means in this context.

2. Does not make clear the status of "*Spent Convictions*".

The *Criminal Records Act* 1991 provides that certain convictions will be classified as "Spent Convictions" if a person has not committed a crime during a specified period. The Act applies to offences committed within, and outside, NSW.

A conviction is spent if it was imposed in a Court (other than the Children's Court) and a period of 10 consecutive years' has elapsed during which the person has not been convicted of an offence punishable by imprisonment (s.9). For Children's Court convictions, 3 years must have elapsed (s.10).

All convictions are capable of being "spent", except convictions:

(a) where a prison sentence of more than six months has been imposed. Periodic detention is not regarded as a prison sentence for this purpose.

(b) for sexual offences (which are listed in the Act);

(c) of bodies corporate.

(d) convictions prescribed by the regulations.

Because such convictions are “spent”, applicants are not bound to disclose them in their applications for security industry licences. Thus they do not commit an offence under s.44 of the *Firearms Act* or s.19 of the SPI Act (both of which make it an offence to conceal a material fact when applying for a licence).

In evidence, Sgt. Dawson said that the *Criminal Records Act* has made it more difficult, in certain cases, for the police to refuse a licence on the ground that a person is not of “good fame and character” (s.10(2)(d)).

He used the example of an applicant for a Class 1A and B licence who had committed seven break, enter and steal offences prior to attaining the age of 15 years. He applied for a licence on reaching the age of 18.

> "Because this person had not committed an offence for three years prior to his attaining that age, no objection could be taken and a Class 1AB licence was issued."
> (Ex.16 pp9,10; T138.30-T139.30).

However, the suggestion in Guideline Two, that “spent” convictions should be ignored, is contrary to the Police Department’s own legal advice on the matter. Sergeant Dawson also gave evidence that the Police have received legal advice that they *may* still consider “spent” convictions when adjudicating on security licence applications (Ex.20,82,83, Sgt. Dawson T166.10)

Sergeant Dawson gave evidence that one of the two major ways which people with criminal convictions are allowed access to Class 1A licences is that they have “spent convictions”. The other is because of the inadequate criteria set out in s.10 itself (T166.5-30).

In conclusion, while the present probity requirements in the SPI Act may be satisfactory for assessing non-CIT security guards (although that may be doubted), they are clearly too weak for assessing CIT security guards who, in many cases, transport large amounts of money and carry firearms.

What Should be Done?

The range of disqualifying convictions in s.10 of the SPI Act is too narrow. Further, s.10 gives the police too much discretion and is not properly enforced. This is a serious problem because, as Mr. Frost pointed out:

> "The security industry, particularly the CIT section, is entitled to rely on the regulatory agency to provide a high degree of confidence in the selection process. Employers cannot legitimately access criminal records and a

> prospective employee who produces a current licence, despite a criminal history, may well have passed the licence test but could be a major liability to a CIT employer. The criminal history barrier to entry should be carefully drawn and strictly applied. The prospects for appeals based on this ground should be either severely circumscribed or non-existent." (Ex.197 p15).

A better model than s.10 is Schedule 4 of the *Firearms Regulations* 1990, which clearly sets out the various convictions which will disqualify someone from obtaining a firearms licence. Schedule 4 lists a wide range of convictions which will disqualify an applicant for a firearms licence.

Further, Schedule 4 more clearly identifies which offences will disqualify someone from obtaining a licence. In particular, it does not use the artificial and confusing distinction between “indictable” and “non-indictable” offences which can be found in s.10(1)(d) of the SPI Act. Rather, Schedule 4 states that:

> 1. any conviction for an offence related to narcotics or the possession or use of firearms will disqualify the applicant; and
>
> 2. a term of imprisonment of 28 days or a fine of more than $200 for an offence involving violence will disqualify the applicant.

Sergeant Dawson suggested that an applicant for a security industry licence should not be able to obtain that licence if he or she has been convicted of any of the offences listed in Schedule 4 of the *Firearms Regulations*. He said that one of the advantages of Schedule 4 is that it does not confer a discretion on police in relation to the specified

convictions. If the applicant has received a specified conviction he or she cannot obtain a firearms licence (Ex.16; T166.40; T202.15-55).

However, Schedule 4 only deals with offences involving narcotics, violence, or the possession or use of firearms. *It does not deal with fraud or dishonesty*. Obviously, it would be inappropriate for someone to obtain a security industry licence if he or she had any stealing or dishonesty offences.

Mr. Frost took the view that rather than use the word "*convicted*", s.10 of the SPI Act should be amended to read "*found guilty of an offence*" because of the substantial shift in sentencing policy evident over the past few years, particularly since the development of a range of sentencing options other than convictions (Ex.197 p15).

RECOMMENDATION

An application for a CIT guard's licence should be refused if the applicant has:

1. **During the previous ten years, been *convicted* of an offence which would disqualify an applicant for a firearms licence under the *Firearms Act* 1989 (see Section 25(1) of the *Firearms Act* 1989 and Regulation 21 and Schedule 4 of the *Firearms Regulations* 1990);**

2. During the previous *five* years, been ***found guilty*** of an offence which would disqualify an applicant for a firearms licence under the ***Firearms Act*** 1989 (see Section 25(1) of the ***Firearms Act*** 1989 and Regulation 21 and Schedule 4 of the ***Firearms Regulations*** 1990);

3. During the previous ten years, been ***convicted*** of any offence involving fraud, dishonesty or stealing;

4. During the previous five years, been ***found guilty*** of any offence involving fraud, dishonesty or stealing.

5. At any time, been ***convicted*** of an offence referred to at 1 to 4 above where the person was sentenced to a period of imprisonment of more than three months.

6. At any time, been ***found guilty*** of an offence involving robbery (armed or otherwise).

The regulations to the new ***Firearms Act*** 1996 should contain a list of disqualifying convictions at least as comprehensive and as strict as those contained Schedule 4 of the ***Firearms Regulations*** 1990.

Few Non-Probity Requirements for Class 1A Applicants

Apart from the 'fit and proper person' and 'good form and character' tests in s.10 of the SPI Act there are two additional barriers:

1. “may” refuse to grant a licence if “not satisfied that the applicant is competent to carry on that activity” (s.10(2)(a));

2. "the adequacy of any security equipment, methods or practices to be employed in the carrying on of that activity”(s.10(2)(b));

In relation to these requirements adjudicating police officers are usually satisfied that someone is “competent” for the purposes of s.10(2)(a) if that person has undertaken the 16-hour pre-entry training course. There was no evidence of any assessments being carried out in relation to equipment, methods or practices (Sgt. Dawson Ex.16 T185.35).

Psychological and Medical Tests

At present there is no provision in s.10 for considering the medical or psychological profile of an applicant, although it arguably comes within the scope of “*fit and proper person*” in s.10.

There are a number of reasons why CIT guards need to be mentally and physically fit. These include:

1. so that they can cope with the stresses of the job;

2. so that they do not misuse their firearms and endanger either themselves, their colleagues or members of the public;

3. so that they respond appropriately in an emergency;

4. so that they remain alert on the job; and

5. so that they do not look like “soft” targets.

On this last point, the armed robber, John Frederick Cook (pseudonym - the subject of a videoed interview by Police), told police about the physical fitness of some of the road crew he had held up or observed during the planning stage of a robbery:

> "... [they were] quite old, most of them had grey hair and looked pretty unfit. They didn’t look like the sort of person that would be chasing you down the street. They always walked together. They took the job as just a walk in the park, that’s the way that they appeared to us. With other companies, they had much younger men and they were all - not all, but most of them - fit, gung-ho looking types ... [But the guards were] very sloppy and very - and a lot to them overweight."
> (Ex.195B p4.24-47).

In a similar vein, Prof. Wilson told the Inquiry that:

> "... there is a perception of armed robbers, from the studies that I have been involved with ... that they do tend to pick targets which they define as being easier, such as females or older persons.”
> (T4075.5-10)

Thus Mr. Frost summarises the basic position as follows:

> "Applicants for work in the CIT industry should not only be physically fit but mentally stable individuals who can cope with the stresses of the job. I am aware that major employers such as Armaguard utilise profiling tools such as the Minnesota Multiphasic Personality inventory in their selection process and this is to be commended. I believe we are following the American experience of increasing litigation for negligent recruitment, negligent assignment, etc and it is essential that some psychological assessment form part of the licence process."
> (Ex. 197 p16).

Mr. Foggarty said that at Brambles prospective employees undergo a psychological test conducted by a company called London House that specialises in such tests (T1650.23).

Mr. Cunningham said that Armaguard places a "*reasonably high level of emphasis*" on physical fitness. But the only time it conducts a medical assessment of CIT guards is when they are recruited (Mr. Cunningham T645.20).

Mr. Dyhrberg said that in Western Australia applicants are required to provide references from two people and a medical certificate from the family's physician stating that they are a fit and proper person to engage in an occupation involving the use of the firearms. The licensing authority conducts checks with the referees and the doctor (Ex.117 paras 56-59).

In June 1993 the NSW Police Service created guidelines for medical practitioners to assess and report on the fitness of persons to hold a Firearms licence/permit in NSW. To date,

those guidelines and the reporting procedure, have not been adopted, but they do provide a useful checklist of the sort of issues which should be looked at before someone becomes a CIT guard (Ex.19).

RECOMMENDATION

Applicants for licences to act as security guards in the CIT sector should have to:

1. **pass psychological and medical assessments to determine whether they are fit to operate in the sector; and**

2. **provide references from two people stating that they are fit and proper to work in the industry and handle a firearm.**

Literacy Requirements

Mr. Frost gave some evidence about the need for literacy, although there is no evidence of a practical problem in this regard in the CIT industry. However, there is an obvious need that CIT guards possess sufficient literacy and communications skills to understand and apply standard operating procedures.

The Requirements for Business Applicants

The competency of the company and its members

Only two of the four requirements in s.10 of the SPI Act referred to above apply to applicants for Class 2 licences which are companies. The Commissioner "may" refuse to grant a licence if he is not satisfied:

1. that the applicant is "*competent to carry on that activity*" (s.10(2)(a))

   or

2. 'as to the adequacy of any security equipment, methods or practices to be employed in the carrying on of that activity... (s.10(2)(b)).

Chief Inspector Wedderburn stated in his report that:

> "The provisions of s10[(2)(a) and (b)] of the Act render lucid evidence that the legislators intended to restrict entry into the business of the security industry only to those who have some knowledge of the industry and the competence to carry it out."
> (Ex 6 p8; Sgt. Dawson T162.35)

At present, before a Class 2 licence is granted, no checks are made of a person's experience in the security industry or ability to supervise and manage people in that industry. Further, no checks are made of that person's

equipment (such as armoured cars) or methods of practice (Sgt. Dawson T187.5-55).

However, the police can hardly be blamed for lax enforcement of s.10(2)(a) and (b) when one considers how dramatically Schedule 6 of the SPI Regulations undermines those provisions. Schedule 6 states that there are "*no prescribed qualifications*" which an applicant for a Class 2 licence must have. Neither the applicant, nor any director, manager or supervisor, has to possess training or experience in areas like supervision, manning, safety procedures, the safe storage of pistols or the responsibilities of employers under the SPI Act, the *Firearms Act* and their attendant regulations. Nor does the applicant have to demonstrate that the business is or will be viable.

Many in the security industry are concerned that companies and individuals obtaining Class 2 licences have neither the background, business acumen or financial resources to properly manage companies involved in this area (C.I. Wedderburn Ex.6 p7; Mr. Byrne T811.10-20; T828.5-T829.25).

The SPI Act places restrictions on those who want to carry on the business of being security consultants. Before obtaining a Class 3 licence they must show that they have had a minimum of five years experience in the security industry, and so have sufficient knowledge *"to engage in the activity authorised by the licence"* (SPI Regulations, schedule 6).

Thus an advisor must be qualified, yet the person supplying the manpower to a customer under a Class 2 licence does not need to have any knowledge of the industry at all (C.I. Wedderburn Ex.6 p7).

The ease with which Class 2 licences can be obtained has seriously eroded standards in the industry, and made it harder for good operators to compete with cut-price, substandard operators.

When Chief Inspector Wedderburn wrote his report, he received:

> "Many complaints ... concerning Government tenders being given to the lowest tenderer without consideration to the manner in which the service can be provided. It is suggested that the honest provider cannot compete with the unsavoury operator who is at present able to “walk” into the security industry through the Class 2 licence door with little or no experience or expertise, no business acumen, no qualifications, no fidelity bond and no integrity."
> (Ex.6 p10)

Obviously, this lack of accountability cannot be allowed to continue. Chief Inspector Wedderburn wrote that:

> "At the present time the incidence of unacceptable or roguish behaviour is peripheral within the industry and this is the very reason that swift remedial action needs to be taken before the delinquent security entrepreneur and his questionable tactics becomes firmly entrenched."
> (Ex.6 p9)

As Mr. Frost commented:

> "A major weakness in the SPI Act in my view is the lack of any “prescribed qualifications” for a Class 2 licence,

> whereas employees are required to complete certain courses. The irony in the qualification requirement is that an employer can have no experience whatsoever in the CIT work, yet may employ hundreds of specialised employees."
> (Ex.197 p17)

What should be done?

In his Report, Chief Inspector Wedderburn cites the Model Private Security Licensing and Regulatory Statute of the United States of America ("the Model Statute") (C.I. Wedderburn Ex.6 p8). Section 16(a) of the Model Statute states that the principals of security companies applying for registration must meet the following prudential tests:

* Legal age;
* Residence;
* Non-conviction of certain offences;
* Mental capacity;
* Physical capacity (not drug or alcohol dependent);
* Good moral character; and
* Proven managerial, supervisory or administrative skills.

The Model Statute provides that the proven management skills are three years experience as a manager, supervisor or administrator with a Contract Security Company or Proprietary Security Organisation or three years' supervisory experience approved by the Licensing Authority with any Federal, US, military, State, County or Municipal law enforcement agency. In addition, companies are required to provide a $10,000 bond when lodging their application for a licence.

According to Mr. Byrne of Brambles, before a business is licensed to operate in the CIT sector it should have to show that:

1. it has the appropriate level of financial support;

2. the people involved are bona fide;

3. those people have sufficient security experience;

4. its equipment (ie, vehicles, firearms, communications systems) are satisfactory; and

5. its manning levels are appropriate.

(Mr. Byrne T811.10-20; T828.5-T829.25)

Mr. Cunningham of Armaguard said that a separate licence class should be established for companies and persons operating in the CIT industry. This licence would have to be held by any company or person which transports cash, bullion or negotiable instruments for a fee for service. The licence process should include:

1. police record checks on owners and directors;

2. evidence of solvency of owners and directors;

3. evidence of public liability insurance and workers' compensation insurance (or self-insurance licence); and

4. a commitment from the company or person to abide by specified operating and safety standards, via a code of conduct. Mr. Frost agreed with this.

Conditions on Licences

Mr. Frost expressed the view that whatever licence was given to an employer it should be limited on the basis of whatever expertise they held at the time when they made the application and that a failure to comply with the conditions should lead to a cancellation of the licence. This was his practice in Victoria (T3941.40-T3942.25).

Class 2 Licence Holders should not 'employ' Sub-contractors

A considerable amount of evidence told of the way in which many CIT operators engage persons as "sub-contractors" rather than employees. One operator gave evidence that until recently he paid such persons a flat $10.00 per hour, irrespective of when or where they worked. They did not receive any sick leave, annual leave or superannuation and out of that money had to pay their own tax.

This operator had been the subject of an ex-parte order made by the Chief Industrial Magistrate on 30 May 1996 ordering the payment to such a person the sum of $10,000 for wages held to be outstanding under the Security Protection Industry (State) Award. On 6 December 1996 *Schmidt* J., sitting as the Industrial Relations Commission of New South

Wales in Court Session, gave judgment in the matter on appeal by the operator, Feuerstein Pty. Limited, the principal of which is Michael Feuerstein. The respondent in the appeal was the person held by the Chief Industrial Magistrate to be entitled to the order for wages, Andrew Heaney. After granting leave to appeal *Schmidt* J. had called for evidence from the appellant, there having been no appearance by the appellant at first instance. Mr. Heaney also adduced evidence on the appeal.

In upholding the appeal her Honour said:

> "On the evidence, a subcontracting arrangement was the basis upon which the parties agreed to contract with each other. Mr. Heaney provided his own vehicle, he was rostered for work in accordance with the appellant arrangements made for subcontractors, with Mr. Heaney dictating when he was available for work, resulting in him working on occasions over 14 consecutive days, for up to 11 hours per day and on other occasions not being available for work at all. Mr. Heaney was paid at an agreed hourly rate on provision of an invoice, from which no tax deductions were withdrawn by the appellant. During the period in question Mr. Heaney was also operating his own business in the security industry. On termination of the arrangement, Mr. Heaney freely executed a document acknowledging both the nature of his relationship with the appellant and that he had been paid all sums outstanding to him. In all these circumstances, I have concluded that Mr. Heaney has failed to demonstrate that an employment relationship existed between he and the appellant."
> (Unreported - No. CT1167 of 1996 - 6 December 1996).

Whether the arrangements of this kind are a sham or, as *Schmidt* J. found in the particular case before her, legitimate subcontracting arrangements, the problem emerges that a service is able by this process to be supplied by the use of labour which is paid an appallingly low rate. This type of

operating system cannot conduce to the provision of a service which is likely to comply with minimum operating standards. The consequence is likely to be that either the service provided will be at an unacceptably low and thereby dangerous level, or alternatively clients will not receive the service for which they pay and are presumably entitled.

RECOMMENDATION

To obtain, keep and renew its CIT Business licence, a business should have to:

1. **Lodge a substantial bond or bank guarantee which will be forfeited if its licence is revoked for breach of one of these conditions;**
2. **comply with the SPI Act;**
3. **comply with the Code of Practice to be developed for the industry;**
4. **comply with the *Firearms Act;***
5. **comply with the relevant awards;**
6. **provide appropriate training to employees;**
7. **have the following insurances from a reputable insurer:**

(a) workers' compensation or self-insurer status for every employee carrying out CIT duties;

(b) death and total and permanent disability insurance of at least $250,000 per employee for injury occasioned by criminal attack while carrying out CIT duties;

(c) public liability insurance of at least $10 million;

8. ensure that all individuals employed or engaged to carry out CIT duties (including managers, supervisors and guards) as well as directors hold appropriate licences under the SPI Act (see below);

9. ensure that those whom it engages to carry out CIT duties:

(a) are employees; or

(b) hold CIT business licences; and

10. in relation to sub-contractors, franchisees and licencees:

(a) verify that they hold a CIT business licence;

(b) not use them if they do not;

(c) inform the regulatory agency responsible for the security industry (see below) of all such arrangements; and

(d) be responsible for all failures by their franchisees, licensees and sub-contractors to satisfy minimum conditions while working for them. This is a two-fold requirement. The principal must exercise supervision and control to ensure that all requirements of the Code of Practices are met, as well as rectify and be responsible for any failures by his franchisees, licensees and sub-contractors to meet the conditions referred to above.

(e) if the license of a franchisee, licensee or sub-contractor is revoked or not renewed *show cause* why the business's licence should not also be revoked or not renewed.

Breach of any of the licence conditions referred to above should be a ground for:

1. Refusing or revoking a licence.

2. Forfeiting the bond or guarantee.

3. Imposing a fine (which can be met out of the bond or bank guarantee).

Competency standards for managers and supervisors

The evidence establishes that a number of people who are presently directors and/or managers of CIT operations have little experience and no qualifications.

Obviously it is not enough that the business itself should have to satisfy certain competency standards. So should its managers and supervisors.

Both Messrs Frost and Dyhrberg took the view that the class 3 licence criteria (for consultants) should be expanded to cover all person who engage in risk assessments (Mr. Frost T3948.5-50; Mr. Dyhrberg T2314.15-57). Professor Wilson said that *"Risk assessments should be carried out by qualified and specially credentialed consultants."* (Prof. Wilson Ex.217 para 19).

Many applicants for Class 2 licences are companies which are obviously, made up of directors, managers, supervisors, employees and shareholders. However, the SPI Act does not specify which of these individuals must satisfy the probity standards in s.10 when the company applies for a Class 2 licence. That issue is left to the police.

In practice, it appears that the police do computer checks on:

1. the person who submits the application form, who is deemed the nominee of the company; and

2. any directors of the company

to determine whether they are of good fame and character.

Further, like all other applicants, the nominee is required to disclose on the application form whether he or she:

1. has been refused a licence;

2. has any criminal convictions; or

3. suffers from alcoholism, drug dependence, mental instability.

However, the directors, managers and shareholders of an applicant for a Class 2 licence do not have to fill in or sign the application form. Therefore, they do not have to supply this information themselves. Further, the police do not check with the Australian Securities Commission to ensure that the details provided are correct.

If a director joins the board of a company after it receives a licence he or she is supposed to fill out a change of details form and submit it to the local police. Computer checks are then made of that director.

No checks are made at any time of:

1. Shareholders, even of small companies.

2. Managers and supervisors. If a manager or supervisor is directly involved in transporting cash or valuables, he or she should hold a Class 1A licence. However, if the manager only performs a staff supervisory function, it is unnecessary to hold a licence of any kind.

A proposition emerged in the evidence that if a manager draws up safety procedures he or she may need to hold a Class 3 (Consultants) licence. However, I do not consider that a person employed as a manager in a security company can be regarded as “carrying on *the business* of furnishing advice” (see s.8(4) of the SPI Act).

Mr. Frost said that:

> "For licensing to be completely effective it must be applied to the whole of the industry and to the whole of the corporation. Licensing should encompass Directors, Managers, Supervisors, Guards, Trainers and Consultants. Exceptions should only apply to clerical or administrative staff, although employers ought to have legitimate access to criminal history checks of those employees too, given that they have some part to play in the protection of sensitive corporate data."
> (Ex.197 p14)

There needs also to be care to ensure that persons otherwise suitable for employment in supervisory or managerial roles are not prevented from taking up employment in the

industry. Provision is made in the recommendations accordingly.

RECOMMENDATION

All directors and partners of CIT business licence holders should be required to hold a CIT Director's licence (unless they hold another CIT licence)

To obtain, keep and renew a CIT Director's licence, a director or partner should have to satisfy the same probity check as a CIT guard, but should not have to satisfy any other requirements.

All persons involved in the CIT industry (including consultants) who:

1. **Perform risk assessments;**
2. **supervise road crews;**
3. **instruct road crews; or**
4. **establish, design, supervise, monitor or review security operational procedures**

should have to hold a CIT Manager's licence.

To obtain, retain and renew a CIT Manager's licence, a person should have to:

1. **Satisfy the same probity requirements as an applicant for a CIT guard's licence;**

2. **complete the mandatory approved training courses within an approved period; and**

3. **have a minimum of experience in the industry (unless he or she has completed sufficient training courses to compensate for his or her lack of experience) as may be determined by the licensing authority in consultation with the industry.**

All persons involved in the CIT industry who do not hold a CIT licence and have access to operational information (ie, delivery and collection times, routes, sums collected, etc) should have to obtain a CIT Employee's Permit:

To obtain, keep and renew the CIT Employee's Permit, the employee must:

1. **Notify the licensing authority where he or she works; and**

2. **satisfy the same probity check as a CIT guard.**

THE DISCRETION VESTED IN POLICE

It is apparent that even when s.10 of the SPI Act does identify a probity requirement which an applicant for a Class 1A or 2 licences must satisfy, the requirement is so vaguely expressed that the police are thereby conferred discretion which is vague and thus potentially excessive.

Accentuating this problem is the way that adjudications on licenses are presently made. At present there are 470 police stations in New South Wales, all of which handle applications for security licences.

The task of adjudicating on licence applications is not assigned to specific officers at each station, although officers with licensing training tend to attract more of the work.

Patrol commanders are required to formally approve or refuse licence applications. However, they tend to rubber stamp what their subordinates have done. No patrol commanders have attended the five-day Liquor and Miscellaneous Licensing Course.

Potential conflicts of interest

Not only do station police have a wide discretion when adjudicating on licence applications, many are also exposed to potential conflicts of interest. These two problems go hand-in-hand, and create a dangerous mixture.

At the present time there are a number of serving police officers who conduct businesses in the security industry or work as employees. They are permitted to perform that work if they obtain the sanction of the Commissioner. The Commissioner generally does not allow servicing police officers to do patrol work in the security industry, but he does allow serving officers to act as static guards, training instructors and control room monitors. Around 230 officers are sanctioned to perform such work.

Thus, many who teach the Security Industry Training Course (and the Firearms Training Course) are serving police officers. There is an obvious potential that they might adjudicate on licence applications which are submitted by their students. There is also a potential conflict of interest when police officers who work as security guards adjudicate on licence applications.

Police are also more exposed to pressure when they adjudicate on licence applications in country areas rather than in large metropolitan centres.

Mr. Frost gave evidence that:

> "Police who are permitted to work in the security industry are exposed to enormous potential conflicts of interest. The involvement of police officers in the security industry as trainers, part-time employees of licensed firms and owner operators is widespread in every jurisdiction in this country and internationally. I have had cause to investigate many complaints of police officers acting contrary to the Police Regulation Act (in Victoria) where employment in the industry is prohibited ...

> Police officers who are charged with a responsibility to investigate the bona fides of licence applicants, make recommendations as to fitness to trade and investigate offences against the relevant legislation cannot be considered as eligible for work in the industry. The only possible exception I would accept is in the area of approved industry training, but even that poses some potential for conflict in what is a very competitive environment. I am astounded that in New South Wales, serving officers who are directly involved in the licensing process can be granted approvals to set up and operate their own training agencies and security firms."
> (Ex.197 p23,24)

The Need for Centralised Adjudication

There is no doubt that a centralised system of licence adjudication would enhance consistency.

Further, such a system would remedy the conflict of interest problem that has been identified.

This would not prevent local police still conducting the initial interview and making any comments they wished to make in their report to the person making the decision.

Local Courts

Another option is to have licences issued out of Local Courts Administration, rather than police stations. Chief Inspector Wedderburn strongly opposed such a move:

> "A study of the issue of Private Inquiry and Commercial Agents licences [from the Local Court] indicates that the level of communication and co-operation between the licence issuing authority (Local Courts) and the records management authority (Police Service) is poor to say the least.

> Records indicate that there is an abnormally high number of these licences issued by the Local Courts that are never notified to the State Licensing Command with the result that there is no authority within the State capable of supplying the numbers or details of Private Inquiry and Commercial Agents (licensed or unlicensed) who presently operate in New South Wales.
>
> In addition, the question of firearms is central to the issue of licensing under the provisions of the SPI Act and it could never be argued that the office of Local Courts Administration is the appropriate authority to control the possession and use of firearms within this State, albeit that their office does shoulder the responsibility for the hearing of appeals pursuant to the Firearms Act."
> (Ex.6 p6)

Further, as Chief Inspector Wedderburn points out, at present the local courts are also responsible for hearing reviews of applications decided by the Commissioner concerning the grant, renewal or variation of any licence under the SPI Act. For that reason, the independence of the local courts might be questioned (Ex.6 p6). Additionally, the evidence reveals that Local Courts have been unduly lenient when hearing appeals against licence refusals.

RECOMMENDATION

Adjudications of applications for security industry licences should be made by a central licensing authority, although local police should retain responsibility for accepting applications and making identity checks.

Computer Checks are Inadequate

Another reason why the wrong people are obtaining Class 1A and Class 2 licences is that the computer checks which police undertake are not as comprehensive as they might be.

As already mentioned, when deciding whether to grant or refuse an application, a police officer relies upon the following information:

1. The information supplied in the application form; and

2. a computer search of the Criminal Names Index ("CNI") and the Adverse Licensing System

to determine whether the applicant:

(a) previously had a firearms or security licence which was granted, refused, revoked, suspended or the subject of an appeal, etc;

(b) has a criminal record; or

(c) is recorded as having a mental illness or suffering alcoholism.
(Sgt. Dawson T22.40-T125-6; T205.5-55; Ex.17 xiv p4).

The CNI search which police undertake does pick up interstate criminal records, but does not give full details. That information has to be requested from the relevant state.

Information about interstate Domestic Violence Orders is not available. Nor is information about interstate refusals or cancellations of security industry licences (Ex.238, Q&A.9; Q&A.10).

Information which the State Intelligence Group might hold about an individual might not have been entered onto the police computer (Sgt. Dawson T205.35-55).

Police also have difficulty accessing information about “spent” convictions. According to Sgt. Dawson:

> "The Criminal Records Act, 1991, has proved to be a major hindrance to the adjudication system for both Security and Firearms Licences. Whilst it’s intent was no doubt well placed, it has in fact allowed persons with serious criminal convictions to avoid the normal process of law which should have operated to bar them from gaining employment in certain high security positions ...
>
> Our legal advice indicates that we may still consider matters which are classed as spent, for the purpose of adjudication of an application. However, applicants are not bound to disclose these matters in their applications and do not commit an offence under s44 of the Firearms Act or s19 of the SPI Act [if they do not]."
> (Ex.16 pp.8,9)

To centralise the adjudication of licences will improve the quality and consistency of licensing adjudications. Another advantage is that a central body would be able to access the National Names Index (“NNI”) via the National Exchange of Police Information (“NEPI”) arrangements. A central body could also press for the introduction of a national security industry register as part of the NNI (Mr. Frost Ex.197 p25).

THE DECISIONS OF MAGISTRATES

The evidence suggests that magistrates have, in the past, been too lenient when determining appeals against police refusals to grant Class 1A and Class 2 licences. Sergeant Dawson gave evidence that:

> "Numerous incidents are being recorded where Magistrates are granting licences to persons with offences which should have precluded them."
> (Ex.16 p8)

As an example, Sgt. Dawson cited the case of a man who, in 1992, was convicted of armed robbery and ordered to serve three-years' periodic detention. The police refused to grant him a Class 1A licence. However, in April 1995 a magistrate upheld his appeal and ordered that he be granted a Class 1A and B licence "upon completion of his current sentence" (Ex.16 p8)

Mr. Cunningham said that, in his view, one of the principal reasons why people with criminal convictions are getting into the security industry was because magistrates were granting them licences (T636.40).

FALSE IDENTITIES

Pre-entry Identification Problems

This is the final reason why the wrong people are getting into the security industry. If a person is ineligible to

obtain a security industry licence (particularly a Class 1A licence) he or she may attempt to obtain one under an assumed name.

Sergeant Dawson admitted that the accuracy of a criminal records checks depends upon the accuracy of the original identity check (T122.15-30). Mr. Frost said:

> "The true identity of the applicant is fundamental to the whole process of licensing and it is with some concern that I note the ease with which an individual in New South Wales and Victoria can change their name and adopt a new identity." (Ex.197 p15).

The present application form requires that an applicant satisfy a 100-point identification check similar to that used by banking organisations (eg, passports, driver's licences and birth certificates are each worth 70 points; licences issued under the law are each worth 40 points, etc).

Schedule 4 of the *SPI regulations* states that an applicant for a Class 1A licence must supply the Commissioner with a recent colour photograph. However, the application form does not mention that requirement.

Sergeant Dawson said that, in his opinion, because of the 100-point test, the risk of a person obtaining a licence in a false name is not high (T204.50).

The Australasian Police Ministers' Council - Special Firearms Meeting, held in Canberra on 10 May 1996, resolved

that in future, an applicant for a firearm should have to prove identity through “a 100-point system requiring a passport or multiple types of identification” (Snr. Const. Donald Ex.152 Ann.4 para 4). That resolution has been incorporated in s.10(2)(b) of the *Firearms Act* 1996. There appears no reason to erect any greater barrier.

Post-entry Identification Problems

The Class 1A and B licenses currently being issued are not photo licences and this is a matter of serious concern to many in the industry (C.I. Wedderburn Ex.6 p3; Sgt. Dawson T170.35-40; Mr. Frost Ex.197 p13).

Sergeant Dawson said that because the licences did not have photographs, it would not be difficult to work in the industry using someone else’s licence (T204.35). Obviously, if that occurs, the imposter might improperly obtain access to a pistol.

Under the new *Firearms Act* a licence must contain a recent photograph of the person to whom it is issued (s.18(2)).

RECOMMENDATION

All security industry licences should contain photographs of the licence holder.

IV. PERSONS PERFORMING CIT WORK WITHOUT LICENCES

A number of participants in the security industry are involved in CIT work without holding appropriate licences. These include franchisees, licensees, subcontractors and couriers and taxi trucks.

Franchisees, Licensees and Sub-contractors

According to Sgt. Dawson, many companies in the industry engage sub-contractors (or franchisees) in the industry, who engage other sub-contractors (or sub-franchisees). He said many of the primary sub-contractors and franchisees do not have Class 2 licences.

Sergeant Dawson said that the Firearms Registry has done some policing of companies which use such contractors, and advised them that the sub-contractors should also have Class 2 licences. Those sub-contractors have complied. However, he said that to date, the Registry's inquiries had been quite limited, and it might not be aware of all situations (T171.50-T172.25;T206.10-55;see also Snr. Const. Donald Ex.152 p20-21).

Mr. Frost said that a business licence should not permit an operator to engage in the practice of establishing franchises, licenses or sub-contract arrangements. He said:

> "It is firstly essential that these businesses [e.g. sub-contractors] be separately licensed so that the minimum conditions established will apply directly to them. Secondly, it is essential that the business licence for the principal record whether that business is engaged in the

> practice of sub-contracting or issuing licenses or franchises. Thirdly, it is necessary that the licence conditions require that the principal ensure that the minimum licensing conditions agreed to by the principal are applied equally to the contractor, licensee or franchisee and that the condition of maintaining the licence depends upon the principal ensuring that these standards are met by the contractors, licensees or franchisees. It should be made clear to the principal that the failure of the [contractors, licensees or franchisees] may have direct consequences for the licence held by the primary business." (Ex.197 pp17-18)

Couriers and Taxi Trucks

Couriers and taxi truck operators do not have to hold Class 1A or Class 2 licences unless they "*intend to carry on the business of, or to be employed in ... patrolling, protecting, watching or guarding any property*" (see s.8(1) of the SPI Act).

The courier and taxi truck industry requires only a driving licence issued in the name of the contract carrier and his/her substitute driver. Bicycle couriers do not even have to hold a driver's licence.

However, every working day couriers and taxi truck operators transport cash and valuables on either set runs or an ad hoc basis. The property transported includes negotiable securities, credit and debit cards, computer equipment, jewellery, drugs, art, instant lottery tickets, cigarettes, payrolls and airline tickets.

The clients include: airlines, banks, shops and retail outlets, credit unions, insurance companies and post offices,

federal and state instrumentalities, finance corporations and finance companies.

Mr. Dyhrberg said that it was a common practice for cash to be consigned or carried by common carriers. He said that, by the nature of the industry, common carriers such as couriers were, in most cases, unaware that cash was being consigned. He considers that requiring common carriers to be licensed would not be an effective way to stop the practice. The only effective way to prevent it would be to legislate it to make it unlawful to consign cash or valuables except by a company licensed to perform that work (Ex. 117 paras 217 & 219).

Conclusion

I consider that any corporation or business which knowingly and regularly transports any cash or valuables on a fee-for-service basis into, out of, or within NSW should be licensed if they undertake such work with an intention to provide a secure or guarded delivery. The objective is not to require truck drivers to be security guards; such drivers always or at least very often carry goods of value. I consider these sentiments to be consistent with, and indeed required by, the present provisions of the SPI Act.

MIXED ENTERPRISES

The degree to which security firms are involved in cash-in-transit work varies substantially, and cannot be determined merely by reference to the size of the business. Mid-State Security is a substantial security company whose CIT work is a relatively small proportion of its overall activity. However, Mr. Bolam indicated that it does have an important role in regional CIT work. Deadlock Security is a smaller business, but has a relatively substantial involvement in the Newcastle and Central Coast region due to its involvement with Mid-State and Security Cash Transit.

Many companies focus on static guard or patrol work. CIT work is only an incidental part of their business. Access Security is a good example. However, no matter how small the involvement of a business in CIT work, both the business and its employees should be regulated by licensing and a code of practice. The arguments in favour of this were developed in the Introduction. CIT work is materially different from other security work because of the specialised knowledge and skills which managers, supervisors and guards must have, and the risks and hazards involved. It also involves, of course, risks to the public and the protection of highly valuable property. Thus there should be regulation of any operator who knows (or could reasonably be expected to know) that he or she is doing CIT work in that sense of protecting the goods.

V. MISCELLANEOUS LICENSING ISSUES

NO CENTRAL RECORDS OF WHO HAS PISTOL ACCESS

In NSW there has been no central record which indicates which Class 1A licence holders have access to pistols through their employer. Indeed, there is no central record which records who is employing Class 1A licence holders, or where those licence holders live.

Indeed, the Firearms Registry is not even aware whether people are employed in the industry or not. Thus they can renew their licences even though they have not participated in the industry at all (Sgt. Dawson T170.45-T171.35; Snr. Const. Donald Ex.152 p2).

Business Pistol Licence holders (ie, Class 2 employers) are also required to keep a register of the kind referred to in regulation 75 of the *Firearms Regulations* 1990. That register is supposed to include particulars of the names of all employees who are to be issued with firearms and of the periods for which they have on issue each firearm possessed by the employer (see Reg.75(a)(b)).

Sergeant Dawson said in his evidence that:

> "... inspection of these records is improving through education of police and information provided to the industry. There is room for improvement and this area is currently the subject of operations by the Police Unit [of the Firearms Registry]."
> (Ex.16 p11)

Because the police have so little information about which Class 1A or B licence holders have access to weapons, or where they live or work, they are at a considerable disadvantage when:

1. An AVO order has been made against a Class 1A or B licence holder.

   Not surprisingly, in the past, the police have experienced “a lot of problems” in relation to Class 1A or B licence holders who become the subject of AVO orders (Sgt. Dawson T167.10).

2. Police want to cancel or suspend a Class 1A or B licence, and thereby deprive the licence holder of access to a weapon.

The Police Response

In an attempt to remedy the problems outlined above, the Firearms Registry has recently adopted a new system to record and identify successful participants in its two-day firearms accreditation course (Sgt. Dawson Ex.16 p12).

The Firearms Registry then generates a plastic card which is linked to the person’s Class 1A or B licence number and forwarded to him or her to replace the temporary form. That person then has to produce the plastic card (or temporary form) on every occasion that he or she is required to access a firearm.

This process will, in future, allow the Firearms Registry to keep computer records of all persons who have had firearms training and revoke the authority of those persons who fall within the four “mandatory grounds” for refusing a firearms licences in s.25(1) of the *Firearms Act*. That is, they have:

1. Committed a prescribed offence;

2. are subject to an AVO order;

3. are subject to a recognisance to keep the peace; or

4. are subject to a firearms prohibition order. (Sgt. Dawson T193.45-T194.25)

Because of the present legislative constraints on the Firearms Registry, this new system appears to have a number of flaws. These are:

1. It is limited to those who undertake the new firearms training course, which has only just begun. However, the police expect that the re-accreditation process will be completed by April 1997. That should alleviate this problem (Ex.238 Q&A 3).

2. It will tell the police which security guards have completed firearms training. But it will not tell them who employs the security guard. Thus police will not be able to contact the employer to ensure

that they are not issuing weapons to security guards whose approval has been revoked.

3. It is unlikely that most employers would require that their employees produce the plastic card every time they issued a pistol, which could render ineffective the withdrawal of the plastic card by the police for any reason.

4. The plastic card being issued does not contain a photograph of the licence holder.

RECOMMENDATIONS

CIT guards whose firearms licences are revoked or suspended should be required to:

1. **Deliver up their CIT licences so that they can be endorsed "NO FIREARM ACCESS"; and**

2. **inform the police, on demand, of the identity of their present employer(s).**

When a CIT guard has had his firearm's licence cancelled or revoked, the licensing authority should advise all CIT business licence holders of that fact.

NO APPROVALS GIVEN UNDER REGULATION 43(3)

As already mentioned, it appears that Business Pistol Licence holders have not complied with regs. 43(1) and (2) of the *Firearms Regulations.* They have not been informing the Commissioner whether any of their employees who are Class 1A/B licence holders have access to pistols.

Because it is only for such notifiers that the Commissioner grants approvals under Reg. 43(3), it is doubtful whether any Class 1 Licence holders in NSW have formal approval from the Commissioner to access a weapon on that basis.

Effect of No Approval under Regulation 43(3)

If Class 2 licence holders in NSW do not have approval from the Commissioner under regulation 43(3), what effect does that have?

Section 21(3) of the *Firearms Act* deals with Business Pistol Licences. Subsection 2(c) allows the employees of Business Pistol Licence holders to possess and use a pistol specified in the holder's licence certificates if they:

> ... are eligible to be applicants for pistol licences (and ... are approved for the time being by the Commissioner of Police for the purpose of having access to and possession of, and using, the pistol or pistols) ... [Emphasis added]

If the Commissioner has not effectively granted any approvals under Reg.43(3), it would appear that Class 1A and B licence holders in NSW who possess and use pistols have no authority to do so.

The penalties for possessing or using a firearms without a licence or permit are set out in s.5 of the *Firearms Act*.

Any future reporting regime under the new *Firearms Act 1996* should be backed up with stiff penalties for non-compliance by employers, including revocation of security industry and firearms licences.

RECOMMENDATIONS

The licensing authority should ensure that:

1. **CIT Business licence holders keep proper records of who has access to pistols.**

2. **Only *employees* of CIT Business licence holders are given access to pistols.**

3. **All CIT Business licence holders who give access to non-employees (ie sub-contractors) are prosecuted.**

A Security Industry licence should not be renewed unless the applicant for renewal can demonstrate substantial involvement in the industry during the term of the expiring licence. If the applicant cannot show that substantial

involvement, the applicant should have to apply for a new licence and satisfy all threshold conditions, including pre-entry training, subject to any exemption granted by the licensing authority.

VI. STRUCTURAL REFORM OF THE LICENSING SYSTEM

SEPARATE CIT LICENCES

At present employees and employers in the security industry are, by and large, issued with generic licences. There is no specific category dealing with CIT operations. Thus, a security firm obtains a Class 2 licence which permits it to engage in a range of activities such as mobile patrol, static guard and ultimately CIT work. An employee obtains a Class 1A licence which permits him or her to engage in a similar range of activities.

Licences in Victoria, are issued for specific categories of activity. I agree with Mr. Frost and Sgt. Dawson that it is important that a specific category exists in recognition of the specialist nature of CIT.

Division between Soft-skin and Hard-skin Licences

As will be seen from the observations on training, the differences in the nature of those operations demand that different licences be issued which authorise persons to work

in the soft-skin or hard-skin sector of the CIT industry (or both, if qualified for both).

Mr. Frost said that to reduce the bureaucratic inconvenience of issuing different licences, the responsible licensing authority should issue two licences (one for employers and one for employees) which carry different endorsements. He draws an analogy with driver's licences.

> "A core licence is provided with a range of conditions attached which reflect the competence of the individual concerned. I firmly believe that a similar model would work well in the security industry."
> (Ex.197 p13)

RECOMMENDATION

Generic licences should be created for the security industry, but special conditions and endorsements should be utilised.

A REGULATORY AGENCY

As already mentioned, at present the police (in the form of the Firearms Registry) are responsible for regulating the security industry. Thus, the Registry oversees both licensing and training. In Australia, the police are also responsible for licensing in Victoria, New South Wales and Western Australia. The Northern Territory recently enacted licensing for hotel security staff under the Liquor Commission. Queensland and South Australia have established

regulatory units under the Office of Fair Trading and Consumer Affairs (Mr. Frost Ex.197 p22).

The various reports into the NSW security industry have suggested the following changes:

The Bartley Report, 1990

Mr. Bartley said that:

> "There is widespread criticism of the lack of enforcement of the Act. It is said there is only one officer, who has many other duties, attempting to enforce the Act. The abolition of a specialist Licensing Sergeant has left the general enforcement of the Act to all officers, who appear to give its enforcement a very low priority."
> (Ex.4 p14)

Mr. Bartley supported a deregulation of substantial areas of the security industry (although security guards would still have to be licensed).

Mr. Bartley suggest that a position of Registrar of Licences be created within a government department so that the public and industry have an identifiable point of contact for assistance and advice without going to a serving member of the police force charged with the enforcement of the Act. The Registrar would also control licensing under the Act (Ex.4 p20).

Police would still be responsible for accepting licence applications (so that they could check the identity of those

submitting applications). Licence renewals would be automatic (Ex.4 pp.18,19).

The Mutch Committee Report, 1993

The Mutch Committee was scathingly critical of police administration and enforcement of the SPI Act and the SPI Regulations:

> "With respect to the administration and enforcement of the Act and Regulations, the Committee found that enforcement has dropped to negligible levels. The devolution of enforcement to the patrol, coupled with lack of knowledge by police officers of the requirements of the Act, with corresponding lack of interest, has resulted in a situation where the Act is being avoided by many commercial enterprises, where personnel effectively engaged in activities regulated under the Act are not licensed at all." (the Mutch Report, Ex.5 p3)

The Mutch Committee cited, with apparent approval, Swanton, a criminologist from the Australian Institute of Criminology who, in his paper "*Police and Private Protection: Relations, Functions and Possible Directions*", wrote:

> "At the present time, police and private protection communities had largely separate existences and a degree of tension exists between them, more so from the former towards the latter. Police workers collectively are concerned with gradual growth of private activity into what police believe to be their preserve. That antagonism is compounded by the fact that police practitioners tend to see private security operatives generally as possessing low status and lacking moral authority. The majority of practitioners in both communities see themselves as being more functionally distanced than alike.
>
> It can be gathered from this that the development of the private security industry should not at this stage be controlled by police. The rewards that may ensue by an increased commitment at the police level will only be achieved at a slow pace because of the perceived differences

between the police culture and the private sector security forces."
(Ex.5 p13)

However, the Mutch Committee rejected Mr. Bartley's recommendation that the administration of the SPI Act be transferred to another department and the position of Registrar of Security Licences be established. It said there was no reason to think that the new department would have greater expertise than the police presently possess (Ex. 5 p13).

The Mutch Committee Report recommended the establishment of a:

"Security Protection Industry Commission reporting directly to the Minister for Police with responsibility for administration and enforcement of the Act, with a charter to carry out ongoing research into the industry and to adopt a formal liaison with key interest groups in the security industry."
(Ex.5 pp.7,13).

The Report said that:

"This option is favoured and would have the advantages of maintaining a nexus with the Government-funded Police Service whilst developing policies that will ensure the community of New South Wales receive an integrity based, accountable private security protection services when required. The establishment of such a commission would be funded from within the funding received from licence fees ($1.3 million).

The advantage of having the Commission report to the Police Minister is that this will highlight the overall commitment of the Government to providing total security protection to the community of New South Wales through the Police Service and the security industry.

The establishment of the Commission will provide a focal point for the industry and will be oriented towards ensuring

that education standards are lifted in the industry, that the industry develops a closer liaison with the police service, that trends in security are properly monitored and that the consumer will have an identifiable body to take complaints concerning inadequate provision of service."

The Wedderburn Report, May 1995

In his report, Chief Inspector Wedderburn looked at a number of different bodies which could be responsible for regulating the security industry. He eventually decided that the Police Service should retain responsibility for regulating security industry licensing. He said that using the Police Service had the following advantages/disadvantages:

"POLICE SERVICE

FOR -

[1] Computerised record system already in place.

[2] Arrangements completed with the RTA for the issue of photo licences

[3] State wide licensing outlets.

[4] Revenue of $1.6m available for Treasury.

[5] State wide access to the Criminal Names Index.

[6] Computerised daily monitoring of licences.

[7] Firearms Registry (present licence issuer) is also the governing body for firearms in the State (no duplication of effort where licensee requires firearm accreditation).

[8] Comprehensive Security Industry Support.

[9] Open to scrutiny

AGAINST -

[1] Involves police in clerical duties.

[2] Processing of licences presently too cumbersome.

[3] Police presently employed in the industry.

(Ex.6 pp5,6)

He argued that the main reason why the police should continue to be responsible for the registration and licensing of those involved in the security industry was the industry's access to firearms:

> "There is clearly a reason for some measure of disquiet if the proper authority is not monitoring the licensing, training and integrity of those whose business or occupation impinges into the area of firearms."
> (Ex.6 p7)

Professor Wilson

Professor Wilson supported the establishment of a statutory board to oversee the security industry. He said:

> "... there appear to be three options with respect to regulation: self-regulation subject to current legislation; total government regulation under comprehensive legislation; and self-regulation underpinned by government statutory regulations. I recommend that the final option be acted upon because it would be more effective than the first and more cost-effective than the second.
>
> Competition, publicity and consumer expectations have largely driven the self-regulation of the security industry ... but this alone is not enough. For the security industry as a whole it is recommended that a statutory board be established for advisory, regulatory and licensing functions. It should be an appointed body, with terms of between three and five years, and responsible to the Minister for Police. This board should consist of representatives from interested sections of society and financed by annual licence fees ... Despite the view that the security industry purports to want a self-regulated environment with little legislation and not 'dictated to by non-industry bodies' (ASIAL,1995), I suggest that there are significant benefits which would accrue to the industry by having other stakeholders involved, especially those connected to CIT work as identified above.

> I recommend that a licensing board be formed. This board would consist of representatives from the CIT industry, unions, financial institutions, other major retail clients, commercial developers, local government and the police service. The board, through a registrar, in addition to issuing licenses, could attend to regulatory issues such as parking, training and safety practices and procedures, as well as investigate research and development issues with respect to environmental design and technological innovation.
> (Ex.217 pp.29,30)

Mr. Frost

Mr. Frost was strongly opposed to having the police continue their regulatory function. He said:

> "The regulation of the private security industry is a function of government but is not, in my opinion, a core function of the police. In North America, some 39 states have enacted legislation and 15 have passed the function to a law enforcement agency. The balance are controlled by an occupational licensing agency typically housed in a Consumer Affairs portfolio.
>
> The private security industry is increasingly a part of the law enforcement community and it is this sharing of the functional domain which contributes to the belief that police are best placed to regulate or police their conduct. More importantly, police are the keepers of the criminal history data which makes effective regulation possible. There is also the belief that police have expertise in the investigation of crime and are therefore best placed to pursue breaches of relevant security industry regulation.
>
> The reality is that police do not have a monopoly on investigative capacity and with constraints on budget can no longer afford peripheral activity which could easily be handled by a dedicated government agency within another department. It is done efficiently and effectively in other jurisdictions, provided there is a strong link to the core criminal history data. Many jurisdictions actually second trained police investigators as part of the regulatory unit and it is a model which can work in New South Wales."
> (Ex.197 p22, 23)

Further, Mr. Frost said that he did not favour the use of a professional association (like ASIAL) as the regulator:

"The alternative approach is to have a professional association act as the code maker and enforcer. In the United Kingdom there is no legislation or licensing scheme and the British Security Industry Association (BSIA) assumes the role of industry regulator. I am impressed with the British approach to the extent that it exerts a strong influence over member organisations. The major flaw however is the fact that the vast majority of operators are not members in what is an entirely voluntary scheme. The best feature of the BSIA approach is the existence of an independent Inspectorate of the Security Industry ("ISI") which is entirely funded by member organisations and which actively regulates the industry. However, despite genuine attempts at self-regulation they are also undermined by government policy in tendering which drives business to the lowest common denominator. In other words, a policy which is focused on price rather than performance."
(Ex.197 p.21).

He said that the whole security industry (T3941.5) would be best served by a single industry regulator which had the following features:

"[1] Sufficient human and technical resources to ensure a quick turnaround on applications;

[2] Access to the state criminal records data base. This in turn would allow access to the National Names Index (NNI) via the National Exchange of Police Information (NEPI) arrangements.

[3] A structure and licensing protocol that was part of a consistent national approach to security industry licensing (and which meets the minimum licensing conditions I have referred to in this statement).

[4] A national security industry register as part of the NNI. This could be an extension of the current push for national firearms licensing and registration.

[5] Appointment of a Registrar or Commissioner for Licensing with a group of deputies to perform the function of licensing, promulgation of standards and enforcement of standards [including a code of practice] in relation to a range of disciplines, eg, Firearms and security.

[6] A group of specialist investigators with a focus not simply on enforcement but also on education and compliance auditing. These individuals could well be seconded members of the police force or other trained

investigators. Ideally they would have a training background.

[7] A code of practice committee with representation from various industry sectors covered by the legislation including CIT. The committee in my view should also include a representative from the public, ideally a major user of CIT or guard services generally. (Ex.197 p25,26)

I consider the approach of Mr. Frost to be fundamentally sound and suitable for adoption save in one respect. I am not convinced the regulatory role ought be removed from the Police Service. Most of the features of the Frost approach conform with those of Chief Inspector Wedderburn. I find the Wedderburn view more persuasive in terms of the maintenance of the police role given the firearms and criminal history elements of licensing which I consider should not be dealt with outside the Police Service.

The Code of Practice

It is of importance that a code of practice for the CIT industry be developed and enforced.

I have already referred to some of the evidence (e.g. Mr. Cunningham) that a condition for obtaining an employer's licence in the CIT industry should be that the employer agrees to abide by a code of conduct that refers to minimum operating standards. The code would deal with matters like operating procedures, safety practices, equipment, vehicles and weapons (Mr. Frost T638.10-45).

Most importantly (from the perspective of the CIT sector), the code of practice should include those safety practices which this Report recommends. The actual contents of the proposed code are specified in Terms 4, 5, 6 and 7.

Such a code of practice would lift standards in the industry (particularly among low-cost operators) because it would ensure that standards were properly defined and enforced (Mr. Frost T3946.10-30).

At present, Victoria is the only State which has introduced a code of practice. Its code was the product of a long process of consultation with the various sections of the security industry, including the CIT sector. Companies like Armaguard and Wormald were active participants in that process. Mr. Frost's evidence was:

> "The end result is a document which addresses security company operations in some detail and unlike legislation, has the added benefit of ownership by the stakeholders. The intentions are that the ratified code will be adopted by all security firms with an expectation that a failure to comply with attract sanctions. It is also intended that new applicants adopt the code as representative of the expected standard for the whole of the industry... This is a major step forward for the industry in this country and provides a more detailed regulatory framework than is described in the legislation ... It is essential that matters required to be addressed in the code are fixed by legislation and where appropriate, minimum conditions are specified."
> (Ex.197 p20).

Further, a failure to comply with industrial awards should also be a ground for revocation or termination of a licence (T3944.40).

A Code of Practice Steering Committee

Mr. Frost said that the industry regulator should have a Code of Practice Steering Committee to "*provide the regulator with advice on industry trends and the on-going validity of the code*" (Ex.197 p20). This would be similar to the advisory committee which the TWU has suggested in its final recommendations (p.24, para 3).

However, the committee would not have ultimate responsibility for approving the code or enforcing it. Those would be matters for the industry regulator. Mr. Frost said that:

> "It is entirely inappropriate for a code of practice committee that comprises persons with a vested interest in the industry to be involved in a process of sanctions against competitors or potential competitors. (Ex.197 p20; T3947.5).

Strong Sanctions for Non-compliance

Mr. Frost said that if the security industry is committed to the concept of self-regulation within the framework of a Code of Practice then it must accept that there will be tough sanctions for a failure to comply (Ex.197 p21).

In Victoria, the industry was widely consulted on the code of practice. In the past there has been a reluctance to impose suspension or even cancellation on major employers because of the impact on long term contracts and the employment of dozens or even hundreds of employees. However,

under [the code of practice] model there is a compelling basis to act rigorously as:

1. The code derives from industry in part as to the appropriate standard;

2. the code relies for its effect on industry-wide compliance;

3. the code is designed to produce a more professional, safer and secure industry; and

4. the regulatory authority needs to be seen to be acting swiftly and resolutely in assisting the industry to maintain standards.

Mr. Frost said that "*you need something more than a paper tiger which is created by the legislation*".

Funding

During 1993-1994 the revenue from licence fees was $1,596,987. That sum was derived from fairly modest licence fees, particularly from business licences (see Ex.28). It would appear that the regulatory structure proposed in this Report could be funded from licence fees.

RECOMMENDATION

The Office of Security Industry Registrar be established within the Firearms Registry to control licensing in the security industry. It should perform the following tasks:

1. **Adjudicate on licence applications;**
2. **impose conditions on licences;**
3. **monitor and enforce licence conditions (see above);**
4. **revoke/cancel licences;**
5. **establish and oversee industry training, including compliance auditing;**
6. **devise, and update from time to time, a code of practice for the industry and, in particular, the CIT sector;**
7. **monitor and ensure compliance with the Code of Practice;**
8. **adjudicate on breaches of standards;**
9. **promote a national approach to security industry licensing and training;**
10. **research issues affecting the industry, including technology; and**
11. **advise the Commissioner.**

The Registrar should report to the Commissioner of Police and receive advice from a panel made up of representatives from different sectors of the industry, industry users and the community.

The Registrar should have access to police criminal data information services and be assisted by seconded police officers.

The Registry should be funded by licence application and renewal fees levied on CIT business licences, and fines.

TRAINING

Introduction

The training which security guards have been required to undergo for licensing purposes has given little recognition to the fact that the security industry has a number of sectors which carry out different functions. Individuals who hold Class 1A and 1B security licences perform one or more of the following:

1. Guard cash and valuables in transit (the CIT sector).
2. Perform static guard duty.
3. Monitor alarms.

4. Provide mobile security.

5. Act as body-guards.

6. Conduct retail store security.

7. Provide building security.

8. Act as bouncers or crowd controllers.

Training is extremely general and is not directed to the particular needs of industry sectors. Training may be divided into three areas:

1. Pre-entry training;

2. post-entry training; and

3. firearms, baton and handcuff training.

I will consider these in turn.

PRE-ENTRY TRAINING

I. THE LEGISLATIVE FRAMEWORK

Section 10(1)(c) of the SPI Act requires that any applicant for a Class 1A or B licence have the "prescribed qualifications or experience". Clause 8 of the SPI Regulations states that the prescribed qualifications and experience can be found in Schedule 6. That schedule provides

that an applicant for a Class 1A licence must have completed "a security industry course approved by the Commissioner."

At present, that approved course involves sixteen hours of face-to-face instruction on subjects considered relevant to the duties of a security officer ("the Security Industry Training Course").

II. THE SECURITY INDUSTRY TRAINING COURSE

Private Sector Training Providers

The Security Industry Training Course is conducted by private sector training providers whose *courses* have been accredited by the Firearms Registry; the courses are expected to last for 16 hours.

The courses are based on a 29-page manual prepared by the Police Service which provides information on a range of legal and associated matters relevant to the licensing and duties of security officers under the SPI Act.

There are 66 training providers in NSW with approval to conduct the Security Industry Training Course.

However, the number of training providers has grown in an alarming fashion, because some training providers have on-sold, franchised or sub-contracted the teaching of their

approved courses to other individuals or companies (Sgt. Dawson T173.45-30; T193.25-35; Snr. Const. Donald Ex.40 p5).

Further, some organisations, like SECTA, conduct their approved course in numerous locations throughout NSW (Sgt. Dawson T173.45-30; T193.25-35; Snr. Const. Donald Ex.40 p14).

Often the Firearms Registry does not know when, where or by whom approved courses are being taught.

It appears that the course itself usually costs students between $100 and $150, unless they are sponsored by a Government retraining scheme (Mr. Jennings Ex.129 para 3.4; Snr. Const. Donald Ex.40 pp.3,5,12,13,15; Snr. Const. Donald Ex 165 pp.2,4,8).

There is no entry barrier.

III. WHAT'S WRONG WITH THE SECURITY INDUSTRY TRAINING COURSE?

The Commission heard a chorus of complaints about the Security Industry Training Course. While there are obviously some good training providers, overall, pre-entry training in the security industry is a disgrace and in urgent need of reform. It allows people to obtain Class 1A licences who have only the most rudimentary and superficial training. (C.I. Wedderburn Ex.6 p15; Mr. French T102.55-T103.5; Sgt. Dawson T173.40; Mr. Brookes T389.10; Assoc. Prof. Robertson Ex.38

pp.3,6; Sgt. Hatte Ex.35 pp2,3; Mr. Byrne Ex.71 p5; T809.35-55; Snr. Const. Donald Ex.40 pp11-12; Mr. Frost Ex.197 pp28,29; Prof. Wilson Ex.217 p31.)

The following are the main criticisms of the course:

1. <u>Inadequate Content</u>

In his evidence to the Mutch Committee review of the SPI Act, Assistant Commissioner Neil Taylor summarised the course curriculum in these terms:

> "Basically, the rationale is that it is desirable for all licence holders to know relevant provisions of the SPI Act and, in particular, understand the differences between police powers in relation to the use of force, firearms, stop, search, detain and arrest and those of non-police security guards...[However, the course does not] extend to relevant physical, communicational, analytical, interpersonal and firearms use skills."
> (Ex5 p15; see also Sgt. Hatte T274.45-55.)

Associate Professor Robertson commented that:

> "... there is little or no emphasis on competencies or any other standards of professionalism that should govern the way security companies function."
> (Ex.38 p3; see also T322.5-40).

Sergeant Hatte told the Commission that he has trained around 3000 security industry personnel. He said that when he conducts a Security Industry Training Course he tries to give trainees an overview of the security industry. He explains their rights, citizens rights and their basic powers. He also explains when they can use force, how much they can use and similar issues. He then tells them about the various

types of work that Class 1A and B licence holders can do, to "give them a bit of an insight into each of those areas". He said that:

> "... by the time I do that it's 16 hours gone and I'm frustrated. The more courses I run the more frustrated I get in terms of not having enough time to finish or give them more information about the industry."
> (T276.45-55; Snr. Const. Donald Ex.40 p3,6 and also Ex.165 p5).

Mr. Frost said that in the security industry there was some substance to the adage 'a little bit of knowledge is a dangerous thing' (Ex.197 p30).

Almost no CIT component

At present, the course has no components which specifically deal with the transportation of cash and valuables. Course instructors only really touch upon that area when they discuss the rights and duties of security guards using pistols (Sgt. Dawson T186.5- 20; Sgt. Hatte T276.40-55; Snr. Const. Donald Ex.40 pp.2,6,13,19 and Ex.165 p5).

Assistant Commissioner Taylor said that the inadequate curriculum developed because:

> "No formal analysis of the training needs of security guards preceded design of the approved course, and to my knowledge, no such analysis has taken place since ... "
> (Ex.5 p15.)

Mr. Frost said that:

> "The process of course design in New South Wales reflects a basic misunderstanding of the needs of the security industry and sound training methodology. In my view, the approach has been completely perfunctory. It is difficult to identify precisely who designed the initial course, but anecdotal evidence would suggest that various vested interests in the training fraternity were at least partially responsible for advising the Commissioner's delegate on course content.
>
> What resulted from that inadequate and questionable advice was a document which listed topics rather than objectives and was based on content rather than outcomes. The "information manual" is not a training manual. It is merely a statement about desirable areas for coverage during a course and the interpretation of the coverage, content and depth of instruction is a matter left entirely at the discretion of the course provider. It is ridiculous to expect that this sort of approach to 'design' would achieve any sort of standardisation of content or delivery."
> (Ex.197 pp28,29)

2. <u>Lack of Assessment</u>

Participants in the Security Industry Training Course are only required to complete it. They must attend the course; there is no formal requirement that they complete it successfully. There are no mandatory exams, or other forms of assessment which they have to pass (Sgt. Hatte Ex.35 p2; Mr. Byrne Ex.71 p5).

However, some training providers, like Sergeant Hatte, have developed their own informal exams which they give to trainees at the end of their courses. Sergeant Hatte said that he has failed some candidates (Sgt. Hatte T279.45-50; Snr. Const. Donald Ex.40 pp2,6,7,15,19 and Ex.165 p2).

At present there are no established minimum competency standards which an entrant to the security industry must

satisfy (Mr. Byrne Ex.71 p5), so it is hardly surprising that there is no standardised assessment of those entrants.

3. Unqualified Instructors

The Firearms Registry assesses the formal structure of courses before it issues an approval. It does not assess the instructors who will teach the courses. Those instructors are not required to have any formal qualifications (C.I. Wedderburn Ex,6 p16; Sgt. Hatte Ex.35 p2; Assoc. Prof. Robertson Ex 38 p3; T322.15-30; Mr. Frost Ex.197 p28).

It appears that many who teach the courses are serving police officers (Sgt. Dawson T163.35-T165.20; Snr. Const. Donald Ex.40 p14 and also Ex.165 p4).

Senior Constable Donald interviewed one instructor who did not even have a Class 1A or B licence. Yet, he had possession of handcuffs, in breach of the *Prohibited Weapons Act* 1989. He also heard complaints from students that the same instructor had been both sexist and insulting (Snr. Const. Donald Ex.165 p6,7).

Mr. Frost attacked the notion that serving or former police officers make good instructors. He said that when he sought to reform the Victorian security industry in the early 1990s:

> "I ... examined literally hundreds of security industry training “manuals’ and found many with glaring deficiencies and major errors in content. In some cases I recall

> instructors teaching aspects of law which had been abrogated in the early 1970s. Typically these were former police officers who had failed to maintain currency in legal knowledge and relied on past experience and outdated police training manuals. This is a particularly dangerous area with significant implications for trainees. Consider the possibilities of a trainee exposed to erroneous instruction on the justification for use of firearms and use of force and relying on that advice in the event of an armed hold up. There are many people now involved in the training of security guards whose knowledge of the law is suspect. In my experience even serving police officers who have had authority to teach all or part of security courses have little understanding of security practices and relevant legal issues. They tend to stress arrest and detention (police focus) rather than observation and report (security focus) and in most cases, operational experience does not translate into good instructional ability in a different albeit related industry like security."
> (Ex.197 p29)

Obviously, controls should be put in place to ensure that training instructors are qualified and properly monitored (Mr. French Ex.12 p3; Mr. Frost Ex.197 pp29-30).

4. <u>Inadequate Monitoring of Courses</u>

Until recently, the Firearm Registry did little to monitor the quality of training provided in security industry training courses. Once a course has been accredited, the Registry did no follow-up to ensure that the course was being run satisfactorily, nor was there any re-accreditation requirement (Snr. Const. Donald Ex.40 pp2,19 and also Ex.165 p8).

However, during the last 18 months the Registry has become more active in policing these courses, with Firearms Registry personnel covertly entering seven courses to assess

them. As a result, five courses had their approvals revoked (Sgt. Dawson T164.55-T165.20; T193.5-30; T204.5-20).

Sergeant Dawson said that the practice of on-selling, franchising, and sub-contracting the teaching of courses made it more difficult for the Registry to police them. Further, he said that the Registry only knew which persons or companies had approval to run courses. It often did not know who was employed to teach the courses, where the courses were held, or what qualifications the instructors possessed (Sgt. Dawson T193.20-40; T173.05).

The potential for abuse is obvious. Indeed, one training provider told Snr. Const. Donald that he was being offered large amounts of money by people who wanted to obtain certificates without having to do the course (Snr. Const. Donald Ex.40 pp6,7).

5. Inadequate Facilities

Courses are sometimes conducted in homes or licensed clubs, particularly in country areas. It appears that few training providers have modern facilities or teaching aids (Snr. Const. Donald Ex.40 pp13,14,18 and also Ex.165 p2).

6. Profits versus Quality

When one also considers how much competition there is between training providers, it is hardly surprising that the

quality of the courses is, in general, so low. As Chief Inspector Wedderburn said in his report:

> "One need not reflect for long on the obvious direction that these training courses took. They were competitively driven by both time and fees and without being critical, the trainers met the lowest common denominator and structured their courses over two days and squeezed in as much of the curriculum as possible into that time. To do otherwise would have been commercially futile."
> (Ex.6 p16; see also Assoc. Prof. Robertson Ex.38 p4.)

THE IMPACT OF INADEQUATE TRAINING

The Security Industry Training Course has two main effects:

1. It allows people to enter the security industry who, even with proper training, are unsuitable for it; and

2. it does not adequately train those who are suitable.

Mr. Colin Nayda, the contract manager of Boland Security, made the following comment about new recruits:

> "... you get people who cannot speak English and do not read English..., so how they get their licence to start with is another matter. How they pass their alleged two-day course and tick-and-flick exam to get their licence ... I don't know because [in] interviews I've conducted with people to be put on, they could not speak, let alone read, English."

After interviewing many individual security personnel, Chief Inspector Wedderburn concluded:

> "It became apparent that there is a marked variation in the level of knowledge, even on the most basic of subjects, amongst those who have completed security courses. There were many who lacked fundamental knowledge concerning their powers of arrest and the use of firearms, whilst there were those who displayed marked deficiencies in rudimentary reading, writing and verbal communication skills. If asked to encapsulate the majority of security guards in a simple statement it would be "poorly trained".
> (Ex.6 p18).

There can be no doubt that the present system of pre-entry training in the security industry has failed and must be replaced.

The Consultel Pre-Entry Course

Consultel offers a significant exception to the usual form of security industry training. It presently offers a 10-week entry-level training course which includes a 30-hour module relating to security officer training (Mr. French Ex.12 p1). Currently, in NSW, the program (which is run in conjunction with TAFE) is only provided to unemployed referred by the Commonwealth Employment Service ("CES") (Mr. French Ex. 12 p1).

The program (called the Advanced Security Officer's Training Course) is taught by specialist educators from TAFE and Consultel. TAFE provides premises, facilities and lecturers in occupational health and first aid, computer training, people skills, increased inter-personal communication and general communication skills (Mr. French Ex 12 p75; T107.10-.30;T113.20; C.I. Wedderburn Ex.6 p19).

The National Training Developer of Consultel, Mr. French, said that the course also has support from industry, and for that reason is usually able to place trainees in jobs (Mr. French Ex.12 p2).

Too Many CES Referrals?

There is considerable concern in the security industry about the large number of people the CES sends to Security Industry Training Courses.

A number of training providers said that the standard of trainees sent by the CES was usually very low, and many showed little interest (Snr. Const. Donald Ex.40 pp3,4,14,15 and also Ex.165 p3).

The Contract Manager of Boland Security, Mr. Nayda said:

> "I believe that the manner in which the CES puts people through security courses ad hoc just for something to do is wrong in that ... they don't look at the local need ... There is only a certain amount of work in each regional area, and the amount of people [whom CES are putting through] the security course really is silly. All it does is put money in the pockets of the people who are running the courses and the majority of people that go through those ... security courses...are not suitable when you interview them to be employed as security staff.
>
> I have taken people from CES because they have been of excellent qualities. Others are just purely not suitable ..."
> (Ex.192)

It also appears that some security companies take advantage of CES job subsidies. These companies generally get six-month subsidies of up to $240 per week for each employee.

The subsidies then drop down to $100 per week for the following three months.

These companies give their new employees the minimum 16-hours training required to obtain a licence and then, with the benefit of the subsidies, win tenders against the major security companies. As a result, these new employees are not highly trained and are generally discarded when the subsidy runs out (Mr. French T96.45-97; C.I. Wedderburn Ex.6 p10).

According to Chief Inspector Wedderburn, the system:

> "Dumps into the community hundreds, if not thousands of security licensees with little prospect of employment. It destroys the dreams, ambitions and aspirations of the individual who may see the security industry as a career. It creates an uneven playing field in the tendering for security contracts. Finally, whilst it may artificially enhance the unemployment figures for the CES it is essentially dishonest."
> (Ex.6 p10).

Mr. Frost commented that:

> "[When the CES funds the attendance of the long-term unemployed at a course] there is no consideration by either the CES or the trainers of the ultimate eligibility of these persons. The trainers clearly welcome the income stream. Often these individuals are targeted by security industry employers who employ them as part of the Job Start program and receive a substantial subsidy which is limited to serveral months. At the end of the subsidised period the employee is sacked and moves on to another company or leaves the industry.
>
> This does not assist the industry in maintaining high standards. Employers are reliant in the main on the existence of a licence to justify employing a guard. If a course provider simply accepts every applicant for a course on the basis of their ability to pay then it undermines the attempts to impose reasonable standards and can have a marked downstream effect."
> (Ex.197 p47-48)

POST-ENTRY TRAINING

Introduction

At the present time, once a security industry employee has obtained a licence, he or she is not obliged to undergo, nor is his or her employer obliged to provide, any post-entry training.

Further, there is no requirement that employers (who hold Class 2 licences) undergo any form of training, whether pre-entry or post-entry. The same applies to managers and supervisors.

Associate Professor Robertson said:

> "While there is some understanding of the need for education there is little or no commitment by employers within the security industry to such programs; especially within New South Wales."
> (Ex.38 pp3-4)

This lack of commitment can be attributed to a number of inter-related factors. These include:

1. No legal compulsion to provide training

2. The casualisation of the workforce

A significant reason why employers are reluctant to provide post-entry training to employees is the casual nature of the workforce. Professor Wilson commented that:

> "The profile of employment in the industry is characterised by many part-time and casual employees, where, for example, one major CIT company claims that over 50% of its employees are casuals. While many casual and part-time employees may perform security work on a fairly regular basis, there should be incentives within the industry to create security of tenure and career progression so that screened and trained personnel are retained."
> (Ex.217 p31).

Associate Professor Robertson pointed out that:

> "... [employers] can rightly argue [that] if we put a person through a particular course and they are a casual employee, they could leave tomorrow and so their investment is negated."
> (T336.25; Ex.38 p5)

It is noteworthy that the CIT firms with the lowest turnovers of staff (Brambles and Armaguard) also provide the most post-entry training.

Sub-contracting, Licensing and Franchising

The failure of this group to provide any or sufficient post-entry training to persons to whom the work is given is comprehensively identified in the section of this submission dealing with Term 5. Therefore I shall refer to this only briefly.

In an effort to keep down costs, many security firms employ sub-contractors, licensees or franchisees. Professor Wilson commented that:

> "... from the documented incidents presented to the Inquiry (see Wormalds Vols I & II) staff working in a subcontracting

> situation report that they were given little or no training or told what to do in the event of robbery."
> (Ex.217 p31).

Mr. Frost commented that such arrangements tend to result in a:

> "... Failure to keep records, failure to deliver sufficient relevant training in any sort of structured manner and failure to provide any sort of reasonable level of support."
> (Ex.197 p8)

He referred to companies, like Mid-State Security, which operate over vast distances through a network of sub-contract or franchised arrangements. In his experience:

> "As such companies expand they lose control of the field force and rely on one or two key individuals (such as Mr. Nayda) to supervise company operations. The span of control of these companies is poor and in many cases they have never seen nor met the people who are working for them on the front line."
> (Ex.197 p8)

Cost Pressures

Associate Professor Robertson commented that:

> "... security companies are driven by very tight economics. The first casualty of a totally economic and narrow service delivery focus in any organisation is usually training and education. That is certainly the case throughout the security industry.(Ex.38, p4) ... Training is often seen as an appendix to the core business.
> (T322.50;T327.50-T328.5;T331.40-T332.35)

Mr. French, from Consultel, agreed that there was a vicious cycle in the security industry. Companies become competitive by not training their staff, and the competitive

advantage which they gain further drives down prices within the industry (T98.10; T112.50)

Employees want Training

Associate Professor Robertson said that he had detected a strong desire among employees to obtain training. But that demand was not being satisfied.

> "From my investigations, the reluctance to embark on any serious training agenda lies more with the employers than with employees. There is a ground-swell of interest and motivation amongst employees who responded to this and other tertiary institutions whenever the issue of further training and/or education opportunities are raised. Many employers on the other hand, see no economic mileage in either encouraging enrolment in training/education courses, nor in sponsoring or rewarding students who participate in courses of their own volition ...
>
> While ever security and related organisations fail to offer more than minimum pay rates with no prospects of an industry career, then the outlook for any real accountability and improved professional standards [in the security industry] is glib and disturbing."
> (Ex.38 p5)

THE PRESENT STATE OF POST-ENTRY TRAINING

Despite the disincentives referred to above, some post-entry training is being provided in the Security Industry. However, it tends to be ad hoc and sub-standard.

According to Assoc. Prof. Robertson there are five different levels of training presently being provided in the security industry:

Level 1: Pre-Entry (Pre-Licensing) Training

Level 2: In-House Training

At present, the major form of post-entry training in the CIT industry is via in-house training. In this respect, the larger (hard-skin) operators tend to provide considerably more in-house training than smaller (soft-skin) operators. Their programmes do have some limitations but are far superior to the inadequate and often non-existent training provided in the soft-skin sector. The training provided in each sector is summarised below.

Both Brambles and Armaguard provide their employees with structured in-house training to teach them the skills they need to perform their functions.

Mr. Byrne and Mr. Cunningham both gave evidence that the in-house training which armoured car operators provide adds significantly to their costs vis-a-vis soft-skin operators.

Brambles

Mr. Byrne said that Brambles employs a training officer in each State, including NSW, who in conjunction with other specialist trainers, provides classroom and “off-the-job” training. This is monitored and directed through the National Security Manager (Ex.71 p6).

Before being given an operational assignment, each new Brambles employee engaged in on-road CIT operations (who has necessarily completed the Security Industry Training Course of sixteen hours) goes through a five-day induction training course. This course covers a range of subjects, including:

1. Operating procedures.

2. Street awareness.

3. Documentation.

4. Armoured car operations.

5. Customer service.

6. Commercial security.

7. Weapons training - The weapons training is both practical and theoretical. The theoretical side looks at the consequences of firearms use and the specific laws pertaining to such use.

Following completion of this part of the induction training, the employee is assigned to an armoured vehicle as an extra crewman, where experienced operators give practical on-the-job training. It is up to the supervisor to place a new starter with a senior crew member the supervisor is happy to have teaching the starter. Other factors which have to be considered are the type of run and the type of armoured vehicle available, which must be able to take a fourth seat.

Brambles also conducts refresher training courses on normal operational duties and/or new procedures or services. These usually take one day. In addition, once a year, all road crew must undertake the firearms training required for licence accreditation. This usually involves an additional day's training.

Armaguard

Before they start on operational duties, Armaguard provides its new employees with the following training:

1. Firearms accreditation (if necessary) - 1 day; and

2. Armaguard orientation course - 1 day.

Following the orientation training, new employees are allocated to a branch where they undertake on-the-job training in an operational role under the guidance of senior experienced road crew employees. There is no formal assessment of this on-the-job training. It is simply based on informal observation and feedback by senior road crew.

Mr. Cunningham said there was no procedure or practice in place for obtaining, on a regular basis, feedback from new recruits about whether the in-house training they were receiving is sufficient. That is a subjective judgment made by branch managers in consultation with supervisors and senior road crew.

Each year, road crews undertake the following training:

Road crew training - 1 day

This is a refresher course and update on current operational, security and safety procedures, plus a range of other relevant subjects.

Annual firearms accreditation - 1 day

This course deals with the theory and practice of handling firearms, including legal requirements and responsibilities (Ex.60 NEC 13).

Annual firearms refresher - ½ day

This is predominantly a practical training session on firearms handling.

Thus, Armaguard employees must undertake two weapons training courses each year.

Within Armaguard, the principal personnel involved in providing formal training in NSW are:

1. NSW Personnel Manager
2. NSW Personnel Co-ordinator
3. Four security supervisors
4. Branch managers

5. Supervisors

6. Other specialist units (ie, administration, security, sales).

The Smaller Operators

As mentioned above, the smaller operators predominantly conduct soft-skin operations, although a few, like Kunama and Roden Security, have some armoured vehicles.

With a few exceptions, most provide either:

1. Minimal and unstructured “on-the-job” training. That is, the new employee follows around an experienced security guard for a few days to learn the ropes (see Snr. Const. Donald Ex.152 p5; Mr. Jennings Ex. 129 paras 3.5, 3.6) or

2. No training at all (see Snr. Const. Donald Ex.152 pp7,13,14). That frequently occurs when a business is using sub-contractors (Snr. Const. Donald Ex.152 pp20-21,24,25).

Advantages of In-house Training

The major advantages of in-house training are:

1. It is usually practical and hands-on. It is taught by those with on-the-job experience and trainees can see the utility of what they are learning.

2. The training tends to be job specific.

3. If companies spend money on in-house training (as the major operators do) they expect a return on their investment. They expect the training will be of acceptable standard and the trainees attentive and diligent.

Mr. Frost said that the advantages of in-house training was that in-house trainers were:

> "... closer to the employees and should have a much better understanding of the culture of the organisation, the business of CIT and the specific training needs of the guards." (Ex.197 p37)

Disadvantages of In-house Training

These include:

1. The smaller operators provide almost no in-house training.

2. The training is ad hoc without basic standards for the currica, teaching or assessment.

3. Trainees do not emerge from the courses with any qualifications which would improve their job mobility and job prospects.

4. The in-house courses are not linked into an educational framework. Trainees cannot use the training they have received to obtain higher qualifications, and so improve their career prospects.

5. Obviously, security firms are profit orientated. Thus they are only likely to give employees the minimum amount of in-house training they need to adequately perform their jobs.

   They are unlikely to train employees in areas not directly relevant to their jobs, or given them training which advances their careers and makes them more marketable elsewhere.

6. There is a lack of formal assessment and regular review processes (although this deficiency may be improved by better supervision associated with the fourth person and crew leaders).

In the light of the above, the issues which need to be addressed are:

1. The legitimacy of in-house training?; and

2. should post-entry training be delivered by external providers, such as TAFE?

Level 3: Short Courses Targetting Specific Topics

These courses are usually organised by security industry training providers, large “name brand” organisations and the three major professional bodies. They usually take the form of conferences or seminars, where participants receive and debate information, usually of direct relevance to their work tasks.

While such short courses have a role to play, they are obviously not the whole solution to the security industry’s training needs.

Associate Professor Robertson commented that:

> "... such initiatives are undertaken without any clear training or education pathways having been mapped out ... many such short courses are seen as the panacea; the ‘quick fix’. The are of course little more than beginnings at best or inappropriate band-aid solutions at worst." (Ex.38 p6)

Level 4: Short Courses as Part of Professional Development

Usually, such courses are offered by private sector training providers. They are intended to increase general and specialist knowledge, and skill levels, as part of an individual’s professional development. According to Assoc. Prof. Robertson, they can be seen as genuine training (like level 1 courses) because learning is measured by assessment.

Once again, as with other levels of training referred to so far, the major disadvantage of level 4 training is the

absence of recognised teaching, curriculum or assessment standards in the security industry.

According to Assoc. Prof. Robertson:

> "[Level 4 training is] usually developed by the course providers without regard to any objective evaluation of their abilities in this regard...[they] establish their own assessment benchmarks as to relevance and rigour." (Ex.38 p7)

Level 5: Tertiary Training

Tertiary institutions in other states have developed and delivered certificate, diploma or degree courses for the security industry for a number of years. Such courses are intended to increase issues awareness, increase and broaden knowledge, increase specific practice and management skills, and increase levels of critical analysis by placing security issues in organisational and societal contexts (Assoc. Prof. Robertson Ex.38 p7).

Until 1996, no such courses were offered in NSW. However, the University of Western Sydney Macarthur has recently developed two courses which it is offering for the first time in 1996. These are:

1. A Graduate Diploma in Security Management (two years, part-time); and

2. A Certificate in Security Studies (one year, part-time).

The University is presently considering whether to offer a certificate course in Security Management.

Associate Professor Robertson said that the university is presently seeking (through its enterprise centre, the Australian Centre for Security Research ("ACSR")) to form links with some private sector training providers so that they can deliver a number of short courses which would form the basis of a building block approach to industry professional development. For that reason, the university recently called for "expressions of interest" from training providers in the following areas: Security Investigation; Intelligence Analysis; Risk Assessment and Risk Management; Strategies for Emergency Security Management (Assoc. Prof. Robertson Ex.38 p8).

Associate Professor Robertson said:

> "Benchmarked short courses are seen as foundational steps in a building block approach that will provide security practitioners and security managers with a number of education pathways."

The Advantages of Tertiary Training

Associate Professor Robertson said that university and TAFE courses have two main advantages:

1. Successful completion of tertiary courses provides students with formally recognised qualifications.

That obviously gives students an incentive to learn because they will obtain widely-recognised qualifications.

2. Tertiary institutions can assist the industry by establishing benchmarks and standards for training that will eventually become mandatory.
(Ex.38 p9; T326.45-55)

Chief Inspector Wedderburn noted that:

> "The advantages of TAFE structured courses are their independence, consistency of content, accredited instructors, wide-spread availability of training venues, quality control and appropriate pricing structure."
> (Ex.6 p18)

Interaction between Tertiary and Private-sector Providers

Associate Professor Robertson said that in the past, many tertiary institutions like TAFEs and universities had jointly developed and delivered training programmes with private sector providers, under the apprenticeship model (T338.10).

He said that before undertaking such joint activities the tertiary institutions made sure of the private provider's bona fides. He said the selection process:

> "Is a rigorous process in many universities ... [It] is their core business, to be able to determine standards, bona fides, relevance and rigour of any training programmes, be it short courses or the certificate diploma and degree courses."

He said that at present the University of Western Sydney is negotiating with some private providers to join it in the delivery of post-entry training courses (T337.55-T338.30).

An example of how the tertiary sector and private training providers can interact is Consultel's 10-week Advanced Security Officer's Training Course, run in conjunction with TAFE.

According to Chief Inspector Wedderburn, the co-operative arrangement between Consultel and the TAFE might alleviate any concerns that TAFE might not be able to handle the work-load. He said that:

> "the future of security training may very well lay in a privately structured, TAFE supervised and assisted course." (Ex.6 p19)

Chief Inspector Wedderburn said TAFE would also be ideally suited to conducting a *pre-entry* training course. However, he noted that there is concern as to whether their facilities were capable of handling the workload involved without some support from the private training sector (Ex.6 p18).

HOW PRE-ENTRY AND POST-ENTRY TRAINING SHOULD BE REFORMED

THE NEED FOR NATIONAL COMPETENCY BASED TRAINING

The first, and most important step, towards reforming pre- and post-entry training is to ascertain exactly what security industry trainees should be taught. What should the content of their training courses be?

The discussion so far has amply demonstrated the need for Competency Based Training ("CBT") to be developed for the security industry, and in particular its CIT sector.

The concept of CBT was endorsed at the Special Ministerial Conference on Training in April 1989. CBT is intended to ensure that individuals can perform workplace functions to the standard required by a particular industry.

Developing CBT is a three-step process. It involves:

1. Identifying the workplace outcomes which an industry needs. That is, developing National Competency Standards;

2. Establishing a training system which will attain those outcomes; and

3. Assessing people to confirm that they can produce those outcomes (Mr. Brookes Ex.44 p2)

To date, National Competency Standards have been created which cover approximately 90 per cent of the total Australian workforce (Mr. Brookes T393.25)

Steps have been taken towards developing CBT in the security industry. The Property Services Industry Training Advisory Board ("PTSITAB") represents the security industry at the national level. PTSITAB is one of 18 national Industry Training Advisory Boards ("ITABs") endorsed by the Australian National Training Authority ("ANTA"), the peak national co-ordinating body for the Australian vocational education and training system (Ex.44 p1).

In December 1994, PSITAB started to develop National Competency Standards for the "manpower" area of the Security Industry, covering the functions of:

1. Mobile Guarding
2. Static Guarding
3. Control Room Operation
4. Crowd Control
5. Supervision/team leadership

(Ex.14; Mr. French Ex.12 p4)

This has fairly broad support in the security industry. The Security Industry Sub-Committee of PSITAB oversaw the

project. It comprised representatives from industry, the unions and the NSW Firearms Registry (Ex.44 p2; T395.25-55).

After looking at a range of functions in the security industry, the project identified 33 distinct units of competency. How many units a security industry employee should be competent in depends upon the extent of his or her discretion and responsibility. That is determined according to the Australian Standards Framework ("ASF") (Ex.44 p3).

Thus, for example, a mobile patrol rated at ASF 2 should be competent in Units 1 (Maintaining the security of premises and property), 2 (controlling access to and exit from premises), 3 (maintaining the safety of premises and personnel), 4 (communicating in the workplace) 5 (managing conflict), 6 (maintaining occupational health and safety), 7 (managing own performance), 9 (operating basic security equipment), 17 (maintaining an effective relationship with clients/customers), 18 (working as part of a team), 23 (operating a security vehicle) and one elective unit.

A mobile patrol rated at ASF 3 is required to be competent in all of the ASF 2 units mentioned above and also unit 11 (escorting and carrying valuables) and unit 19 (leading small teams), as well as three of the elective units.

Unit 11 is the competency relating to escorting and carrying valuables.

Thus, the National Competency Standards regard "*escorting and carrying cash and valuables*" as an ASF3 function which requires competency in a large bundle of units.

However, Unit 11 does not deal with the transportation of cash and valuables by armoured vehicle. That was specifically excluded from the National Competency Standards. Thus, it only deals with the soft-skin sector of the industry and even for that area has difficulties with content.

Mr. Brookes gave evidence that guards in armoured vehicles may need to have some unique skills which are not covered in the National Competency Standards. Standards covering these skills would have to be developed by people familiar with the sector (T390.40-50; T391.15-25).

Mr. Cunningham, from Armaguard, said that he was concerned that many modules in the National Competency Standards had no relevance to the CIT industry. He said that he was anxious that there be established a specification of standards or competency standards for the CIT industry (T634.50; Ex.56, NEC 19).

He said that:

> "The national competency standards address pre-employment training, effectively, currently covered by a 1A/B licence. There is significant additional training required to act in the CIT industry, some of which could be covered within pre-employment training, but for Armaguard's part a significant part of that training I believe would always be covered as post-employment specific training by Armaguard."
> (T635.10-15)

Further, the National Competency Standards do not refer specifically to the sorts of competencies that managers and off-the-road supervisors need (ie, risk assessment, designing and monitoring safety procedures, etc). The standards do include some competencies which “supervisors” responsible for giving on-the-job training may need: unit 19 (leading small teams), unit 29 (deliver training in the workplace), unit 30 (review training), unit 31 (plan assessment), unit 32 (carry out assessment), unit 33 (record assessment results). Of course, such a supervisor would also need to know what to teach (ie, risk assessment, counter-surveillance, etc).

Mr. Brookes said that PSITAB is about to take the second step needed to establish CBT in the security industry. It is negotiating with the national Standards and Curriculum Council to create a curriculum development project. That project would use the National Competency Standards already developed to create curricula for security industry training.

At the end of the curriculum development project the security industry should have a set of curriculum modules, accredited by all State and Territory training accreditation authorities, including the Vocational Education Training Accreditation Board ('VETAB'). The modules would then be available to training providers at a nominal cost. However, those training providers could also develop their own curricula, based on the National Competency Standards, and submit them for accreditation if they wished.

Mr. Brookes conceded that State and Territory security industry licensing authorities did not have to require that pre-entry training was based on the National Competency Standards, and because of the Mutual Recognition legislation, that could lead to problems. However, he said that experience suggested that, over time, licensing authorities tended to adopt the same standards (T393.50-T394.35).

Certainly, Sergeant Dawson felt that the development of National Competency Standards would help overcome the problems created by the Mutual Recognition legislation (T197.25).

Consultel, which is the largest independent security and telecommunications consultancy in Australia, has modified its current training courses to meet these competency standards and has sought to have their courses registered by the training accreditation authorities in Western Australia, NSW, Victoria and Queensland (Ex.12 p4).

However, Mr. Brookes said training courses did not have to seek formal accreditation from VETAB. They were not obliged to do so, but if they wanted to have their courses accredited through the formal State accreditation process then they would have to go through the national framework (T392.5-55).

Summary

The formulation of National Competency Standards should form the basis for a more uniform approach to security industry training, and make training providers more accountable.

However, the National Competency Standards which have already been developed do not fully address the needs of the CIT industry. Further, the establishment of standards does not establish training courses per se and certainly does not ensure that they will be properly provided. These issues will be discussed below.

SPECIALIST TRAINING FOR THE CIT SECTOR

Guards in Armoured Vehicles

A number of people told the Commission that any security guards who wished to work in the CIT sector should have to undertake specialised CIT training (Mr. Frost Ex.197 p32; Sgt. Hatte Ex.35 p3; Assoc. Prof. Robertson T326.25-40; Mr. Jennings S Ex.129 para 3.11; Mr. French T108.50; Mr. Brookes T390.40-50; T391.15-25).

Mr. Frost said that:

> "There is a view in the security industry generally and the CIT section in particular, that there is little need for industry specific training. It is argued that the work of security guards is little more than common sense which can be enhanced by simple on-the-job training. I agree that experience is valuable in any vocation. However, in the case of CIT work, there can be no justification for allowing any individual to undertake full operational duties, in the

> absence of a minimum period of instruction in all aspects of the job. Proponents of the "common sense" philosophy would never support employees being issued with a firearm without instruction, yet would seem to support the same employees delivering vast sums of cash and valuables, in situations of potential risk to themselves and the public, whilst relying on nothing more than their alleged common sense. It is an argument which defies logic." (Ex.197 p27)

As mentioned above, Unit 11 of the National Competency Standards establishes competency standards for soft-skin operations in the CIT sector, but it does *not* deal with armoured vehicle operations.

What CIT Guards should be Taught

Whilst it is not appropriate for this Report to formulate and recommend national competency standards or training course curricula for armoured guards, it would appear that at least the following matters are worthy of consideration.

Safety Procedures

Mr. Cunningham said Armaguard had not turned its mind to what specific pre-entry training should be developed for CIT guards, but he agreed that the following were relevant: understanding security concepts; maintaining a security post; managing emergencies; survival in the case of such emergencies and reporting emergencies (T640.5-25).

Professor Wilson said:

> "[at present] there appears to be little training for staff on how to carry out risk assessment or how to conduct pre-delivery surveillance. Training courses should therefore include a significant component dealing with situational

> crime prevention aspects. I also concur that basic first aid should be a requirement of the training courses. Some simulations to familiarise personnel with possible robbery or siege situations should also be a priority as such training could lead to a reduction in severe stress reactions to armed robbery. (Ex.217 p33)

Mr. Jennings felt that CIT guards should have to complete a first aid certificate course because when an officer or a member of the public is injured during a hold-up, possibly by gunfire, the other armoured car crew members are usually well placed to assist (Ex.129 para 3.11).

RECOMMENDATION

CIT guards should be trained in the safety procedures for CIT guards referred to in relation to Term 5, and first aid. A large component of that training should be in their pre-entry training course.

Managers and Supervisors

No National Competency Standards have been developed for managers and supervisors in the CIT industry who design and monitor safety procedures, and conduct risk assessments. That needs to be done so that courses presently being offered in this area comply with national standards.

There is a need for the licensing authority in discussion with industry parties to consider whether completing such courses should be a pre-requisite for obtaining a licence to act as a manager or supervisor.

RECOMMENDATION

National Competency Standards should be developed for:

1. **Guards working in armoured vehicles and soft-skin guards.**

2. **Managers and supervisors in the CIT industry who design, implement or monitor safety procedures and conduct risk assessments; and**

3. **On-the-job training 'supervisors' in the CIT industry.**

A BUILDING BLOCK APPROACH TO TRAINING

It should be possible to identify the generic units which all or most security guards should have to complete, and those additional units which they only need to complete if they want to work in a specific area (such as CIT work). It will then be possible to more effectively accredit and monitor courses. Further, those courses will be a stepping-stone to higher qualifications (such as those needed by a manager or supervisor).

I agree with Mr. Frost that:

> "What should happen is that all security guards, regardless of their intended role in the security industry (governed by licensing) should do the standard pre-entry training. What should then follow are specific modules which provide function specific training for a range of disciplines including CIT work. This would mean:

[1] A common point of entry for all security practitioners;

[2] The basis for a career path model which accords with the National Training Report Agenda;

[3] Future recognition for security guards who aspire to managerial positions in this or related industries;

[4] The basis for far more reliable means for the regulator to assess applications from employers and consultants (Class 2 and Class 3 licence holders) [for licences] ... At present the regulator is utterly reliant on the claims and references which accompany an applicant. There is no benchmark other than an arbitrary reference to years of experience and I have little doubt that many Class 2 and 3 licence holders lack the basic skills, knowledge and values now incorporated into the [National Competency Standards]

[5] The framework for development of other relevant courses, for example security managers or supervisors and the ability for employees to rely on Recognition of Prior Learning ("RPL") credits in pursuit of higher qualifications (in Victoria for example, the courses could contribute to credits for the Associate Diploma of Security Management).

[6] Establishment of the fundamental building blocks for raising the standard of competence in the industry generally." (Ex.197 pp32,33)

Associate Professor Robertson also advocated a "building-block" approach to training. Pre-entry and post-entry training should start at a "foundational level" and move through to quite sophisticated areas and levels of training. In that way, the security industry would allow people to move from basic skills to high level knowledge and high level skills in much the same way as other professions (T317.30-45; see also C.I. Wedderburn Ex.6 p17; Mr. French Ex.12 p3). It would give them a career path and improve the training of employees and managers (Assoc. Prof. Robertson T334.5-25).

Sergeant Dawson gave evidence that the NSW Firearms Registry and the Victorian Police Service have attended meetings to review drafts of the National Training Course, and when that is completed the standards will form the basis of a five-day pre-entry training course presently being considered (Ex.16 p4; C.I. Wedderburn Ex 6).

However, the Firearms Registry only envisages that the five-day course will be a "Basic Security Course" which would "enable a new applicant to gain sufficient knowledge on basic law and ethical responsibilities in order to obtain a licence for entry to the industry" (Firearms Registry Ex.238 Q & A 17).

THE REFORM OF PRE-ENTRY TRAINING FOR CIT GUARDS

CIT Should Have Its Own Pre-entry Course

Prospective security guards only have to undertake pre-entry training which relates to the particular sector of the industry in which they intend to work.

There should not be one, but a number of pre-entry training courses which a security guard can undertake. Mr. French said that the National Competency Standards could be used to develop the following entry-level training courses:

1. Security Officer

2. Crowd Control

3. Retail Security

4. Weapons Training (Batons & Handcuffs)

5. Alarm Systems

6. Movement of Cash and Valuables

7. Security Traineeships
(Ex.12 p6; for details of each, see T99.35ff).

Obviously, a number of teaching units would be common to all courses. These would include issues such as: an introduction to the industry, powers of security officers, citizens rights, use of force, custody issues, etc. (Sgt. Hatte Ex.35 p2).

Thus if a security guard found, after commencing employment, that he or she had gone down the wrong stream, he or she could, by completing a few other units, switch to another stream.

The breaking up of pre-entry training into different areas means that the present Class 1A licence will have to be replaced by licences issued for different sectors. In the present context, that means that those wanting to work in the CIT industry will have to obtain specific licences for hard-skin or soft-skin operations.

RECOMMENDATION

New entrants into the CIT sector should be required to complete a pre-entry training course related specifically to the transport and delivery of cash and valuables before obtaining a provisional licence to work in that sector. Where appropriate, specific additional units to a basic course could be constructed for armoured and soft-skin operations.

National Competency Standards have been developed which would allow the development and accreditation of pre-entry courses relating to soft-skin operations. Thus, there is no reason why a specific licence for soft-skin guards cannot be proceeded with as quickly as possible.

Duration of the Pre-Entry CIT Course

Associate Professor Robertson said that the basic pre-entry training course should last between 50 and 100 hours (T339.35-55; T341.55-15). However, most who gave evidence to the Inquiry seemed to think the course should last around five days.

Mr. French said that before obtaining a licence security officers should have to undertake a minimum 30-hour course, which will have to be supplemented by post-entry, on-the-job training. He said a longer course might hinder entry into the industry (Mr. French T104.40-55). He estimated the cost of the course would be about $400 per participant (Mr. French

T110.45-55; see also Snr. Const. Donald Ex.165 pp5,6; C.I. Wedderburn Ex.6 p22).

Sergeant Dawson said that the course would have to be built around the competencies required for particular areas. For that reason, some security employees might have to undertake less than five days of study, and others might have to undertake more (Sgt. Dawson T191).

Below, I recommend that students who attend pre-entry training courses have to pass externally assessed examinations. This, more than minimum course durations, should ensure that all materials are properly covered.

RECOMMENDATION

Training courses should conform to a pre-set minimum period of time, having regard to the time it would take a reasonable instructor to teach the course materials to a less-than-average student. This should be a matter specifically dealt with by the licensing authority in conjunction with the industry advisory panel and training providers.

Who Should Teach the Pre-Entry Training Courses?

Despite the poor performance of private training providers in the past, most experts did not want to see them banished entirely from security industry training, but attributed many of the failures to inadequate regulation rather than the inherent unsuitability of the trainers.

Associate Professor Robertson said that he saw a role for private providers in the system, provided that they are attached to or supervised by an appropriate training body such as TAFE or a university, or have proper accreditation from a body like VETAB (T337.55-T338.30).

Chief Inspector Wedderburn recommended that:

> "all current course accreditation be cancelled and Security Course providers be called upon to tender their curriculum for the four (4) day training course together with the qualifications of their instructors, as set out in the police document prepared by the Director, Firearms Registry, for approval by the Commissioner.
>
> That consideration be given in the future to the accreditation of only a TAFE/Private Training Partner training course ... This option subject to the course meeting the proposed National Competency Standards ... and the future availability of training facilities and instructional personnel at the colleges of TAFE."
> (Ex.6 p22)

However, Mr. Frost took the view that the important issue was not whether courses were taught by TAFE or private providers, but whether they were properly accredited *and* audited.

Mr. French said that private sector providers should continue to be responsible for training in NSW, but VETAB should oversee that training. The police should be represented on VETAB. Training providers would have to obtain their registration (Ex.12 p6; T105.40).

According to Mr. Frost, all approved trainers presently conducting pre-entry training courses in NSW should be given

provisional accreditation. Thereafter they will have to reapply for accreditation in accordance with the new system and undertake the proposed training development program as a matter or urgency. A cut-off date should then be determined, after which, those who have not complied will be struck off the accreditation list (Ex.197 p39).

RECOMMENDATION

When suitable competency standards have been developed for the CIT sector, all existing and prospective training providers should be given provisional accreditation and then allowed sufficient time to obtain approval from the licensing authority to provide pre-entry training courses for:

1. **Armoured vehicle operations; and/or**
2. **Soft-skin operations.**

Nobody should be allowed to provide these courses without such approval.

The CIT pre-entry training courses should be taught by:

1. **TAFE; or**
2. **private sector training providers working in partnership with TAFE or whose courses have received accreditation from VETAB or the licensing authority; and**

3. **be subject to regular audits conducted by the licensing authority.**

Accreditation of Training Providers

Sergeant Hatte recommended that a formal training program for all instructors be established which identifies relevant competencies in terms of teaching ability and technical expertise.

The accreditation of training providers should proceed along the following lines, suggested by Mr. Frost:

Application submitted

1. The prospective trainer submits an application to the licensing or accreditation authority. If the applicant is acting through a business name or corporation, then all persons associated with the management of the agency should be disclosed.

Background check - bona fides and suitability

2. The applicant (including all persons associated with management) and all prospective instructional staff should be subjected to criminal record checks.

Background check - competence

3. The applicant(s) must provide a comprehensive curriculum vitae which addresses both their experience in the industry and their instructional skills.

Provisional accreditation

4. If the above assessment is satisfactory, the trainers are granted provisional accreditation, subject to the completion of a prescribed industry-based trainer program.

Commence course

5. The newly accredited trainers commence their courses. The trainers are then audited on two levels. The first is a compliance audit which aims to check that fundamental activities are in place. For example, compliance with record requirements, use of lesson plans and checking the attendance of students.

   Subsequent audits are more substantial, in that they involve a complete review of course delivery. They are arranged on an infrequent basis with the trainer and involve audit staff sitting through a complete program and assessing the quality of delivery.

Full accreditation

6. Full accreditation is granted after successful completion of the first substantive audit. Compliance auditing then continues for the length of the trainer’s involvement in the industry.

RECOMMENDATION

Providers of pre-entry training courses should be required to:

1. **Submit an application to the licensing authority, identifying all persons associated with the management of the agency.**

2. **All such persons and all prospective instructional staff should be subjected to a probity test.**

3. **The applicants must provide a curriculum vitae identifying experience in the industry and instructional skills.**

4. **Applicants satisfying the above test should be granted provisional accreditation subject to the completion of any prescribed industry-based trainer programme.**

5. **The course providers should then be audited first by way of compliance audit and, secondly, in the context of a review of quality of course delivery.**

6. **Upon successful completion of the first quality review full accreditation should be granted.**

Instructors should have to satisfy the tests identified in paragraphs 2, 3 and 5.

The licensing authority conduct regular audits of the training providers and their programmes.

External Assessment

At present applicants need only to complete an approved course without meeting any success criteria.

According to Chief Inspector Wedderburn, the pre-entry training should be quality rather than quantity driven and subject to the successful completion of a written examination (Ex.6 p18).

Sergeant Hatte suggested that there should be progressive exams that form part of a final assessment. However, instructors should also have to assess whether a trainee has displayed an appropriate attitude which would allow him or her to deal properly with people and members of the public (T280. 25-45).

Associate Professor Robertson said that there must be some form of formal external assessment of students (T326.50).

Mr. Frost said that:

> "Examinations are one of the worst aspects of training I have seen. The structure and questioning techniques is typically at such a low level that it cannot possibly be relied on as a measure of the student's grasp of the subjects covered in the course."

Centralised exams would have the following advantages:

1. They will force instructors to keep up teaching standards.
2. There would be no temptation for instructors:

    (a) To teach students only the information they need to pass particular exams, rather than information about the whole course.

    (b) To show a bias towards their students when marking exams.

Mr. Cunningham said that while Armaguard did not object to external assessment it did not think it was necessary (T639.40-55).

RECOMMENDATION

Trainees who undertake pre-entry training courses should be required to pass an examination to successfully complete the course.

The licensing authority should consider holding central examinations.

Instructors should be required to assess whether trainees undertaking their courses have the appropriate attitude for security industry guards.

Regulations should specify:

1. The maximum class size;

2. The minimum lighting and floor space;

3. The minimum standards for personal facilities;

4. Access to relevant materials; and

5. The use of appropriate teaching aids

which those teaching pre-entry and post entry training courses must meet.

Goulburn Police Academy

I note Sgt. Hatte's evidence that security industry training could be conducted at the Goulburn Police Academy. He said that the Academy was presently developing a commercial outlook and will eventually offer relevant private and public sector organisations the opportunity to use its resources (Ex.35 pp3-4; Annex. 1).

The Academy has 650 beds and, in addition to police training, now facilitates ambulance and fire brigade training. It has both an 8-lane pistol range and a fully-equipped mock village, which can be used to simulate policing situations. He said that training scenarios may include building/vehicle approach, dealing with armed offenders, preserving crime scenes, motor vehicle stops and looking for danger signs.

The Academy also has a library, gym, a mat room for baton, handcuff and weaponless control training, an obstacle

course for fitness testing and numerous sports facilities, including tennis courts.

RECOMMENDATION

The Goulburn Police Academy should be identified as an example of an appropriate place to conduct pre-entry and post-entry training courses, particularly firearms simulation training courses.

PROBITY CLEARANCE BEFORE ADMISSION TO PRE-ENTRY TRAINING

In NSW there is no provision for police to release a person's criminal record to a training provider. A number of witnesses said that unless proper checks are made before people commence pre-entry training courses, it is possible that criminals may participate in those course and gain useful knowledge (Mr. French Ex.12 p6; T112.30; C.I. Wedderburn Ex.6 p16; Mr. Byrne Ex.71 p6; Snr. Const. Donald Ex.40 pp4,6; Snr. Const. Donald Ex.165 p9; Mr. Rose Ex.31).

According to Chief Inspector Wedderburn

> "During discussions with tutors from the NSW Institute of Technology it became clear that there are many persons who undergo this course of training with the certain knowledge that they are ineligible, by virtue of their criminal records, to be considered for licensing under the provisions of the SPI Act. The lecturers' concerns are that they are participating in the running of schools for criminals and teaching them the skills to ply their 'trade'."
> (Ex.6 p16)

He recommended that a pre-requisite to receiving training in the industry should be a security clearance (Ex.6 pp15,16,22).

Mr. Feuerstein told Snr. Const. Donald that a number of people who attend his pre-entry training courses may have criminal convictions, usually as juveniles. He said that he advises them to contact the local police to see if their convictions will make them ineligible. However, he said that local police would not provide any advice, and told them to do the course and find out later (Ex.40 p4).

It is both unfair and potentially dangerous that applicants have to complete the training course before knowing whether they can obtain a licence.

Mr. Frost opposed making criminal checks a pre-condition to participating in a pre-entry training course. He said that may unduly inhibit access to the security industry.

> "I do not believe that restrictions ought to be placed on course providers to limit their market to only those persons who might qualify for a licence. There are many people who undertake the course to assist them in deciding whether to enter the industry and to make them more valuable as a potential employee. These people should not be disadvantaged on the basis of the risk that a criminal may infiltrate the industry. The licensing process is there to address that risk."

However, the danger that criminals may gain access to information about safety procedures, particularly those involving the CIT sector, outweighs all others. Further,

provisional licences should only be granted to new entrants who are sponsored by employers. If that is so, it would make it far less likely that people will complete the pre-entry training course “on spec”.

RECOMMENDATION

Before attending a pre-entry training course for CIT guards, a trainee should have to obtain a criminal history clearance, and satisfy all other probity requirements required to obtain a licence.

THE REFORM OF POST-ENTRY TRAINING FOR CIT GUARDS

There appear to be four possible ways that post-entry training can be delivered. These are through:

1. Formal in-house courses.
2. On-the-job training.
3. Private training providers.
4. TAFE.

In-House Training

According to Mr. Frost, the delivery of post-entry training could be provided by internal company trainers, provided that the training is structured and delivered in accordance with the requirements of registration of the company as a private training provider. That means that in-house trainers would be subjected to the same sorts of

licensing requirements as external private providers (Ex. 197 p44).

Associate Professor Robertson said that if employers were serious about their training standards they would want to have their training courses externally accredited (T345.35-50).

Mr. Byrne said that he would prefer it if:

1. Brambles' in-house training could be based on recognised competency standards.

2. Those who give in-house training are properly accredited. At present there is no system of accreditation for security industry instructors; and

3. Employees who do not undertake the required in-house training do not get licenses (T811.50-T812.5; T829.45-T830.5;see also Mr. Cunningham Ex.60 NEC23).

Mr. Frost said that:

> "There is at times an almost irrational fear by employers in this industry that regulating the training will impose enormous financial and logistic burdens on their operations. What I am proposing however, need not be onerous, particularly in the case of those companies who are already dedicated to providing a reasonable standard of CIT specific training. The benefits of linking [in-house] training to the national framework are:
>
> [1] the delivery can still be largely "on the job" and in many cases current training will simply become formally acknowledged training. Those companies already providing CIT training will need to document that training in accordance with the mandated registration requirements and deliver it in a more structured manner, using appropriately trained and qualified trainers. Those who are not providing any training will need to convince the training regulator of their ability to design and deliver training

internally or alternatively, to seek training from an externally accredited provider of the specialist module.

[2] Employees will receive a tangible benefit in recognition of that training as part of a state and federally recognised qualification if they choose to pursue further training either with or independently of the employer."
(Ex.197 p34)

Professor Wilson said that:

"In-house training to specific company policies and procedures is essential. This is already carried out quite extensively by the major companies. Such on-the-job training must continue so that staff are aware of specific procedures, routes and sites used by their particular employers ..."
(Ex. 217, p31)

Mr. Frost said that a great deal of the in-house training referred to above should be on-the-job. Indeed, if it is properly structured and recorded then the daily exposure of guards under the supervision of a *qualified* person can contribute to Recognition of Prior Learning ("RPL").

"It is possible and indeed desirable that the complete course of training for a guard consist of both formal classroom instruction and on-the-job, with a greater emphasis on the later." (Ex.197 p44).

Associate Professor Robertson supported the use of practicum training in the security industry, as occurs in nurse and teacher training. However, he conceded that might not be practical because of the costs pressures on the industry (T339.5-45). However, if such training was a uniform and properly enforced requirement throughout the industry then employers could not gain a competitive advantage by not complying with it. Indeed, unless they did comply

with it they would not be able to employ any new entrants to the labour market.

Mr. French felt that for the first 12 months of their employment, security guards should get on-the-job training. They would carry around a record book and at their own pace reach their levels of competency so they can be assessed. They would take their book to a competency based assessor who would be provided by the employee. If the assessor approve of their work they would be issued with a licence. Smaller companies which were unable to have employees do the assessor's course would employ companies like Consultel to do the work of assessor. The advantage of this system is that the cost would be met by the employer (T99.30-55, T111).

Sponsorship by Employers

If the above system of post-entry training is to work properly, then responsibility for providing it must be thrown on employers. Employees should not have cast upon them the financial burden of obtaining post-entry training; that would just allow unscrupulous firms to further exploit new entrants to the industry. For that reason, it is important that CIT employers sponsor new security guards for their first 12 months and provide them with post-entry training. The code of practice should provide that during those 12 months the employer shall prima facie be expected to retain the employee (so that he or she can complete all training) save for cases of misconduct or where they do not successfully complete post-entry training.

RECOMMENDATION

New security guards in the CIT sector should be issued with 12 months provisional licences after they have:

1. **Completed the pre-entry training course;**

2. **completed the firearms training course (where applicable); and**

3. **been sponsored by an employer.**

New CIT guards must successfully complete 12 months of post-entry training before being eligible for a full licence.

Sponsoring employers will be responsible for supplying that post-entry training, a large component of which should be 'on-the-job' under the supervision of a qualified supervisor who has appropriate training as required by the structure of the course.

Failure to provide adequate post-entry training for new entrants should be a ground upon which an employer's security industry licence can be revoked.

WHO SHOULD REGULATE SECURITY INDUSTRY TRAINING?

At present, the NSW Firearms Registry is responsible for regulating pre-entry training for the security industry in NSW. There is no body responsible for regulating post-entry training as there is no formal regulation of that area.

The organisation which regulates security industry training must perform - or at least supervise the performance of - a number of tasks. It must:

1. Design courses for instructors.
2. Accredit courses for instructors.
3. Accredit instructors.
4. Monitor/audit instructors.
5. Design pre-entry and post-entry courses for managers, supervisors and security guards.
6. Accredit and monitor those courses.
7. Set exams, assessment, etc.
8. Ensuring that training remains relevant in the light of industry demands (Sgt. Hatte Ex.35 p3)

The Licensing Authority Should Regulate Training

Licensing and training are closely inter-related, as are industry standards and training. So it makes sense that the licensing body should also be responsible for over-seeing training (Prof. Wilson Ex.217 p34; Mr. Frost Ex.197 p25).

However, the licensing authority could delegate a number of its functions to specialist organisations, while still retaining overall responsibility.

Professor Wilson believed that training courses should be accredited by VETAB, using the National Competency Standards (Prof. Wilson Ex.217 p32; Mr. Byrne Ex.71 p6).

RECOMMENDATION

The licensing authority should be given ultimate responsibility for security industry training, but with the power to delegate functions to specialist training organisations.

FUNDING FOR TRAINING

Who will fund training regulation?

The cost of designing, monitoring and accrediting courses may be met from:

1. Licence fees; and
2. Fees paid by training providers (whether in-house or private sector) to obtain accreditation.

Mr. Frost said that the whole system could be funded by a fee levied against the trainers, who are commercial enterprises. He said that:

> "If a trainer's licence was created then the fee ought to be substantial and take into account the costs of the structure of auditing I have proposed."

Who will pay course fees?

Trainees will have to pay the cost of attending pre-entry training course, unless they obtain a government subsidy or a prospective employer agrees to pay the cost.

Employers will have to pay any external post-entry training costs for their employees.

THE FIREARMS TRAINING COURSE

Introduction

Employers who hold Business Pistol Licences can issue to employees (who hold Class 1A or B licences) pistols for use when escorting cash or valuables (s21(3)2(c) of the *Firearms Act* 1989)). What will happen after the *Firearms Act* 1996 comes into force is less clear.

Regulation 77(1) of the *Firearms Regulations* 1990 states that before being issued with a pistol, the employee must:

> "undertake a pistol safety test conducted by the employer, being a test set or approved by the Commissioner."

Further, Reg.77(2) states that, thereafter, the employee must:

> "undertake shooting practice, of a kind approved by the Commissioner, at least once a year."

Until recently, security guards satisfied Reg.77(1) by undertaking a one-day course for firearms instruction. However, since 1 April 1996, they have had to undertake a two-day course. As at 3 July 1996, 864 security officers had passed through the course. A number of these had already been accredited and were renewing their authority under the new scheme (Firearms Registry Ex.238 Q&A 1).

THE TWO-DAY FIREARMS COURSE

The two-day course commenced on 1 April 1996 but, to date, no course manuals for the two-day course have been completed. However, a document entitled *"Guidelines for Conduct of Firearms Accreditation and Testing Courses"* ("the Firearms Course Guidelines") has been prepared and has been approved by the Director of the Firearms Registry.

In summary, the Firearms Course Guidelines specify that:

1. The basic revolver course must be conducted over a minimum of two days, totalling 16 hours.

2. To attain accreditation for semi-automatic pistols, course participants must first undertake the basic revolver course and then complete an additional day on semi-automatic pistols (total - three days).

3. Persons accredited to carry and use semi-automatic pistols must be exposed to and receive basic training in all types of semi-automatic pistols.

4. The annual re-accreditation will be conducted over a minimum of four hours using the same course of fire as for accreditation.

5. Only people with a current Class 1A or 1B licence or who have access to pistols under a Government Pistol Licence can undertake the course.

6. If an instructor fails a course participant, the instructor has a *discretion* whether to re-test the participant without the need for another course or payment of a further fee.

7. During the course each participant must fire 100 practice rounds.

8. To pass the course, participants must fire 30 rounds at targets from a distance of between 3 and 10 metres. The pass mark is 80 per cent (not more than six rounds outside the key-hole). All rounds must hit the target.

Sergeant Dawson said that the rights and duties of security guards when in possession of a pistol are supposed to

be taught in both the Security Industry Training Course and the Firearms Training Course. He said that the instructions given are taken from the police manual, with a few modifications. He said the guards are told that:

> "If their life is in real and imminent danger, or if the life of another person is in real or imminent danger then they are justified in drawing their firearm and using it to stop the threat ...
>
> I think [the trainers] cover the subject as well as they can. I am sure that they get the message across, essentially in the firearms course. There is not a heck of a lot you can say - you can only say so much on the subject."

Sergeant Dawson said that the new two-day firearms course has no component specifically tailored to meet the needs of security employees in the CIT sector.

> "... [the course] doesn't specifically address any function. It simply addresses the can and cannot. That you can shoot and that you cannot shoot. In other words, the legislation which affects the use of the firearm and the person's ability to handle the firearm properly and use and store it."

Sergeant Dawson said that no simulation training is offered.

Reaccreditation

As mentioned above, security guards must obtain re-accredition every 12 months. Re-accreditation takes a minimum of four hours and is over the same test of firing as for accreditation.

Sergeant Dawson said that, if possible, it would be preferable to re-test people every six or three months. However, that is probably not practicable.

Mr. May, from Tricorp, said that once-a-year training was not sufficient:

> "It is like all training. You train a guy and send him away for 12 months and you expect him to retain all that when he comes back. That is not going to happen. So what you do, rather than worthwhile training, is re-train the guy to a certain extent and then go on. So if you train him once every 12 months you cannot expect him to retain all that. It takes 1500 repetitions alone to attain muscle memory." (T1355.45-55)

Armaguard gives its staff firearms training twice a year. The two courses are:

1. Annual firearms accreditation - 1 day.

   This course deals with the theory and practice of handling firearms, including legal requirements and responsibilities.

2. Annual firearms refresher - ½ day.

   This is predominantly a practical training session on firearms handling (Ex.60, NEC13; T670.5).

Kunama Securities' employees undertake accreditation annually and then three-monthly refresher courses (Mr. Dyhrberg Ex.118 tab 7.1 Q.103).

Although these views vary I am not persuaded that refreshers as frequently as three-monthly are necessary.

The weight of expert opinion, which I accept, is for six-monthly refreshers.

RECOMMENDATION

CIT guards should be required to undertake, in addition to initial firearms training, a refresher course in firearms training every 6 months.

IS THE TWO-DAY FIREARMS COURSE ADEQUATE FOR THE CIT INDUSTRY?

There was a general view that the one-day firearms training course was inadequate, and for that reason it has been replaced with a two-day course.

Senior Sergeant Lupton said that the minimum amount of time needed to introduce someone to the *basics* of firing a revolver was two days. He said:

> "the constraints of a basic two-day revolver course is that it could not adequately address the use of self-loading pistols, shotguns or any tactical considerations or shooting techniques that would be applicable to the skills levels I believe CIT employees should possess."
> (Ex.127 p8)

He said that while the new two-day course is adequate for security guards employed in static or patrol activities, it is

not suitable for those who are going to work in the CIT sector. He said:

> "the level of weapons training that should be required for employees engaged in the transport and delivery of cash (or for that matter other valuables such as diamonds) should be ... higher ... than for security employees engaged in, say static security guard activities or patrol activities. This arises because the risk factors for confrontation are much higher for the CIT employee and also because the environment where the confrontation will arise is usually quite different. For example, it is highly likely that confrontations occurring in association in the delivery of cash will occur in a public place where there are a number of other persons and where the environment is such that the difficulties of making judgements about the use of firearms will be heightened. The type of judgements which will be required by a security employee when confronted during the course of making a delivery in a public place, particularly where there are members of the public nearby, can only be described as split second. These judgements will involve a high degree of personal assessment and a relatively high degree of reactive skills, including firearms skills." (Ex.127 p7)

Sergeant Dawson noted that, compared with other security guards, an armoured vehicle guard may have to adopt different tactics when using a firearm. That is because the guard is usually working with two other people, and so has to co-ordinate his actions with theirs (T196.35).

Mr. May, from Tri-Corp, said the two-day course was a suitable building block but not sufficient for someone intending to work in a specific area like the CIT sector (T1353.45-T1354.25).

If the two-day course is not sufficient for the CIT industry, what specific training should they receive?

THE FOUR TYPES OF FIREARMS TRAINING

Sergeant Lewis, the Training Co-ordinator at the Firearms & Operational Response Training Unit of the Police Service, said that there were four different types of firearm training. These are:

1. Passive Training

This usually involves theoretical lessons and group discussions in a classroom environment. Subjects such as the law, policy, tactical considerations, weapons handling, storage and cleaning are dealt with.

2. Conventional or Active Training

Initially, students go through "dry fire" programmes during which they practice basic skills with a firearm, such as grip, trigger pull, sighting, stance and drawing the weapon from the holster. The student then progresses to "live firing" the weapon on a range with live ammunition. Usually, the targets are static, the firing is conducted under perfect conditions and there is little or no stress placed on the firer.

3. Dynamic Training

This is similar to Active Training, except that physiological, psychological and environmental changes are introduced. By using moving targets, having the student move at speed while firing, presenting optional targets and firing under ambient or low light conditions, the student is placed

in a position where the conditions are closer to reality and a degree of stress or pressure is introduced.

> "The student is forced into a decision-making mode and must practice basic skills under pressurized operational conditions. This form of training is also extremely beneficial as a testing tool and my opinion is that all operational security officers who carry and use firearms should be tested under these conditions."

4. Interactive or Simulation Training

This is an extension of "dynamic training" in which the student takes part in a scenario with conditions which closely duplicate a real-life situation. In this type of training, the student interacts with an actual offender, usually a target or an instructor playing a role. The interaction is generated verbally or via the offender's actions. It is designed to produce a verbal or physical reaction from the student.

Sergeant Lewis said:

> "This type of training is designed to produce a high degree of stress in the student and allows them to practice the decision-making process and basic tactical and weapons handling skills under highly pressurized operational conditions, which are the conditions which will be present in an actual situation.
>
> The rationale is to attempt to place a person under training in a 'real life' situation where physiological and psychological pressures are introduced. By attempting to present an operational situation which closely duplicates reality the person under training has to put into practice the skills previously learned under highly stressful conditions. The student is also forced to practice decision-making skills in a high pressure environment. The American terminology for this type of training is 'Environmental Innoculation'."
> (Ex.177 p6).

DYNAMIC AND SIMULATION TRAINING IN CIT OPERATIONS

Brambles

At present, CIT guards do not do any simulation training. However, Brambles does some dynamic training in a role playing exercise. Mr. Kava said that on the last day of training for new starters at Brambles they would get out of the vehicle and practice moving across the footpath to and from clients. Mr. Kava would then observe their use of hand-held radios, the positioning of the vehicle, the speed of their walking, the separation between them, what they were looking for and the general deterrent effect, by which he meant the way the guards arrived and left the job, checked the job out and kept a separation between themselves.

Armaguard

Mr. Carey, an Armaguard security operations supervisor, confirmed there was no practical simulation training given to road crews, but scenarios are drawn on a board during practical training. In no sense is an employee taken through a possible armed robbery situation as a participant. This was the existing training position notwithstanding that Mr. Carey accepted an armed robbery would place a security officer in a real stress situation and there is likely to be a real potential for the officer to panic.

Armaguard does some dynamic training. Trainees are taught to discharge their weapons at moving targets, from

different positions, using cover and concealment, and low-light conditions.

Experts

Sergeant Lewis felt that all security guards should be given "dynamic" training, but only armoured car guards (rather than soft-skin operators) should receive "interactive" training, as they were more likely to face heavily armed robbers.

He conceded that it is physically impossible to train for every type of situation, and it is not possible at all to defend against a robber who sneaks up and strikes a security guard from behind. But the training can hone their ability to deal with a range of situations.

Sen. Sgt. Lupton also favoured:

> "... a wide range of scenario-based simulations which reflect both the environmental and situational conditions which CIT operatives may face."

Sergeants Lewis and Lupton said that "interactive training" has a number of advantages. These are:

Improves Automatic Responses

Interactive training can condition someone to respond appropriately in a life-threatening situation, rather than just obey their natural fight or flight instincts. They can

be conditioned, according to the situation, to act passively or pro-actively.

Snr. Sgt. Lupton said security guards are almost always involved in close-quarters shooting. They can be taught how to do something unexpected in the danger zone (such as make lateral movements or drop down to reduce their body mass), while still being able, if necessary, to fire accurately.

He denied that because of the great variety of situations security guards might face, simulation training would be of limited use. The object of the training was to teach people basic tactical skills. He said that the different needs of companies could be incorporated into the simulation training.

He said that making people more confident about using pistols did not heighten the risk that they would act rashly when confronted by a robber. That didn't happen if you had good trainers who installed the right attitudes in trainees.

He said that simulation training could be constructed so as to emphasise reluctant compliance. Further, simulation training may reveal who, as a first option, attempts to use his or her pistol. That person's suitability could then be scrutinised very closely.

Sergeant Lewis said that it is important to distinguish between the corporate policy of passive surrender and the unusual circumstance where an officer might be actually

required to use his or her weapon. The training needs to be directed to both situations and cannot be wholly and successfully taught in a class-room or a static range environment.

He said that simulation training allows a pre-conditioning of the student to conform with the rules of the corporation which includes a pre-conditioned to surrender rather than making movements or taking actions which may place the guard in jeopardy.

However, Det. Dein felt that simulation training at the level of police special duties or armed forces training is quite inappropriate for security guards. The first reason is that security employees are primarily being trained not to withdraw their firearm. The second is that he has real doubts about whether it is realistic to try to train security guards in such a passive reaction. He said that simulation training in his field (police work) involved an active response.

Improves Decision-Making Under Stress

It may well be that through simulation training, guards can learn to cope with pressure and act rationally in stressful situations. Sergeant Lewis said that while it was impossible to reproduce the state of abject fear which security guards undergo during an armed hold-up, during simulation training an extremely high degree of surprise and stress can be duplicated. He said that:

> "It is the only method that I have practised in 24 years of training that can, if carried out correctly, induce such a high degree of surprise, pressure and stress."

Asked whether such training might provoke heart attacks in security guards, Sgt. Lewis conceded that there was a danger of injury in any form of training. He said it was necessary to balance the need for such training against the chances that the scenario, or a like scenario, would occur in practice.

Helps Guards Recognise Cues and Signals

Interactive training will assist an employee to recognise the verbal and physical cues and signals which an offender sends out. To a properly trained person, these indicate the degree of danger faced Sgt. Lewis referred to signs such as a tightening of the knuckles and a clenching of the jaw (T3261.50-T3262.55).

Tests Equipment under Stress

Simulation training allows equipment (ie pistols, holsters, re-loading equipment) to be tested under stressful conditions.

Makes it possible to test the operational stability of personnel

Sergeant Lewis said that:

> "There are some employees who, for reasons which are beyond their control, cannot operate or function at all when placed in a stressful or dangerous situation. In some cases, no amount of training can rectify or overcome these problems. Neither conventional or passive training usually identifies this type of person and consequently, because there is no means of testing the psychological capabilities of that person, they are handed a firearm and placed in an operational role. It is my experience that both dynamic and interactive training programmes have the capacity to identify this particular problem at the outset."
> (Sgt. Lewis Ex.177 p15; T3279.40-T3280.35; Sen. Sgt. Lupton Ex.127 p5-6; T2523.40ff; Prof. Wilson Ex.217 p33; Mr. Frost Ex.197 p42; Mr. May T1356.35).

Obviously, those who cannot cope well with the stress of a hold up are not only a danger to themselves, but a danger to their workmates and the public.

After July 1996, all operational police officers in NSW will be required to undergo interactive training. Emphasis will be placed on operational movement, verbal challenges and judgmental shooting.

The training will take about a 90 minutes per person. Only about twenty minutes of that will be spent in an actual scenario situation. The rest of the time will be devoted to watching videos, practising various techniques and preparing for the scenario. The pistols used in the scenario will be loaded with “simunition” (paint dye) bullets.

Industry Attitudes

The CIT industry’s reaction to simulation training is mixed. Some believe that it would be a good idea, and others do not.

Mr. Dyhrberg, from Kunama, said that it was necessary to ensure that every person that works in the industry goes through a survival training course that trains them to automatically respond and comply with offenders, and a high degree of knowledge of their legal responsibilities so that they are able to quickly make important decisions as to whether compliance is the best option or resistance is the necessary option for them. He stated:

> "I believe that that level of training can't be achieved by individual companies operating their own training programmes."

He said that he believed it was possible to train for automatic compliance in a stressful situation and attempts should be made to achieve it. He said that training should be based on the fact that the employee might receive tremendous stress suddenly and be designed to teach him to handle that stress, particularly when confronted with weapons. He bases this opinion upon his own experience of being threatened with various types of weapons and his experience in the industry. The training should not just be aimed at ensuring compliance in the event of an armed robbery. It should equip the guard if he isn't in a situation where he can comply, to decide the form of resistance that might be necessary.

Mr. Dyhrberg gave the illustration of a guard who walked out of a loading dock in Queensland. When the offender shouted out "get on the ground", the guard turned round.

This reaction was a completely natural reaction. However, it may have cost him his life.

However, Mr. DeLacy, the training officer at Kunama, did not agree with simulation training. He thought it might create confusion, as it was difficult to make training reflect actual situations. However, he conceded that if a guard delays when trying to decide between compliance and some form of resistance, that might have serious adverse consequences.

An illustration of how a security guard may react inappropriately under the stress of an armed holdup is the reaction of Mr. Abdalla at the Warringah Mall robbery on 28 July 1995. Mr. Abdalla thought he could take cover in the arcade entrance he had just passed. So he dropped both ATM cassettes he was carrying, and turned around to go back down the pedestrian thoroughfare. One of the offenders fired at Mr. Abdalla with a shotgun, hitting him in the back.

Mr. Alderton, from Armaguard, agreed that Mr. Abdalla's actions were a departure from normal procedures. Furthermore, at Camperdown there was a departure from procedures when one of the guards grabbed a firearm placed at his head and tried to pull it down (T1098.1-15).

Two other instances arose in the evidence which appear to demonstrate inappropriate reactions by guards. Both appear to involve reflex or uncontrolled reactions to the stress which was imposed. The first concerned the reaction of Mr. Jones in

the course of the Miranda robbery when, on observing the armed assailant pointing the weapon away from him but at his colleague, it appears he reacted with words to the effect "watch out!". This reaction seems perfectly understandable and yet it further appears that his call attracted the assailant who then shot him in the chest, this leading to his eventual death.

The other instance involved Mr. Peters at Eastgardens where he and his colleague were exiting the shopping centre towards their vehicle when they were accosted by an armed assailant. Mr. Peters' reaction was to quickly dart behind a concrete column thereby separating himself from the robber but he then re-entered the fray with his weapon drawn and exchanged gun fire with the robber who was then departing.

The conclusion seems quite reasonable that in all these circumstances there was involved what I might call a reflex action on the part of the guards which led, one way or the other, towards an increase in the tension and or risk of injury to which they were then exposed.

If simulation training of less than two hours' duration is capable of eliminating or reducing the possibility of such reactions then it would appear to be of considerable advantage in situations where crew members are actually exposed to stress. The evidence does seem to suggest that the benefit is there. However, I do not consider that I should form a positive conclusion in this way. I am mindful of the armoured car companies' concerns that an increased level of training of

this type could cause quite inappropriately aggressive reactions. This is a concept only recently extended to all NSW Police, whose required reaction is aggressive. It seems to me therefore that further work needs to be done by the industry in conjunction with the licensing authority on assessing the relevance of this form of training to this industry and in the event that it is found desirable, its form and level.

RECOMMENDATION

I recommend that the concept of simulation training be further investigated and assessed by the licensing authority in conjunction with the industry.

WHO WILL PAY FOR FIREARMS TRAINING?

New entrants into the CIT sector should not be allowed to attend a firearms training course until they have been sponsored for employment by a licensed employer. The employee should then be responsible for paying for the pre-entry firearms training course.

Prospective CIT security guards should not be eligible to attend firearms training courses until they have been sponsored by a licensed employer. The employee will be responsible for paying for the cost of attendance.

BATON AND HANDCUFF TRAINING

BATON TRAINING

Presently, armoured car operators do not supply crew members with batons as a defensive device. Sergeant Lewis expressed the view that batons are not intended for use against offenders armed with firearms and should not be contemplated. This concurred with the view of Mr. Cunningham from Armaguard. Some softskin operators supply batons for use at the employee's choice. Some operators such as Mr. Khoury of Access Security provide training at the company's cost. Ultimate Security, on the other hand, does not provide training. South West Security supplies batons.

There are two type of baton, the long baton and the side handled baton. Sergeant Lewis was concerned about the use of side handled batons in the security industry. He indicated that the side handled baton was utilised by the New South Wales Police Tactical Response Group from 1980 to 1985 then discontinued. The main reason for discontinuance was the complexity of the weapon at the time required for refresher training.

HANDCUFF TRAINING

As with batons there is no legislative requirement that security guards undertake training in the use of handcuffs.

There appears to be no legitimate reason why they should be utilised by CIT guards.

I recommend that armoured vehicle operators should not be permitted supply their staff with batons and handcuffs. Softskin vehicle operators may supply their employees with batons and handcuffs but only after the conduct of proper training and reaccreditation.

ADDENDUM

SUGGESTED STEPS TO OBTAINING NEW CIT LICENCES

New Armoured Vehicle Guard

1. MUST obtain probity clearance (including criminal history check) and pass medical and psychological assessment.

2. MUST complete basic pre-entry course for armoured vehicle guards.

3. MUST be sponsored by a licensed employer who agrees to employ for 12 months and provide post-entry training (both on and -off the road). Guard may only be dismissed during that period if:

   (a) Fails to satisfactorily complete post-entry training; or

   (b) There is a ground for dismissal under the Award.

4. MUST complete firearm training course.

5. IS issued with a PROVISIONAL LICENCE

6. MAY commence work.

7. MUST complete post-entry training during 12-month period.

8. At end of 12 months, MUST complete firearm refresher course.

9. IS ELIGIBLE FOR FULL LICENCE.

Experienced CIT Guard Holding Existing Class 1A Licence

1. MUST be sponsored by employer.

2. MUST satisfy probity requirements.

3. MUST complete core pre-entry training course (minus any Recognition of Prior Learning ("**RPL**")).

4. MUST complete pre-entry firearms training course.

5. ELIGIBLE for FULL LICENCE.

Annual Renewals of CIT Guard Licence

1. MUST be sponsored by a licensed employer.

2. MUST satisfy probity requirements.

3. MUST have complete X number of hours of formal (ie, off-the-job) post-entry training during the previous 12 months.

   X = Y x Z

   Y = the number of years since CIT guard's last renewal: ie, 1, 2, 3 years;

   Z = the required number of hours of formal post-entry training which experienced CIT guards must complete each year.

   When X reaches a certain level the CIT guard must complete the pre-entry training course again.

4. MUST complete the firearms refresher training course.

5. IS eligible for RENEWAL.

Soft-skin CIT Guards

The steps to obtaining a provisional or full licence are the same as for Armoured Vehicle Guards (see above), except:

1. Must complete different pre-training and post-training courses.

2. Does not complete firearms training (assuming that the guards are not armed for CIT work) and baton and handcuff only required if those weapons are carried.

Directors and Partners of CIT Operators

1. MUST satisfy probity requirements.

2. IS THEN eligible for a licence.

3. Licence AUTOMATICALLY LAPSES if ceases to be a director or partner of the nominated company or partnership.

4. Otherwise, licence must be RENEWED every five years.

New Managers, Off-the-Road Supervisors (CIT Manager's Licence)

1. MUST be sponsored by employer.

2. MUST satisfy probity requirements.

3. MUST complete required pre-entry training for manager, supervisor (minus any Recognition of Prior Learning (“RPL”)).

4. ELIGIBLE for a licence.

Renewal

1. MUST be sponsored by employer.

2. MUST satisfy probity requirements.

3. MUST have complete X number of hours of formal (ie, off-the-job) post-entry training during the previous 12 months.

   X = Y x Z

   Y = the number of years since last renewal: ie, 1, 2, 3;

   Z = the number of hours of formal post-entry training which managers/supervisors must complete each year.

4. IS eligible for a licence.

TERM 4: EMPLOYERS' EMPLOYMENT AND RECRUITMENT PROCEDURES

The matters to be dealt with under this heading are:

1. Employer access to criminal records;

2. language ability, physical and medical condition, age;

3. whether serving police officers should be allowed to work in the industry;

4. the incidence of casual employees; and

5. trauma counselling.

ACCESS TO CRIMINAL RECORDS

The ability of a person with an unsuitable criminal record to obtain a Class 1A/B Security Licence has already been referred to at p.18. It is necessary that any alterations effected to the present system of licensing and also recruitment must ensure that persons who are unsuitable for employment in the industry are able to be filtered out by the employers. It is obvious that ought occur prior to the engagement of an employee. It follows that either the licensing system must be restructured in a way to ensure the filtering is effective or, alternatively, employers ought be entitled to have access, in a suitable way, to the applicant's criminal record. There seems to be no good reason why the employer should be provided with open access to criminal records for applicants, particularly where a suitable

alternative is available. The correct course would be to ensure that persons with inappropriate criminal histories are unable to acquire the necessary licence. I would recommend that any access by employers to an applicant's criminal record be limited to the provision of the records to the employer by the prospective employee.

LANGUAGE ABILITY, PHYSICAL AND MEDICAL CONDITION, AGE

Language ability and medical condition are dealt with in Term 3 as licensing requirements and are not repeated here.

Age and Physical Condition

It seems apparent from the expression of opinion by Prof. Wilson based on the empirical evidence (and the direct evidence from the criminal codenamed 'Cook') that robbers will "tend to pick on what they perceive as weak targets and I think they would tend to see older employees as being easier, weaker targets".

The belief of relevant officers of the NSW Police Force as expressed at the Armed Robbery Seminar held in May 1994 is that "offenders will tend to avoid fit and alert guards and much prefer to attack the older, unfit employees".

The perception expressed by the criminal Cook was that he did not anticipate that the older employees would be able to chase criminals down the street. This is a problem which is created by that false perception; age and condition for that

purpose are in fact an irrelevant consideration, having regard to standard operating procedures (which I will not repeat here).

It seems impossible to avoid the conclusion that so far as reasonably possible there ought be a limitation on the use of unfit persons of any age and older persons in across-the-pavement work involving the carrying of cash and valuables. There is however a major difficulty adverted to in the evidence concerning the inability of the companies to recruit only young, fit persons particularly because of the degree of casual employment which the industry regards as necessary.

Another material aspect is that in the evidence of the Miranda and Warringah Mall incidents of 1995 there is nothing which would suggest unfitness on the part of the crews who were subject to attack and age does not appear to have been a factor, as they were relatively young.

I do not consider it appropriate to make any positive recommendation about the limitations of age or physical condition. I consider that any attempt so to do would be likely to visit a serious injustice on experienced, older and perhaps less fit employees with no measurable consequential benefit.

On the other hand, I consider medical fitness, as opposed to physical fitness, to be a separate question. The dangers inherent in the industry surely exclude from suitability

persons who are medically unfit for the work involved. Periodic assessments of medical fitness ought be carried out by independent medical practitioners at appropriate intervals in the context of licence issue or renewal.

WHETHER SERVING POLICE OFFICERS SHOULD BE ALLOWED TO WORK IN THE INDUSTRY

The position in New South Wales is that serving police officers are required to have the approval of the Commissioner of Police before they are entitled to undertake work outside the Police Service. Although the evidence does not permit even an approximation of the numbers of serving police officers who actually work in the security industry it appears that the number could be significant.

The present procedure for the grant of a licence, which requires applicants to attend their local police station, puts police officers, who may be working in the industry, in a position of responsibility in assessing the fitness of licence applicants. As Mr. Frost, the former Assistant Registrar in the Victorian system, adverted:

> "I am astounded that in New South Wales, serving police officers who are directly involved in the licensing process, can be granted approval to set up and operate their own training agencies and security firms".

These are matters of obvious concern. However, the answer does not lie in excluding members of the Police Service from working in the industry from time to time as approved by the Commissioner. I consider that, to the extent the industry

is able to have access to such persons, the industry is advantaged. The obvious strengths of police training and ability and the ability to fit into casual employment needs are two matters which support their participation The answer, however, lies in the procedures applicable to licensing. If the role of local police stations is diminished in the way I have recommended then the opportunity for the development of some improper influence is also diminished to a level which would not be of concern.

THE INCIDENCE OF CASUAL EMPLOYEES

There is a substantial degree of casual usage in the industry. In 1995 the numbers employed by Brambles were as follows:

	Male	Female	Total
Full-time	155	34	189
Part-time	35	16	51
Casual	174	137	311

The figures for Armaguard are:

	Full-time	Part-time	Casual	Total
Road-crew	201	40	268	509
Others	47	9	326	382

The Brambles figures are not able to be distributed across road crew and other work.

The incidence of casual usage in the soft-skin and general security sector appears to be very substantial indeed. In some cases the evidence demonstrates the use of casuals or part-time employees is complete. Kunama Securities, in its armoured car activities, employs all guards, other than senior guards as casuals. In some cases the working hours of casual employees are equal to those of full-time employees.

Counsel assisting has submitted that the high incidence of casualisation has a potentially deleterious effect particularly in the highly unregulated security industry where large groups of employers carry on business with substandard operating conditions. It was submitted "that is because:

1. There is an increased likelihood of poor operating conditions among smaller companies.

2. It can make companies less willing to train their employees. They can see little point training a casual employee to a high standard if that employee is likely to then take his/her skills elsewhere; and

3. It has made difficult to check where CIT guards are being employed in the industry. As a result, the police often do not know which Class 1A licence holders have access to weapons, and which do not."

I think these views are supported by the evidence. No good reason has been made out in the proceedings for the perpetuation of the high incidence of casual employment where it is avoidable. If casual employees are regularly working hours which at least equate with those of a full-time employee there appears to be no valid reason why casual employment should be able to be utilised rather than weekly employment. I would recommend that the appropriate award should be examined with a view to making provision for a reasonable limitation upon the use of casual employees where possible. However, I would not intend that the effect of any variation should be to preclude the use of casual employees where the nature of the employer's operation requires their use. The evidence in the armoured car sector and, to a lesser extent, the soft-skin sector demonstrates that there are within the working week troughs and peaks which themselves dictate that the minimum manning requirement is met by the use of full-time employees and the casuals are added as necessary to meet the developing peaks during the week.

There is no practical alternative to this approach. It is not possible, other than perhaps through an increased use of part-time employment, to require employers to utilise full-time employees when work for them is not available accordingly.

TRAUMA COUNSELLING

There appears to be a widening acceptance of the need for post-trauma counselling for persons who have suffered serious trauma of various kinds. In the context of this industry the objective is to ensure that any psychological damage is minimised and that staff recovery is facilitated in the most effective and appropriate way. The evidence of Mr. Brown-Greaves suggests that the provision of prompt and effective post-trauma debriefing and follow-up counselling reduces the likelihood the victim will suffer long-term psychological effects.

Many companies do not make any or adequate provision for such counselling.

RECOMMENDATION

It is recommended that provision should be made by employers to provide trauma counselling after an employee has been subjected to an attempted or successful robbery.

TERM 5 : SAFETY PRACTICES AND PROCEDURES IN THE INDUSTRY

The matters which will be considered under this heading are :

1. Standard Operating Procedures.

   This will include consideration of any minimum requirement for standard operating procedures ('SOPS') and a consideration of policies known as 'Reluctant Compliance', the use of firearms and in the case of armoured vehicles the 'Drive Away Policy'.

2. Variable Delivery and Collection Times or 'Time Windows'.

3. Site or Risk Assessments

4. Cash Limits and CIT Insurance.

5. The Eastgardens Incident.

There is an issue arising as to soft skin vehicle operators and others such as couriers: Should the whole or part of this class be excluded from the delivery of cash and valuables, or whether any special procedures or requirements should apply to this group. A number of important issues emerge in relation to soft skin operators:

(i) The impact of sub contractors, licensees and franchisees.

(ii) Whether or not soft skin operators should operate on an overt or discreet basis.

(iii) Whether soft skins should operate on a single person basis depending upon the particular type of operation being undertaken.

The duty of care (and other issues) raised by the Eastgardens incident.

STANDARD OPERATING PROCEDURES

(a) General

Detective Dein considered that it was essential that corporations working in the industry have written SOPs which are supplied to, and complied with by, their employees. They should be based upon security or risk assessments and are a necessary tool in risk minimisation in the industry.

He considered that the SOPs should operate uniformly for all parties in the cash in transit industry as this is necessary to minimise risk. They should be supported by training and adherence to proper procedures is essential to a safe system of work.

He indicated that only some soft skin operators provide instruction to their employees on SOPs, especially whether or not to resist an armed attack. Amongst the smaller operators, Frederick Khoury of Access Security Protection Services in

Bankstown and Wollongong seems to be the only one who instructs his employees in this regard.

He further indicated that the non-resistance policy also referred to as non-compliance is adopted by the larger operators. This policy is common throughout the financial institution industry and is preached by the police in giving advice in the community on armed robbery response procedures. Mr Dyhrberg has the view that this policy is the single most important safety factor in Kunama's training programme.

(b) Extent of Existence of Standard Operating Procedures in the Industry - Armoured Car Operators

Armaguard and Brambles

Armaguard and Brambles have, by independent routes, established SOPs which employees are required to comply with. Written guidelines provided to road crew touch matters such as vehicle security and safety, two-way radio procedures, security rules, firearms use, cash carrying procedures and procedures to be followed in emergencies.

In both cases crews are supplied with daily run sheets which outline jobs to be done and may convey information relevant to the security of particular jobs. In both cases security assessments are carried out in relation to new clients' premises and from time to time in relation to older jobs where an assessment has not been conducted in the past;

assessments are also redone when the company concerned is notified of a change in relation to the job either by its roadcrew or by the client. However, complaints from staff emerged in the evidence that the circulation of such new information is not necessarily complete. For example, after the re-assessment of the Miranda Shopping Centre the 1995 robbery, one witness indicated that he knew of its contents only through having seen it on the notice board at work. This does not appear to be satisfactory.

Road crews are provided with a daily run book which also conveys certain information of use.

Armaguard also shows to employees two videos which outline standard operating procedures, one which is routinely used and the other used from time to time.

Roden Security Services Pty Ltd has written Standard Operating Procedures which are reviewed and changed from time to time and the staff are advised accordingly. Training in these operational orders is provided by the Operations Manager. It is important that the armoured vehicle crew should behave at all times as follows:

(a) Consistently with their training;

(b) they should be alert at all times;

(c) when a delivery or pickup is being effected they should not be side by side as this would create an opportunity.

Bushlands Armoured

There is no reference to any formal operating procedures in Mr Halmay's record of interview.

Brinks Armoured

According to Mr Milner, Brinks, a new armoured car operator in N.S.W., is not planning on having any operating procedures in a written form.

Softskin Operators

Soft skin operators often do not provide standard operating procedures. There are usually no written guidelines. The exceptions to this would appear to be Kunama and Wormalds, although Wormalds operates no formal training course in relation to its standard operating procedures and there are no instructions given to employees on the use of firearms in those procedures.

In relation to subcontracting, licensee and franchise arrangements, invariably there are no standard operating procedures (written or otherwise). Some illustrations of the practices adopted by particular soft skin companies in relation to their direct employees are as follows.

Access Security provides a set of standard operational orders for its general guards at each site office covering emergency situations, bomb threats and fire evacuation procedures. Mr Khoury advised Sen. Const. Donald that in the case of cash escort work there are no separate written guidelines and verbal instructions are given. However, Access has recently developed standing orders which include firearms and batons policy and procedures, emergency and holdup procedures; it was suggested by Mr Khoury that the holdup procedure had been in place for four years.

The other soft-skin operators who gave evidence did not have written SOPs. An illustration of the approach of one witness from such an area to robberies was:

> Q. At what point in the course of any attempted robbery would you say that they should engage in the use of a firearm
>
> A. I am not at liberty to say. It is each for their own. They have all got their own judgement.

Kunama's SOPs (with respect to armoured and soft skin operations) are contained within a guard's manual.

Wormalds SOPs for cash in transit activities contain four principal instructions to prevent robberies which include:

(i) Be alert including having the patrol officer conducting visual and physical clearance of an area;

(ii) vary routine including varying delivery times, routes and parking arrangements;

(iii) don't talk including not talking about special duties and not being distracted; and

(iv) advise and review procedures including advising on a development or change in a security situation to the patrol control.

There is no formal training course for Wormalds' employees which deals specifically with the standard operating procedures, and no instructions given to employees as to the use of firearms.

The failures in this regard are so widespread that only a step which imposes a positive requirement will be of any utility in remedying this serious deficiency. It is beyond question that there must be a set of procedures for employees to observe. As will be seen in the following discussion on the content of SOPs, there is no room in this industry for random, uninstructed reactions to the threats the industry is facing.

RECOMMENDATION

There should be an obligation on business licence holders to establish operating procedures which are relevant to the

particular section of the industry. The SOPs should deal with each of the subjects identified relevantly in the Report.

(c) Pavement Risk and Parking Procedures

Detective Dein referred to the 1994 Armed Robbery Seminar where it was considered that security is at its lowest whilst guards are out of the vans - the pavement risk. There is a danger of not only for the security guard but the general public. He described the circumstances which are conducive to robbery as follows:

1. A security guard being in possession of money on the pavement or in any other public area;

2. Readily available access and egress for the offender(s) so as to permit their escape;

3. The element of surprise being able to be utilised by the offender taking up a vantage point to observe the arrival or the departure of the security guard;

4. The amount of time the security guard spends away from either the armoured car or the client premises. If the exposure time is limited then it obviously follows that this limits the time for the criminal act. An important variable in exposure time is the distance to be travelled by the security guard;

5. The availability of a close parking spot for the criminal's get-away vehicle.

Detective Dein did not consider that soft skin operations (and even those that are discreet) should depart from the principal of parking as close as possible to the point of delivery. He was concerned that the operation may lose its covert nature, with a dramatic increase in the pavement risk. He expressed the concern as follows:

> "Mr Dyhrberg suggests that the critical risk to the guard in soft skin operations is at the consignment point and not whilst he or she is on the pavement. He says that the tunnel of risk increases as the guard approaches the client. I think he is underestimating the criminal. If the criminal has discovered the fact that the client is receiving money, I tend to agree. But if the client is sending money away, assuming the criminal has identified the guard, then the guard is at risk between the time he or she leaves the consignment point and when he or she reaches the banking point. The guard is at risk when on foot, in the soft skin vehicle and again when on foot. The Parramatta robberies are a good example although those robberies involve sub-contractors of Wormalds."

Professor Wilson said that it is imperative that armoured vehicles are able to park as close as possible to client premises as it is clear from all available evidence that the walk across the pavement is the most vulnerable period.

Current Procedures

Armaguard and Brambles

Parking procedures within the majors are dealt with in SOPs and addressed in training. The first principle is that the vehicle must park in any space designated in the run book.

Otherwise, at the closest parking space available, and then at the employee's discretion.

Parking is impacted upon by the parking restrictions imposed by local authorities. On occasions a vehicle will be parked contrary to those restrictions with the company meeting any infringement notice that might be issued.

Soft-skin Operators

The approach differs within this sector. As noted by Det. Dein's evidence, discreet operations tend to consider that a variation in parking spots is necessary whereas overt operators tend to want to park as near as possible to the client's premises to minimise pavement time. A number of soft-skin operators which do not provide written SOPs nevertheless issue instructions to employees in this regard.

In relation to the Kunama position it seems to me that an attempt to carry on a discreet operation, which Det. Dein recognises in Kunama's case as having merit because they appear to be discreet, requires an attempt to maintain discretion by following the approach Mr. Dyhrberg requires. Whilst discretion is maintained that practice ought be observed. If, however, the operation is no longer discreet, other considerations necessarily apply. I would understand Mr. Dyhrberg's evidence to have been predicated on this basis. The requirement for parking as close as possible to the consignment point to minimise pavement risk for armoured

vehicles and overt soft-skin operations should be a standard operating procedure. Discreet operations should be exempted from that requirement so as to permit variation to assist in maintaining their security.

Other matters which should be specified in SOPs are:

(d) Distance between guards on the pavement

One of the problems identified with crews activities was the distance between the guards. The armed robber, Cook, said that it is harder to ambush two people walking apart than two people walking together.

(e) Variable Routes

A number of operators require that routes be varied particularly when on foot in shopping centres or malls, although there appears in a number of cases to be a breakdown between the preparation of delivery routes by the employer and application by the employees in practice. The principle of varying routes whilst the crew are out of the vehicle appears to be accepted by the operators and the experts as very desirable, although as Prof. Wilson observed, the routes need to fall within the parameters set by other security measures such as the need to park as close as possible to the premises and the need to use a route which offers fewer vantage points for surveillance by offenders.

(f) Hold-up Procedures: Firearm Use and Compliance

The first observation one may make is that this topic probably constitutes the most difficult aspect of the work of CIT guards. It requires little imagination to consider the stress which is induced in the guards upon their being accosted almost invariably by armed offenders utilising the element of surprise. It is to be expected that the reactions of individuals will vary dramatically in these circumstances. A major problem for the operators is to instil the effects of training which calls upon employees not to react in a defiant way. The principle is encapsulated in the term *"reluctant compliance"* although its full description is somewhat difficult.

There are many illustrations in the evidence of reactions which have thought by the employees concerned to be appropriate but which provide room for serious debate in that regard.

Instinctive or reflective actions such as Mr. Jones' shout in the Miranda incident or Mr. Kole's kick after he was knocked to the ground from behind in Parramatta or Mr. Peters' diving away and then re-entering the scene at Eastgardens are obviously features which require attention in training. However, at a more fundamental level is the way in which guards are to be trained with respect to the point at which they must submit to the attacker. There are clearly competing considerations involved: namely the obligation to maintain

possession of the cash unless there is some threat of a real and measurable kind which would cause submission. It seems to me this is what the term *'reluctant compliance'* really means, that the employee must not comply unless the threat is assessed to be real and indomitable. Such a case would arise where a surprise attack with a firearm was perpetrated but would not appear to be satisfied where an unarmed person approached casually from the front and asked for the money.

I think it is undesirable to record here the precise terms of the policies of the operators in this industry and the forms of training which are given in this respect. Broadly, I can indicate that I am satisfied that the armoured car operators direct their training correctly with the objective of achieving a level of preparedness by way of understanding which will assist employees to deal with armed attacks.

In some of the soft-skin operations the position is not so satisfactory. Very often the operators rely on the training received for the purpose of firearms licensing to provide the employee with an understanding of their right of use of the weapon. This is clearly inadequate. It obviously fails to bring to attention many aspects of the required reaction which ought occur in these circumstances.

The lack of consistency across the industry in this respect commends the adoption of an approach which would lead to a uniform standard operating procedure in relation to the

use of firearms. In this respect I recommend that the licensing authority in conjunction with the industry should formulate a standard operating procedure in this respect with which it will be necessary for business licence holders to comply.

(g) Drive Away Procedures

The armoured car operators currently conduct a policy which requires the armoured vehicle driver to leave the scene upon becoming aware of an attack upon the crew outside the vehicle. If the vehicle is prevented from leaving the scene the driver is required to break off contact with the criminals, including eye contact, should notify base and should activate an on-board alarm. The correct procedure is to ensure the vehicle is not opened for the purpose of releasing money to the criminals. The theory underlying this approach is that experience in the industry throughout the world suggests that to submit by opening the vehicle increases the likelihood of death or injury (per Mr. Cunningham, T175).

The training emphasises that to act in accordance with policy is not to abandoned one's mates, thus trying to counter the natural Australian mateship consideration. Feedback from such incidents suggest that some drivers have been grateful for the training.

Detective Dein felt that the drive-away policy should be more flexible so that the driver might react to varying

circumstances but Mr. Cunningham positively opposed that view. He suggested that if it became known within the criminal fraternity that it is possible to take a hostage and achieve the handing over of the vehicle, that would become a very popular method of holdup. He said that giving in to criminals might solve today's problem but it will come back and haunt you a hundred times in the future. Further, and importantly, there is no incident Mr. Cunningham is aware of where following the drive-away procedure resulted in the death of any employee. He instanced a contrary situation in the USA approximately two-three years ago, where a demand was placed on employees to open a secure branch. Upon their compliance with that demand the thieves gained access to a large sum of money and executed every person in the branch.

Brambles' policy is largely similar. Both Mr. Cunningham and Mr. Bruce accepted that there is a lack of enthusiasm amongst crews for drive-away procedures. Mr. Bruce indicated that crews had said they would not do it and had resisted Armaguard's perseverance with the rule but there have been a number of instances where a drive-away has actually occurred with the desired result of no injury to crew.

Conclusion

Whilst there is some substance in Det. Dein's suggestions it is difficult to ignore the balance of overseas opinion and the experience of the companies in this area. The drive-away policy is a matter which should be the subject of a consistent

approach throughout the industry and therefore again should constitute a standard operating procedure. This should be formulated consistently with the approach of the Armaguard and Brambles unless the licensing authority is capable of producing some consensus variation after consultation with the industry and the TWU.

VARIABLE DELIVERY TIMES - TIME WINDOWS

There is a tension between the need for employers in the industry to organise their runs in an efficient and profitable manner which tends to create rigidities in run-times and the obvious and generally accepted view that variation in runs with altered delivery and collection times will produce a security benefit.

The independent witnesses such as Det. Dein and Prof. Wilson were positive that the randomisation of runs to the maximum possible extent would deter robberies by affecting the ability of the robbers to plan. There is no question that armoured car robberies are usually the subject of significant prior surveillance and planning.

There are a number of influences apart from those already mentioned. The time at which a client will require cash delivered or collected is generally not within the control of the CIT operator. Usually, a period within which a delivery or collection will be made is defined - a "time window". The armoured vehicle operators generally took the view in evidence

that the variation of delivery time within a time window was not likely to have any significant impact on robberies. They are concerned that clients must be able to receive the cash at a time necessary for their business purposes or have it removed from their premises for reasons of security at or by the designated time. That is the nature of the service.

In relation to Reserve Bank cash deliveries and collections to and from banks initially it appeared in the evidence that the company with the Reserve Bank contract, Brambles, was complying with Reserve Bank schedules but it became clear with evidence from the Reserve Bank that it prepares deliveries according to time schedules provided by Brambles and it is capable of adapting its cash preparation according to any varied schedules provided by Brambles. There is a wealth of evidence in relation to this issue, much of which is classified at lower or higher levels. I therefore do not intend to examine it in detail. The proposition which requires answer is whether variable collection and delivery times ought be required in some manner. It is impossible to answer this question in the negative on the basis that it is inconvenient or difficult of achievement; will have little beneficial impact, or that robbers will wait.

I conclude that the industry has taken the view that the variation of delivery times within a day is not a matter of significant moment and therefore not something to be pursued. I am unable to support this attitude. The weight of opinion is that variation as between days would effect substantial

benefits where the client's requirements permit that. It also must follow that variation within days will, as the experts urge, be of assistance.

It is impossible to lay down a requirement that there be a defined level of variation given the hundreds of deliveries involved and the varying needs of clients. However, I consider that it has been established that variable times should be utilised to the maximum practicable extent. This has been achieved in Britain, on the evidence of Mr. Dukes, in relation to delivery schedules for the British Post Office. It must be accepted that this is a case where the run concerns only one client and the client is able to have the run structured to suit its security requirements as well as its commercial needs. That does not appear to exemplify any run which operates in New South Wales. Nevertheless, it is in the interest of all parties, including the clients, that the prospect of robbery be minimised. I recommend that there should be a requirement that all delivery schedules be varied to the maximum possible extent by altering the times of the delivery within a day and the day on which a delivery is to be effected. There should be consultation between the employers, the TWU, client representatives, including the banks, and the licensing authority so that all considerations will achieve some balance.

There should be no need for anxiety that an attempt to impose variation upon clients might cause client loss: the

requirement, if placed universally, should obviate that aspect.

SITE OR RISK ASSESSMENTS

These are the assessment, by a competent person, of a site at which work will be carried on, the objective being to record the features of the site and particularly those which may require special attention from crew members when at that site.

Obviously, sites will differ markedly. For example, an across-the-pavement delivery from the kerb to a bank in an ordinary shopfront situation requires little description. On the other hand, delivery or collection at a point which is difficult of access with various secretion points along a walk of some duration which may include escalators or lifts, may require elaboration.

The purpose of the assessment is two-fold: to permit the company to determine for itself the nature of the delivery and whether any special considerations might apply, and secondly, and perhaps vitally for these proceedings, to ensure that crew members are aware of the circumstances of each delivery.

Obviously, where runs tend to be regular and staffed by the same crew members, the significance of access to such assessments is reduced. However, crew composition alters from time to time and it is necessary that crews be aware of the

physical situation into which they will go in attending a client's premises.

There was again on this issue a great body of evidence which indicates that practices vary between serious attempts to maintain site assessments and to publish them to staff and no assessments at all. Even where assessments are approached seriously complaints emerged in the evidence from crew members that they are not always readily available to them. This needs to be addressed, with a modicum of common-sense.

On the one hand it is obvious that site assessments must be made in relation to each work location and, to the necessary extent, they must be available to relevant staff. I consider that extent does not mean all site assessments must be constantly available to crew members in the course of their runs. To make that requirement would be to impose a formality of little practical application for a significant part of the time and to jeopardise the utility of site assessments.

I consider that site assessments should be constantly available at each relevant depot with ready access for crew members. Any crew member entering upon a run with delivery or collection sites with which he is not familiar should be able and responsible to access the assessments. In relation to complicated sites there should be no barrier to the production of a copy for use in the run which may be signed out and returned subsequently.

No distinction may be drawn between employers and principal contractors or licensors or franchisors in this respect. It should not be possible for this responsibility to be avoided by the adoption of a contracting arrangement which absolves the principal, who stands in the place of an employer.

The remaining question is by whom assessments should be undertaken. The evidence demonstrates that a degree, possibly a high degree, of security awareness and knowledge is necessary to properly perform this function. Only one illustration need be given and that concerns the Miranda Shopping Centre site which was attacked in July 1995. The exit doors from the shopping centre adjacent to the bank had not been identified in a site assessment as being of any significance. It was those doors from which the bandit was able to both observe the arrival of the vehicle and then make his entry to the scene with surprise. Although the person who conducted the previous site assessment maintained his view the requirement now is that the fourth person open the doors prior to the delivery taking place.

Whether the original assessment was the result of oversight or error or the difference in professional judgement reasonably applied, events demonstrated the need for consideration of the doors at that site as a risk to the security to the crew.

The obligation to ensure, so far as practicable, the avoidance of such occurrences demands that assessments must be undertaken by persons with sufficient ability. Whether that ability will derive from a focussed experience in the industry or a Class III Consultants Licence, which I would have expected to be of much wider application, remains in my mind a moot point. The appropriate course is to confer on the licensing authority a discretion to award a licence to perform this limited work to a person who is capable of satisfying the authority that he is appropriately qualified by reason of experience or otherwise. The licence may be appropriate to be granted in a provisional form subject to the satisfaction of any requirements imposed such as the completion of some appropriate form of training.

CASH LIMITS

I do not intend to itemise the evidence in this regard. The terms 'cash limits' relates to the maximum amount an employee is permitted by an employer to carry across-the-footpath. It is a limit imposed generally by the employer's insurer for reasons of security.

No party urged the recommendation of any cash limit with respect to armoured vehicles. I react accordingly. However, an observation needs be made in relation to soft-skin operations. Professor Wilson suggests that there should be limits well below the amounts presently carried in soft-skin operations.

I consider the imposition of limits in this regard to be unnecessarily arbitrary. I think it is preferable to leave this matter to the licensing authority to consider whether in time it is appropriate to formulate a limit in consultation with ASIAL and other parties interested. It seems to me a relevant consideration is the possession of insurance coverage for the work. Whether the imposition of cash limits will have a material effect upon the risk of soft-skin operators who would, even at the suggested level, be carrying substantial amounts of money is a matter which I think has not been established.

Soft-Skin Operations

Again the evidence which has been led in relation to the nature of soft-skin operations appears to me to be a ready reckoner of potential robberies. I do not intend again for that reason to advert to it in detail. However, the submissions of counsel assisting are replete with this material between pages 99 and 148 in relation to term 5. This evidence establishes that soft-skin operations are very often conducted without adequate or any proper care for the safety of persons carrying out the work. This is particularly so with respect to subcontractors or licensed-type operations where an individual, subcontracting through a family company will perform the work alone and yet often spend the whole of the shift or longer in a continuous collection run with money accumulating as the shift progresses. There are failures to provide back-up by way of radio contact, SOPs, and any other

form of support. There are payments at levels which are unconscionably low such as $10.00 per hour flat. There are breaches with respect to firearms provision and generally a totally unsatisfactory picture of the industry. All of these features do not, of course, attach to all operators. Some of the larger operators are in many respects exemplary in their approach although that may not be said of all. In the circumstances, I am persuaded to largely adopt the recommendations of counsel assisting.

RECOMMENDATIONS

I make the following recommendations.

1. **Soft skins operating overtly and with a crew of only one person should be limited to single jobs wherever practicable.**

2. **Soft skin delivery times and routes taken should be routinely varied in accordance with relevant standard operating procedures, as a means of maintaining a discreet operation.**

3. **Operations should be discreet wherever possible; that is, no uniforms and no marked vehicles or vehicle decals.**

4. **On the basis that the operation is discreet only one unarmed crew member should be employed so as to avoid attention and surveillance by offenders, save for jobs**

which have been assessed through an appropriate risk assessment to be higher risk operations. In these cases two persons should always be used.

EASTGARDENS INCIDENT

On 9 March 1993, at about 2.20pm, two members of the crew of a Brambles' armoured vehicle, whilst on the pavement outside the western entrance to the Eastgardens Shopping Centre, were the subject of an armed holdup. The third person of this crew was inside the parked armoured vehicle. One of the two road crew out on the pavement was carrying a bag containing cash notes, to be delivered to the Commonwealth Bank, in the sum of $165 000.

Much of the evidence on this matter is classified and it is not appropriate to review it extensively. However, the subject matter is of significance and requires that recommendations be made concerning future conduct in circumstances such as these.

An armed offender, Kerry John Callaghan, wearing a wig and glasses, perpetrated the robbery whilst a second offender, John William Clarke, waited in a Ford get away vehicle in Westfield Avenue. A third offender, Donna Leanne Clarke (wife of John Clarke) has pleaded guilty to being an accessory before the fact to armed robbery. An alleged fourth offender, an employee of Brambles, is to face trial in

the District Court on a charge of being an accessory before the fact to armed robbery. In the course of the robbery, three shots were fired by the armed offender and two shots by Andrew Thomas Peters, one of the road crew on the pavement. Police intervention then occurred whilst the offender was attempting to escape and the police fired two shots.

Police had been on the scene prior to these events in a surveillance operation, namely 'Blue Eyes'. They had been monitoring the movements of the offenders and liaising with Brambles' management in relation to the alleged inside informant since 15 December 1992.

The impact of the armed robbery on Mr. Peters is that he has been in receipt of counselling for Chronic Post Traumatic Stress Disorder on a number of occasions but remains employed by Brambles in the same position. Mr. Peters reported that "I was greatly afraid and I remember at an early stage my legs nearly collapsed from under me" and of being in a "highly anxious state" during the events of the attempted armed robbery. He further describes the scene when the police intervened, as follows:

> "As I was standing after the assailant fled the scene, I heard a loud voice say 'Drop the gun, get down, get down'. I looked over my right shoulder and saw a number of Police approaching from within the shopping centre. they called out before they came through the doorway. There were three in Police vests of the type the SWAT Squad wear, with what appeared to be shotguns, and in front of them, two plain clothes Police pointing revolvers. They advanced by stages, in what appeared to me at the time to be a very menacing manner. I obeyed, and lay down, spreadeagled face down, and all that I could see were boots... After the SWAT boss shouted 'Clear' ... Constable ..., who at that stage was

> either sitting on me or in some other manner keeping me disabled said words to the effect: 'Can you move? Can you get up? We're going into the shopping centre'. He had me by the collar of the shirt".

Mr. Peters subsequently suffered from what was diagnosed as Chronic Post Traumatic Stress Disorder. He described a situation in which he subsequently found himself, on another Brambles' armoured crew run, when a member of the public pretended there was a holdup situation and Peters found "My nerves were so unsettled that I nearly shot him by mistake." He has undergone trauma counselling and has had a number of weeks off work. He expressed concern that his judgement may endanger workmates or members of the public.

Location of the Armed Robbery

The robbery took place in a walkway or alleyway area just off the car park to Eastgardens Shopping Centre, outside both the entrance into the public library and the western entrance to the centre. Inside the western entrance was a financial court on the ground floor where various banks, including the Commonwealth Bank (to which a cash delivery was to be performed) and the State Bank (where they were to inquire if there was any money to be collected) were located.

The crew had to walk past a fire stairwell and then the entrance to the public library on their left in order to gain entry to the financial court area straight ahead and then past male and female public toilets on their right to access the

Commonwealth Bank and the State Bank further ahead on their left.

The age, length of Brambles' experience and nature of Brambles employment for each member of the road crew was as follows:

(a) Mr. Williams, 61 years, just under four years' experience

(b) Mr. Graham, 45 years, six and a half years' experience

(c) Mr. Peters, 35 years, four and a half years' experience, casual.

The evidence establishes that there had been a considerable degree of liaison between senior members of Brambles security management, including the National Security Manager, Mr. Stanyon and the Police Service up to the level of Detective Superintendent W.G.F. Bull, Commander of the Major Crime Squad, South Region (since retired from the police force and now employed as the NSW Security Manager of Brambles). This contact was necessary in order that the police were able properly to pursue their investigations through the taskforce of the activities of the suspects. Information was conveyed by the police force to Brambles management on the condition that it not be disseminated to employees. This was thought necessary in order to avoid leakage of police awareness to the suspect insider. Brambles management gave the undertaking

sought by the police but sought and obtained an assurance that the suspects would be arrested before any robbery was effected.

There is no doubt that the police intention at all levels appears to have been to effect the arrest at an early stage thereby minimising risks to the armoured crew members. As it eventuated this intention came horribly unstuck on the day and the circumstances already referred to occurred with the exposure of crew members to the attack.

In the course of the evidence reference was made to the possibility of having substituted Police Service members for the car crew. This had been considered but rejected by the police as also revealing police awareness of the impending robbery, particularly to or through the insider. There was concern within the Police Service and Brambles management that if the anticipated robbery was not permitted to proceed to a fairly advanced stage before police first took an active step, the risk was that any alerting of the robbers to police presence could cause the robbery not to occur and expose other car crews to risk of later attacks by the same gang.

I find these views of the various problems to be plausible but they involved, in my opinion, one aspect which was quite unsupportable. The permitting of the ordinary car crew to undertake the delivery in question, with the obvious risks attendant, was misconceived. The fact that the intention to effect an early arrest was apparently frustrated

by events demonstrates, not merely by way of hindsight, but as also as a predictable matter, that the car crew members were exposed to a situation which was quite inappropriate.

Although I can understand the concerns of the police and Brambles that nothing be done to jeopardise the success of the operation designed to apprehend these criminals, the sending of the car crew members into a situation which the police clearly expected to involve a robbery was to use the car crew members as bait. It was suggested that in the UK the policy of the police is to permit a robbery to be effected before an arrest is made. Whether or not that is so I consider that the employer in situations such as this has a duty to protect the employee from exposure to the real dangers involved.

This robbery was actually filmed by a police surveillance unit which was concealed in a van opposite the entrance to the Eastgardens centre. The film of the incident was apparently used in evidence in the District Court proceedings where, presumably, the conduct of the police was not in question. However, an attempt to obtain a copy of the exhibit utilised in those proceedings or any copy of it was futile. Whether the exhibit was lost in the office of the Director of Public Prosecution, which was one less likely suggestion, or by members of the police force is not clear. What is clear is that the video which was produced shows a period leading up to the robbery but not the robbery itself. It is curious indeed that the relevant portion of the film, which it was said in evidence would normally be continuous cannot be located. The

actual conduct of the police intervention therefore cannot be seen.

What can be seen is that the robbery was undertaken at a time when members of the public were entering or leaving the shopping centre and were in close proximity to the incident.

I do not intend to discuss the failure of the police to effect an earlier arrest, for which a number of reasons were advanced. I am prepared to accept that the operational features caused a delay in the decision to have the police enter the scene and that the decision was appropriate in the circumstances. I prefer to approach the matter from the perspective of the employees as I have done.

Subsequently to this incident Brambles commenced a process of discussions with the Police Service with a view to drawing up a memorandum of agreement to regulate their future relationship in circumstances such as these. It appears that the former commissioner was provided with a draft for approval but the matter was not finalised. I consider this approach to be inappropriate. It is preferable that the approach to such circumstances ought be adopted on a general, rather than company specific, basis through an industry code of practice.

I do not consider that the Police Service and employers in the industry ought be prevented from exchanging confidential information which will assist in the detection of criminals and which will enable employers to protect their

employees. However, under no circumstances should an employer permit its employees to enter the scene of an expected robbery. If required, police should be substituted for the crew members.

TERM 6 : THE ADEQUACY OF EQUIPMENT USED IN THE INDUSTRY

Under this term of reference the proceedings received evidence on the following matters:

1. Body armour and its use.

2. Across-the-pavement devices.

3. Armoured vehicles.

4. Firearms.

5. Communication equipment.

BODY ARMOUR

Evidence was taken from Detective Senior Constable Shaun Patrick Roach who is attached to the Forensic Ballistics Section, Forensic Services Group, Sydney, of the New South Wales Police Service. Det. Roach is an accredited Forensic Ballistics Investigator. Since June 1993 he has sat on selection panels to evaluate bullet-resistant vests for possible use by the Police Service and has been the technical representative to the police on policy/procedure for the selection and use of all bullet-resistant vests in service, either issued or privately owned. The other specialist witness was Matthew Gerard Holden, the principal and a director of Signal One International Pty Limited. This company has been in operation for about 10 years and produces

protective body armour. The clients to whom body armour is sold extends from various United Nations Missions, Hong Kong Shanghai Banking Corporation, some police departments in the United States and particular units of the New South Wales Police Service. In terms of sales, Mr Holden's experience is that most of his company's vests are going overseas and they do not sell a great deal in Australia.

The justification for the introduction of body armour as a means of attempting to prevent injuries to workers as the result of being shot is graphically, albeit tragically, demonstrated by two incidents as follows:

(a) Det. Roach, in the particular facts and circumstances of the Miranda incident, is of the opinion that Mr Jones would have survived the shooting if wearing a specified anti-ballistic vest as this would have been effective in defeating the shot actually fired. This opinion is on the assumption that the area of coverage of the vest was full torso and the type of material used was rated as NIJ Level IIIA or PPAA Level C; a Level II vest may have defeated the rounds fired;

(b) in the particular facts and circumstances of the Warringah Mall incident, his opinion is that Mr Abdullah would not have suffered the back wounds on the assumption a specified anti-ballistic vest had been worn as it would have been effective in defeating the shots actually fired. This opinion is again on the assumption that the

area of coverage of the anti-ballistic vest was full torso and the type of material used was rated as above. However, such a vest would not, of course, defeat shots to the unprotected legs, arms or head.

The experience in New South Wales concerning the types of weapons used in armed robberies on armoured vehicle crews is that they are either revolvers, pistols or full-length or sawn-off shotguns. In the Miranda and Warringah Mall incidents, shotguns were used.

There are recognised standards worldwide governing the manufacturing and testing of bullet-resistant vests. The two standards that are typically in use in Australia are:

(a) the National Institute of Justice Ballistic Resistance of Police Body Armour, NIJ Standard 01.03; and

(b) the Personal Protective Armour Association testing standards for Ballistic Resistance of Personal Body Armour, STD-1989-05.

The effect of these standards and the testing data provided by Mr Holden is that a vest of a particular NIJ standard will defeat, under specific testing conditions, types of weapons as follows:

(a) Level 11A - .357 Magnum jacketed softpoint and 9 mm full metal jacketed. It should be noted that Mr Holden has

also had his ‘Microlite 2000' tested for a .22 LHRV (rifle) Copper-Plated Lead 40 grain;

(b) Level 11 - .357 Magnum jacketed softpoint and 9 mm full metal jacketed. Mr Holden has had Microlite 2000 tested successfully to defeat under specific conditions 12 Gauge ‘OO’ 9 pellets fired by a 28-inch barrel; and

(c) Level IIIA - .44 Magnum lead semi-wadcutter Gas and 9 mm full metal jacketed.

The oldest material now in use is para-aramid fibre, which is manufactured in the form of Kevlar by Dupont and Twaron by Akzo Noble. There is now available a new product called Spectra which is used by Allied Signal and Dyneema used by DSN High Performance Fibres. This fibre is a high-performance polyethylene with anti-ballistic properties.

In the opinion of Det. Roach, all of the above types of materials, when compared to the older styles of para-aramid fibres used in an anti-ballistic vest, have the advantage of being:

(a) lighter;

(b) more flexible;

(c) more comfortable to wear for a longer period of time; and

(d) can allow a higher rating of vest to be worn covertly.

It was explained that tests are designed so that upon impact with the projectile, they distribute the shockwave by pulling up the projectile over a greater distance than just that pinpoint where it initially strikes. As a result of that effect, soft body tissue under the vest of the person wearing it is depressed. The impact in such circumstances was equated to getting hit in the chest by a high-rising ball from Dennis Lillee by Det. Roach. In his opinion, a person would end up with extreme bruising to the area, and may lose wind depending upon exactly where the person was struck; generally there is no breakage of bones. The person may be knocked off the feet, depending upon the person's balance at the time, but generally speaking, the effect is no more serious.

Mr Bruce of Armaguard said one phenomenon to be taken into account with body armour is blunt trauma which is the ability of the body to absorb the energy when the vest stops the projectile. In his view, blunt trauma in the worst case can kill a person just as quickly as a bullet passing through the person. He however, confirmed he had no qualifications concerning the efficacy of body armour.

The experience of Mr Holden was that of his customers who are members of the police forces throughout Australia and who buy body armour from their private funds, the vast majority purchase a Level II body armour.

Det. Roach, in advising the Commissioner of Police on policy in relation to body armour, has advised that the minimum requirement for an individual police officer is the vest be rated to defeat the officer's own firearm or the firearm on issue to the New South Wales Police Service (ie Smith & Wesson revolver). It follows the standard vest on the NIJ standard is anything from a Level II vest upwards (T2045.11-20).

One traditional complaint concerning the practicability of workers in the CIT industry wearing body armour during the course of a run is whether it can be worn comfortably. Mr Bruce said these soft body armour materials do not breathe, so you have a problem that when worn by someone engaged in active physical work, particularly in warm and humid climates, the body retains heat to the extent that the person could dehydrate. Armaguard trialled body armour in 1993 but it has not trialled the newer types of body armour which are claimed to be up to 25 per cent lighter.

The practical experience of the two specialist body armour witnesses called suggests:

(a) there are NSW police officers who wear body armour presently whenever they are on duty. Such officers include general duty police, highway patrol police and generally police in what would be classified higher risk duties. It was these types of police officers that Det.

Roach recommended wear a covert body armour of a Level II;

(b) generally speaking, if a police officer needs to wear body armour it will be worn throughout the entire shift;

(c) the wearing of body armour means for the person some extra weight, some loss of flexibility, some degree of heat retention, somewhat fatiguing and there can be heat retention allowing people to perspire, which means the wearer needs to keep up intake of the fluids;

(d) the average constable out on the street has only worn body armour purchased privately;

(e) vests can be worn simply on the front of the body, that is on the chest, as the design really is totally up to the imagination and the requirements of the individual or company;

(f) the Hong Kong client bank of Signal One International Pty Limited requires its guards to wear a vest in the form of a jacket for a 10-hour shift. The nature of the industry in Hong Kong requires a lot of coin carrying. So far as the climatic conditions are concerned, for summer the style has been changed slightly to allow better breathability around the torso and in the opinion of Mr Holden wearing them in summer is not such a big issue now. In winter, the crews in Hong Kong actually have

discarded their traditional jacket because they wear their vest over their uniform shirt. Mr Holden said the particular bank in Hong Kong has been supplied with 200 jackets over three years;

(g) the human torso is not designed to have a manmade product like body armour wrapped around it. As a result, there is always initial discomfort but after a vest is broken in and worn it starts to take on the shape of the wearer, so that initial concerns about the comfort level of the worker wearing such a vest dissipate;

(h) manufacturers of body armour, such as Signal One International Pty Limited, have the ability to adopt, modify and redesign a vest according to the clothes worn and the climate;

(i) assuming most of the companies wear a jacket or spray jacket or a pullover type of some sort during winter, vests can now be made so people would not even know a person is wearing a vest.

A question arises whether the body armour to be used should be overt or covert. Covert vests are worn underneath a shirt and thus are less obvious. An overt vest is worn over the top of clothing. It is the view of Det. Roach that an NIJ Level II vest is the highest rating a person could successfully wear covertly. Some manufacturers produce a Level IIIA vest which is somewhat less bulky than the older

style IIIA vest, but they are still somewhat bulky, making it difficult to conceal them successfully.

As to the choice between covert as opposed to overt vests, Det. Roach said that a covert vest affords the wearer some degree of time if confronted by an armed offender to perhaps get off a couple of shots in the centre of body mass. It gives the police officer time to recover under those circumstances and respond to the attack.

A concern raised was whether the wearing of an overt vest could produce a targeting of the head or limbs as opposed to the body mass, but both Det. Roach and Sen. Sgt. Lupton indicated that a head or a limb shot is a particularly difficult shot under conditions of stress or movement, even for a person very experienced in the use of firearms. Therefore, it is highly likely that shots fired by a criminal in conditions of stress or movement and aimed at the head or limbs will miss. Secondly, if a shot were directed to the limbs, then there is a great likelihood that the security employee shot will not be completely disabled or prevented from retaliating.

The Employers' View

Mr Cunningham said body protection is not used by Armaguard. Trials suggest it is not suitable for the industry. It is suited for short period use in high risk situations. The CIT industry requires use for long periods of

time in low to moderate risk environments. Some employees fear that wearing body armour would cause a criminal to aim for the head.

During March-July 1993 soft body armour (concealed undershirt vests) ballistically rated to Level II were issued by Armaguard to road-crew personnel in Melbourne, Adelaide and the Gold Coast. Seven selected employees in total were requested to wear the vests every working day for one month and reported their assessments in writing. None of the applicants could persevere with the vests for a full month, and often they could only wear them for four hours or so at a time. One of the reports states that the vests *'seriously restrict movement and create unacceptable body heat, particularly when exertion is required, such as when coin handling is involved'*. The consensus was the vests are not a practical option for daily use by Armaguard road-crew employees. Another volunteer (Stan Puz) suggested that the jacket be made up and worn as a sleeveless jacket to be worn externally. The construction of the jacket would be so that it can be removed in the vehicle and when required for outside duty, the jacket is put on and shields inserted - ready in less than 30 seconds. This was not taken up.

Mr Cunningham said while he was not familiar with all brands of new body armour, he has examined one current brand. He found that the current body armour was not significantly different, slightly lighter and slightly more flexible.

Armaguard is not opposed to further testing of more recent models within reason;

Armaguard is strongly of the view that ‘if body armour is to be used and, particularly if it’s to be used by regulation, it should be used by all crews at all times when they are outside of an armoured vehicle carrying cash’, because no one can predict when an attack may occur. The view is that if it is important enough to be introduced by regulation then it should be used 100 per cent of the time;

Mr Cunningham was asked if he had considered Mr. Puz's suggestion in relation to external vests. Mr Cunningham replied that Armaguard does not see them as being as successful because they are visible and this raises other problems mentioned by the TWU witnesses. Also he believes that if the vest is removable, especially as the trials show the crew do not like wearing them, taking it off would become more the rule. Therefore Mr Cunningham is in favour of covert body armour;

Mr Cunningham was asked if the problems referred to were that external vests would prompt an execution-style attack. Mr Cunningham said that this had been raised and is seen by some to increase the likelihood of this type of attack. It was also suggested that had Mr Jones been wearing a vest he would have been protected. Mr Cunningham admitted that deciding whether to wear a vest or not is a problem. He noted that the Brambles’ delegates admitted that the job at which Mr

Jones was killed was not regarded as a dangerous job and he probably would not have been wearing his vest anyway.

It was recommended within Brambles, after the fatal shooting of Mr Jones on 25 July 1995, that NSW management investigate the possibilities of wearing body armour for the protection of crewmen whilst engaged in service activities. The NSW Security Manager concurred with this recommendation. As at March 1996, Mr. Solomon was not aware of any steps taken within the Brambles organisation in relation to that recommendation.

Mr Stanyon, under cross-examination, said that in relation to undertaking any consideration of the question of body armour:

> "I think you will find it goes, I don't remember that incident, when the coroner made a finding in Victoria where, I recall, he made a recommendation that body armour be considered. It was at that stage that the company considered the purchase of body armour. My understanding from that point where I investigated the different types of body armour that is available was that the union did not want them and from that point of time I was told to cease my investigations into them." (sic)

Mr Stanyon agreed it was the case that he had not taken any further steps, either formally or informally, in relation to a recommendation from Mr. Solomon that Brambles investigate the possibilities of wearing body armour.

Mr Stanyon expressed his reservations in relation to the use of body armour as follows:

> "... depending on the mentality of the people wearing them, there may be a case of bravado by those wearing them. They may think they are impervious to attack. There may be a possibility that the types wearing them in an attack think they have more safety than those vests actually provide them. Those vests utilised provide very little protection for the head. It provides limited protection for the very lower part of the torso and certainly the kidney area depending on which way the projectile is fired and also depends very largely on the calibre of the weapon that is utilised against the jacket.
>
> I firmly believe that if we can train people all those matters should be taken into cognisance and they are wearing them consistently, I think they are a good thing....I have no objection to introducing it and using it."

Mr Stanyon did not believe it *"would be wise"* to leave any discretion of wearing of body armour to the crews *"to have a situation where the people wear them as they deem fit I would have to know what the judgment was as to why they were wearing it at a particular place or time, and until somebody could educate me on that I would have great difficulty in knowing how they would know how to do it. I don't feel comfortable with that and the company is, as I said, happy to purchase them and fit them on everybody."*

The TWU in the past has been reluctant to embrace body armour, just like Armaguard and Brambles. However, a Brambles delegate, after an inspection of armoured vests sold by Signal One believes that they could be utilised within a company jacket and supports their compulsory supply on the basis of leaving it to the discretion of individual car crew members as to when it should be worn.

Mr Sheldon, the Assistant Secretary of the TWU said, on 6 June 1996, that his members have conflicting views as to whether body armour should be worn by armoured vehicle crews. The stated TWU view is that the use of body armour should be optional for armoured vehicle crew members.

Others who spoke in favour of body armour were Prof. Wilson, who considered that body armour will assist in deterring robberies or assist the wearer when a robbery occurs. The body armour should be lightweight, flexible and a convenience which should be properly evaluated for use in the industry. Detective Dein considers that body armour should be supplied and worn; it can and will defeat weapons most used by armed robbers such as shortened .22 calibre rifles, shortened 12 gauge shotguns and handguns. He considered the possibility that vests might be stolen during robberies and then used by criminals. He considered this was a possibility but no more likely than firearms being stolen in the same way. He did not consider this to be a reason for not supplying vests which will play an important part in protecting employees. He believed the body armour should be worn for all deliveries. Mr. Cross of Instyle Security has applied for and received permission to use body armour vests, as has Mr. Ridout. Kunama has also made an application for approval of use but it had not been approved at the date the evidence was given.

I note that Mr. Holden indicated Microlite vests would range in price from $300 to $400 depending on the size. It is also noted that the evidence suggested that the NSW Police

Service does not process applications for the use of body armour as expeditiously and smoothly as is desirable.

I conclude that an overwhelming case has been made out for a requirement that the industry supply suitable armoured vests for use by CIT industry employees. In relation to armoured vehicles it is necessary to determine whether the type of vest to be utilised is overt in the sense that it is worn outside other clothing although not necessarily obvious; or covert, namely, worn under other clothing such as a shirt. If covert, it is obvious that the vest would need to be worn for at least the whole of an employee's run if not the whole of the working day. There are undeniable discomfort questions which arise in that context which must be resolved.

If overt vests are employed, the TWU's view that the use should be optional at the discretion of the crew member concerned I find illogical and unsustainable. The purpose for the requirement for the issue of such vests is to protect employees; the vests are protective clothing in the ordinary sense. If the risk requires their use there can be no discretion in employees as to whether the vests will be worn. That, however, does not mean that overt vests would need to be worn throughout a shift. I can see no reason why they could not be donned prior to an employee leaving an armoured vehicle for the purpose of duty and removed upon re-entry of the vehicle.

In relation to soft-skin operations it seems that the question of the style of armoured vests to be used is not essentially different. If the operation is covert or discreet then it is clear enough that an overt vest which is of the obvious style would be inappropriate and some covert style must be adapted. I am not persuaded that discreet soft-skin operations should not be required to provide an appropriate form of vest. It is desirable that any requirement of this kind not inhibit the discreet nature of these operations which, when so conducted, would appear to be optimum form of delivery. However, there does not seem to be any possibility of concluding other than that a discreet system may be revealed by careful observation thereby introducing an element of risk which may not have been existent earlier. This seems to me to require that with respect to body armour the same response be applied to discreet soft-skin operators as to those undertaking uniformed deliveries.

RECOMMENDATION

I recommend that body armour be required to be supplied to CIT employees who work across-the-pavement.

A security guard should be issued with body armour only after undertaking any appropriate education or training, the content of which should be settled by the Commissioner on the advice of the New South Wales Police Service Weapons Training Unit.

There should be immediate consultation between the TWU and employers to decide on the choice between overt and covert body armour. It should be mandatory to wear covert body armour for the whole time engaged in CIT work. It should be mandatory for any crew member to don overt body armour prior to leaving the armoured vehicle and to wear it whilst the crew member is outside the armoured vehicle. In soft-skin operations, whether the body armour be overt or covert, it should be mandatory to wear the body armour at all times while engaged in CIT work.

ACROSS-THE-PAVEMENT DEVICES

The greatest risk to employees as seen in the discussion on robberies, is the ever-present risk of a robbery whilst carrying cash or valuables across the pavement. This risk may be lessened by the use of an across-the-pavement (ATP) device in which the cash and valuables are carried. An ATP device may be fitted with all or any of a siren, whistle, degradation of the contents of the device by staining and emission of a coloured smoke-cloud when there is an unauthorised opening of the device, or a restriction on when and where the device can be opened.

The overall aim of any ATP device is, of course, to deter a robbery of the person carrying the cash and valuables. The various means by which this goal is sought to be achieved are as follows:

(a) an audible alarm or whistle is emitted if the security device is triggered. The aim here is to attract attention to an offender who may have robbed a security guard of a container;

(b) when the device is activated it gives off a very dense cloud of fine particle smoke in which the dye is suspended. This therefore means there is a coloured smoke-cloud being emitted from the ATP device. Once again, this has the aim of drawing attention to an offender at the scene of the crime. Mr Dukes said statistically in around 80 per cent of robbery attempts involving the S100 model, the bandit threw the case away when the pyrotechnics discharged because he found himself then involved in a lot of noise from the siren. The smoke-cloud also made it impossible to drive away if the container was in the front of the vehicle because it filled the car up with smoke;

(c) the cloud of coloured smoke also aims to mark the skin of the person and his/her clothing. At least for the ATP device distributed by Mr. Duke's employer, the Spinnaker Group, the dye is based on vegetable dyes and thus is not chemical-based and harmful, but is very effective at adhering to the skin of robbers, their clothing, vehicles and anything else with which the dye comes into contact. Mr Dukes was aware of examples where even though criminals had been wearing balaclavas, with only their eyes showing, after a robbery attempt they were found to

have very large red spots in the opening where the balaclava was worn;

(d) depending upon the technology utilised in the ATP device, the security guard may or may not be able to open the container when carrying it across the pavement. Mr Dukes said for the S200 the guard cannot open the box as it does not use a lock and key, it is electronically sealed and thus there is no keyhole or padlock. The S200 case has a distinct warning label 'guard cannot open', with the aim of providing a further deterrent to any offender. On the other hand, Mr McKay described the type of device Armaguard attempted to introduce in 1992 as involving a large metal key of approximately six inches in length which was carried by one of the two crew members who left the vehicle to undertake the service. There was no smoke, dye or degradation of the money involved in this type of security case;

(e) the emission of coloured smoke might also involve the disbursement and penetration of coloured dye within the container. The aim is to render the prize of no value by marking the contents or damaging them so making it difficult or impossible to pass or to use as legal tender or, for example, as an accepted credit card.

Evidence was called from Mr Peter Martin Dukes who is the Group Marketing Director for the Spinnaker Group Limited based in the United Kingdom. A security product which the Spinnaker

Group distributes includes an across-the-pavement device, with the current model being called ‘Transalarm S200' and the older model being called ‘S100'. Mr Dukes has held his current position for three years and seven months and, previously, had worked in the banking and finance industry. As a result of his employment with the Spinnaker Group, he had contact from time to time with Scotland Yard’s Crime Squad on a regular basis, the British Security Industries Association which, it is estimated, covers 85 per cent to 90 per cent of armoured car companies and soft-skin operators, the Transport and General Workers’ Union in the United Kingdom which covers workers involved in the transport and delivery of cash and valuables, operators in the United Kingdom including the Royal Mail, Securicor, Group 4, Security Express, Armaguard, Brinks Allied, Brinks UK, Securicor Ireland and, more recently, Guard Force. Furthermore, he has been required to travel to 17 countries spread throughout Europe, the United States and South Africa for the purpose of dealing with operators involved in the armoured car and soft-skin industry, government bodies, national banks, post offices and relevant trade unions. Although Mr Dukes’ original industry experience was in finance and banking, his Spinnaker Group employment uniquely places him in the position of being a conduit about industry practices in Europe, South Africa and, to a lesser extent, the United States.

New South Wales Position

The evidence establishes there is currently no use of ATP devices in the CIT industry in N.S.W. There was some limited

trialling a number of years ago by Armaguard and Brambles. Evidence was given that agents and/or employees of the TAB transported cash in a case fitted with devices to maintain security. The devices consist of a wrist-strap to be attached to the wrist of the person carrying the case. The other end is attached to two plug-in devices, one of which is a high-pitched whistle, the other a smoke-bomb designed to colour the cash inside the case a bright orange.

In contrast, the position in Europe and South Africa is that there is extensive use of ATP devices by professional carriers of cash and valuables. Furthermore, there is uncontroverted evidence that the use of such devices has been a major factor in the reduction of across-the-pavement attacks and losses as a result of such attacks. The technology available in Europe over the last 10 years has become increasingly sophisticated. Given the success with ATP devices in Europe, the question arises why there has been no significant introduction of this type of technology by the operators in N.S.W.

Mr Byrne of Brambles, on being asked whether he had any knowledge or advice about such matters, said he was aware there had been some devices that have been operating in the United Kingdom for quite some time and there has been some reduction in the number of attacks. Mr Byrne was only aware of the older type of technology and not the newer technology distributed by the Spinnaker Group. Despite his limited knowledge about the types of devices available, Mr Byrne said:

> "I think anything we can use like that that is effective and would assist in reducing across-the-pavement attacks is well worthwhile looking at."

The evidence of Armaguard's Mr. Bruce was that since 1979 he has had extensive overseas experience with Armaguard's armoured vehicle operations in North America, including Canada, Belgium, the United Kingdom and, to a lesser extent, New Zealand.

He indicated Armaguard has experimented from time to time with the use of various forms of alarmed containers, or those which contain smoke and/or dye canisters. The most recent investigation concerned the use of a moulded plastic unit designed to conceal the nature of the item being transported and incorporating a single audible alarm device.

Mr Bruce treated alarmed containers as being impracticable for Armaguard. The reasons given in his affidavit were as follows:

> "There has been historical resistance to innovations such as this in the past, generated by the unreliability of some early devices which relied on a small explosive charge in order to operate. The crews felt, unjustifiably, that some danger to them was present and every attempt to introduce them was met with systematic resistance at such a level that the attempt ultimately failed.
>
> The latest initiative was resisted upon the basis that the containers were inconvenient, unnecessary and might have led to a view that cash was carried both ways, thereby exposing the crew to an additional risk. The level of industrial resistance to security issues which I mentioned earlier is sufficiently strong that it was not possible to impose the use of these containers upon the crews against their determined and organised opposition."

Nothing is contained within Mr Bruce's affidavit concerning the use of alarmed containers in the United Kingdom or Belgium, despite his extensive overseas experience.

Mr Dukes was aware from his dealings with three companies in the United Kingdom that Lloyds Underwriters had instructed those operators to use an ATP device such as the one distributed by the Spinnaker Group if they wished to maintain their insurance coverage. So far as Armaguard is concerned, it is interesting that the written evidence this company presented from a Lloyds' underwriter makes no mention of the use of ATP devices.

The disclosure of the true position in the United Kingdom concerning the use of ATP devices raises a question concerning the validity of Mr Bruce's assertion that Armaguard has designed, in the light of current knowledge and worldwide experience, the best possible security arrangements for its branches and vehicles. Until June 1996, Armaguard owned in the United Kingdom a cash in transit operation involving Security Express and Armaguard in the United Kingdom. The Spinnaker Group, before April 1995, was given authorisation by Security Express to use comments they had made in an advertising brochure for the Transalarm S200. Mr. Mike O'Neil, National Security Manager, Security Express (who is a former senior police officer in the Metropolitan Constabulary, according to Mr Dukes), said about the S100D, which was the latest model of the S100 before it became replaced by the S200, as follows:

> "The use of the Transalarm S100D is a major part of our strategy in reducing 'across-the-pavement' raids, and the reduction figures speak for themselves. It is both preventative, and is instrumental in the recovery of cash contents which are virtually useless to the criminal. The system is flexible, adaptable and continues to thwart attackers, despite their efforts to overcome it."

Mr Dukes explained that Security Express had previously used the S100D but after Mayne Nickless took over Security Express, the relevant contract was not renewed by Security Express.

Mr Charles McKay, who has been employed by Armaguard for nine years and has been a TWU delegate for the last five years, provided a statement about his experience and understanding of the type of ATP devices Armaguard has attempted to introduce in the past in this State, about which he was not required to be cross-examined. In relation to the evidence of Mr Dukes, he said:

> "I heard the explanation of how the S200 mechanism worked and what its advantages were. The comment I would make is that the S200 device as it was explained by Mr Dukes bears as a concept absolutely no resemblance to the device which Armaguard tried to introduce back in 1992. In particular, the technology used is simply not comparable to that involved in the Armaguard device."

At least on the basis of material supplied to the Commission, the Transalarm S200 appears to represent the cutting edge of this type of technology available internationally. It is useful in brief terms to identify the specific types of application Mr Dukes identified for the industry and also clients of the industry affected.

Nevertheless, it should be kept in mind that there has not been an exhaustive examination of all products available internationally and the purpose is to consider whether this type of security device in a generic sense should be implemented.

The applications for the CIT industry included:

(a) the use of S200 across the pavement allows the guard a programmed period of time from vehicle to recipient and vice versa. Whilst the case is moving, the internal timer counts, so if the guard is delayed he simply puts the case down and the timer pauses until the movement continues. As guards are often required to make a detour for reasons of security, an opportunity is given to the guard to extend the period of time by use of a touch memory control device. An extension of time by use of the touch memory device can only be done once for each trip across the pavement. If the time limit is exceeded, the container will switch to alarm mode. When the guard gets to the location to be serviced, the container can be opened depending on what level of security protection has been programmed. Mr. Dukes described the three levels of security protection ranging from Level 1 where only one touch memory is needed to unlock the case to higher levels of security when more than one touch memories are needed to unlock the container. The software within the container gives the guard the same amount of time as it took to make the delivery to return to the vehicle. Upon

returning to the vehicle, the guard places the container back into its receptacle in the vehicle and the time for the last service is erased and the container is ready to learn the next journey time. The technology provides that within the container is a memory that can contain up to 1,000 locations so one box can be addressed sequentially to come and go to up to 1,000 locations. In this particular role, the container is designed to protect purely the pavement risk. It is not designed to protect against a hijack of the vehicle. Mr Dukes said his company would assume that the client had taken all necessary preventative measures, for example, by having a drop safe in the vehicle so that the container provides its function of protection across the pavement and a drop safe in the vehicle would provide protection against an attack against the vehicle;

(b) the complete concept developed by the Spinnaker Group permits the use of either an armoured vehicle or a soft-skinned vehicle. It involves transporting the requisite number of containers in a racking system. Depending upon how the controlling software is programmed, the removal of more than the programmed number of containers will cause the system to issue a verbal warning. If this warning is ignored or a further container is removed, all, or a programmed number, of the containers discharge their smoke and dye. The number of containers used in the racking system is a matter for the particular operator. The largest order the Spinnaker Group has

received thus far is for 50 containers in one vehicle, which are used in a Mercedes 310 long wheel-base (a soft-skin vehicle) with a crew size of one person;

(c) an added option is to have an interface that connects the rack to a vehicle alarm and anti-hijack devices can also be specified. This involves a guard only being able to get into a vehicle with a touch memory device and when the device is used it overrides the anti-hijack devices. In the case of a hijack, the guard is advised to give the offender the ignition keys and the vehicle can be driven away by the offender. However, after say two minutes, in order to allow the guard to get a safe distance from the vehicle, the intelligence system will immobilise the fuel pump and ignition circuits. Under the hood of a vehicle a very powerful PA system then announces the robbery with programmed words such as *'this security vehicle has been hijacked, please call the police immediately'* or, as in the case of the Royal Mail, *'help, help, Post Office worker is under attack, call the police immediately';*

(d) in a shopping mall a trolley with racks containing containers can be used. This can involve one guard supervising the trolley and another guard walking in and out of the shops with containers.

The Transalarm S200 is only now being marketed by the Spinnaker Group in Australia. As to cost:

(a) the approximate figure for an S200 container and a single receptacle was $5,000;

(b) the expected life of the external polypropylene container was about four years. The Spinnaker Group expected to replace the external container after four years, but the electronics should still be intact subject to normal usage;

(c) servicing of the containers is required every two years to replace the battery which takes under a minute and requires no skill or training;

(d) the replacement of the degradation system is required every three years and takes about one minute; the polypropylene container costs something like 35 pounds sterling;

(e) Mr Dukes estimated a range of something like 50 pounds Stg. minimum to a maximum of around 100 pounds Stg. to update with a replacement container after a four-year period; the touch memory device costs about 10 pounds Stg.

Mr Dukes was unable to give any figure for the cost of a racking system given it depended upon the size of the rack and the number of containers to be stored in a rack. Nevertheless, on a minimalist approach of only using one ATP

device, its practicability is demonstrated by the following exchange:

> "His Honour Q: Does it follow from that providing a suitable safe storage was provided in a vehicle that one ATP box could be used per vehicle across the pavement?
>
> A: That's already being done. That is the MO we employ."

The modus operandi for Armaguard in the U.K. with alarmed containers was indicated by an exchange with Mr Bruce as follows:

> "A. No. The way they work is each vehicle is equipped with one and it is used for the carriage of cash to and from the client's premises.
>
> ....
>
> A. The alarmed container itself is the device and the money or the cash is placed into it, and it's used as a dual purpose for transporting the money in as well as having this alarm feature which, in our circumstance, involves a smoke dye-bomb which is not designed primarily to disfigure or render the cash useless, but to make it more difficult for the criminals to transport the containers away from the scene of the crime."
> (T3566.14-33)

Mr Bruce said Armaguard used a more simple system with a simple triggering device; if the container is snatched and removed from the crew member carrying it, it will activate after a certain period of time (T3566.45-58).

Mr Dukes indicated what he knew of his international competitors and the other types of devices previously or currently in use:

(a) a device involving the guard pressing a radio link button to make the case operate. The stated disadvantage of this type of device is that, under duress, the robber can take the device and the guards feel disinclined to operate a system that would put their wellbeing in jeopardy;

(b) a device with a trigger in the handle so that at all times the guard has to hold the handle to prevent the device operating. The disadvantages stated for this type of device is that if the guard stumbled or put the case down to open a door or even sticky-taped the trigger shut so that two cases could be carried at once, problems can occur in the event of a robbery because the system is either activated when not wanted or not activated when wanted. (This seems to be the type Mr McKay described as trialled by Armaguard in about 1992). A large metal key of approximately six inches in length was carried by one of the two guards out on the pavement for the purpose of being able to open the container;

(c) a device with the use of a light sensor in the handle which had similar problems to the device with the trigger in the handle (T3683.39-55).

Based upon the overseas experiences outlined by Mr Dukes, the potential implications for the industry are as follows:

(a) the provision of an effective deterrent of professional robberies. A review of the crime reduction figures at the end of the first 12 months in the United Kingdom, after the introduction of S100 in 1985, show a reduction for Securicor of 64 per cent in across-the-pavement crime and, in the case of Group 4, a 54 per cent reduction (Mr. Dukes T3682.45-T3683.L5). Mr Bruce said Armaguard experienced similar benefits from using an alarmed container in their operations in the United Kingdom (Mr. Bruce T3564.16-28);

(b) in the United Kingdom, the trend has been for professional robbers to move away from across-the-pavement robberies because of the containers (Mr. Dukes T3711.26-43). Mr Bruce, in cross-examination by the TWU, also said alarmed containers have certainly been of long-standing benefit in the United Kingdom in dropping the number of attacks on armoured vans (Mr. Bruce T3596A.29-44). In Austria, the security company Protectas, part of the Securitas National Group, as part of its strategy of moving to soft-skinned vehicles, has disposed of the crew's firearm, body armour and helmet and promoted the fact they were now using S200 on prime-time national news in Austria. This was done by a reconstructed robbery attempt showing what happens if an attempt is made to take the container from the guard (Mr. Dukes T3687.35-53). Mr Bruce said in the United Kingdom Armaguard did not advertise the use of an ATP device and it was not something they would advocate. Armaguard relied upon

criminals observing what they did in the United Kingdom and, as a result, knowing that Armaguard used these containers. Just like the S200, the Armaguard device had a sign indicating it contained a device and therefore Mr Bruce said there was no need to advertise (Mr. Bruce T3567.40-T3568.2). The containers and the sign were found by Armaguard apparently in the United Kingdom to be such a visual deterrent that they actual used a small supply of dummy containers that did not even have a device in them as it was thought they would have the same effect as the real thing;

(c) the use of an appropriate ATP device could lead to a transfer of certain types of work away from armoured vehicles to soft-skins. Mr Dukes gave various examples of where this has been the trend without any legislative incentive.

(d) a number of EEC countries have amended their legislation concerning CIT operators. According to Mr Dukes, Belgium in February 1996 has amended legislation to provide that by August 1998 cash handlers will either have to operate soft-skinned vehicles with an intelligence system, for example the S200, or will have to operate with a prescribed standard of armoured vehicle. In October 1995 Holland changed its legislation from requiring an armoured vehicle of a prescribed grade carrying a minimum of three guards to now permitting operators to use a standard soft-skinned light delivery vehicle

provided that they have an approved intelligence system. Spain has also done likewise (Mr. Dukes T3687.6-23).

S200 is also awaiting trial in France, Germany and in Luxembourg using soft-skinned vehicles.

The type of ATP device described by Mr Dukes also has the potential to make clients more responsible for the health and safety of workers who are in the industry affected and members of the public. Mr Dukes described a number of pilot projects which are likely to be at the leading edge of development as follows:

(a) a pilot project with NCR to protect cash contained within ATM currency cassettes by way of the installation of a pyrotechnic device similar to that contained in the S200. This project is as a result of considerable pressure from the banking institutions to find a solution to pavement losses from ATM cassettes and a development in Norway where the entire ATM has been stolen;

(b) one of the larger banks in the United Kingdom is undertaking a pilot project with the Spinnaker Group to provide the CIT operator with an opportunity to deliver cash to a bank and collect documents and other valuables from a bank branch without any involvement of the banking staff itself. Further, the goal is to aim for it being possible for that service to be carried out anytime, night or day. The idea is to have a cabinet in an area

such as a lobby in which ATMs are located. The technology has been approved by the bank and it is expected by about the fourth quarter of 1996 a pilot system will be installed (T3732.37-T3733.25);

(c) the Spinnaker Group has a final prototype where there is a suitable armoured door on the outside of a wall of a building with access being gained by a security guard's touch memory device. When the door is opened, behind the door is the S200 rack. This prototype also has the ability to service at anytime, night or day. It is principally being looked at for supermarkets and smaller bank branches where a single box would be sufficient for their needs (T3733.29-T3734.12).

At this stage, the potential problems arising from the introduction of an ATP device like S200 are as follows:

(a) Mr Dukes stressed that in countries where the system is introduced negotiations need to take place with the equivalent of the Reserve Bank so that authorised and recognised personnel can exchange damaged money for fresh money, because in most countries it is an offence to deface the country's currency. In countries where S200 operates, exceptions have been made to allow an exchange of money in the situation where the currency has been degraded (T3693.10-19). The normal warranty of the Spinnaker Group is that in the United Kingdom a brickpack produced by the National Bank, namely, a very condensed

brick of paper money vacuum sealed, will have a degradation of 100 per cent of the notes with the minimum of 15 per cent damage to each note. The effect on credit cards is on opening a puddle of liquid plastic; to produce the cards are actually destroyed (T3705.1-18).

(b) Presently there is difficulty in carrying ATM plastic cartridges in the S200 as there is no way of getting the dye into the cassette because they are fairly close-fitting around the currency and an activated device will probably damage the cassette by melting the plastic. The kind of currency degradation normally aimed at, on the current technology, is currently unable to be achieved. This may be the case for other types of packaged cash and valuables carried by operators in the industry affected. However, this raises the issue as to whether the other goals of an ATP device, without being able to achieve degradation, still constitute a deterrent. It has already been seen that the type of system used by Armaguard in the United Kingdom is not designed primarily to disfigure or render the cash useless (Mr. Bruce T3566). Rather it seeks to meet the other goals of an ATP device, namely, the siren raising the alarm, marking the offender and drawing attention by way of a smoke-cloud, which also makes it more difficult for the criminals to transport the containers away from the scene of the crime. Mr Byrne of Brambles said his personal opinion is that the smoke bomb is more effective rather than the dye bomb because he believed there is very

limited opportunity for the dye to penetrate the exterior of notes packed tightly (T3338.32-35). Even allowing for no currency degradation, the other goals of an ATP device offer the potential for significant deterrents to offenders;

(c) United Kingdom experience has been a displacement or migration of professional robbers away from across the pavement robberies to robberies on the armoured vehicles or even the security operator's depot itself (Mr. Bruce T3565.36-54 and Mr. Dukes T3711.30-58). At least at this point, there has been no evidence in Australia of the overseas phenomena of ram-raiding and Mr Bruce of Armaguard only knows of two armoured guard vehicle hijacks in more than 50 years;

(d) Mr Dukes was only able to give a ballpark figure for an ATP system comprising one container and the chute/receptacle in a vehicle. No details, therefore, are currently available of the cost of a rack-type system or any of the other pilot projects. At least from a cost perspective, further substantial investigations are required in order to fully assess the advantages of this type of device and system.

RECOMMENDATION

The Commission recommends that there be further investigation of the utility of available ATP devices by the

licensing authority. This should include questions of cost, viability and other alternative systems. There should be full consultation with the industry parties and a report to the Minister as to whether there should be amendments to the SPI Act, the relevant environmental and planning legislation, or a provision by way of code of practice.

ARMOURED VEHICLES

A considerable body of evidence was called concerning the features of armoured vehicles used in the CIT industry.

Brambles operates 64 armoured vehicles of varying types with armour plate protection rating. Guardian Armoured Vehicles are fitted with electronic solenoid locking devices on external doors, electronic and mechanical interlock systems on external front door to inner door, with time locks on rear door and time delays on rotary bins. All other armoured vehicles are fitted with electronic solenoid locking devices on external front doors, time locks on rear doors and time delays on rotary bins.

There is no Australian Standard for armoured vehicle specifications. Armaguard uses Australian Standards relating to bullet resistant material to the extent that those standards are applicable.

The evidence was detailed and identified the capacity of various parts of vehicles to resist gunfire. Accordingly, the

evidence was classified on a restricted basis and will not be reproduced here.

There is no suggestion that the features of armoured vehicles other than armoured plating warrant any alteration. With respect to armoured plating or resistance capacity of various panels the evidence indicates that some types of vehicle are more effective than others although, it may be said, all have their limitations just as strongly armoured military vehicles are limited. There has been no evidence which would suggest that the types of armoured vehicles in operation presently are inadequate for their circumstances. While it might be possible to consider that those armoured vehicles at one end of the spectrum might be upgraded towards the other end, whether any material benefit would result is highly questionable. An illustration of the difficulty in this regard is one incident where one of the vehicles operated by a company whose vehicles are at the strongest end was blockaded on an isolated road and, whilst it was able to be driven away to its escape, its bonnet had been penetrated by a pick axe.

In these circumstances, I do not consider it appropriate to recommend that there be any requirement to upgrade any particular vehicles, marginal as any such upgrade would be.

The question arises whether there should not be some national standard to apply to the construction and operation of armoured vehicles. This has a ready, although perhaps

superficial, attractiveness. However, again, care needs be taken in this regard for the reason that the establishment of some such standard may well merely draw the line beyond which the professional criminal will need to step in order to attack the vehicle. If one contemplates the introduction of across-the-pavement devices with the attendant risk of an increase in attacks upon armoured vehicles themselves, one can only doubt the wisdom of increasing the armoured capacity of vehicles if the effect is to upgrade the level of attack which might reasonably be expected.

These are questions which cause me to respond to the relative security demonstrated by operating armoured vehicles hitherto by making no recommendation for change.

FIREARMS

The proceedings examined the types of firearms in use in the industry, the alternatives which are available and the question whether it was necessary or desirable that firearms continue to be used.

The evidence was strongly in favour of armoured vehicle guards continuing to carry guns. The position is less clear in the case of soft-skin guards because of the difference between overt and discreet operations. Where a single soft-skin guard in uniform is armed, the evidence suggests the weapon is rarely likely to be of much utility because of the

propensity for surprise attacks particularly from the rear. The weapon then becomes readily available to the attacker. In the case of discreet operations there seems to be little justification for the carriage of weapons if the operation is truly discreet. If, by its regularity or any other relevant features, it is not truly discreet, then the approach might be more aptly the same as for overt operations.

Independent evidence was available from Det. Dein, Det. Roach, Sen. Sgt. Lupton and Prof. Wilson, all of whom were of the view that armoured vehicle crews must carry weapons. Det. Dein said:

> "I have examined armed robberies in London and New York with the assistance of local police. The number of armed robberies on armoured cars in London [where firearms are not carried] is enormous. I think it now runs at a rate of about 300 a year. By comparison there are now about 30 armed robberies on armoured vehicles in Australia a year. To some extent this difference can be explained by the fact that there are many more people in London than in any city in Australia. But in New York, which is a much bigger city again, and certainly more violent in general, there are now about 30 armed robberies on armoured vehicles a year. In my opinion, the difference between the number of armed robberies in London, Australia and New York is largely due to the fact that armoured car crews in London are not armed and those in Australia and New York are armed ...
>
> I should add that armed robberies in New York are much more likely than in Australia to result in wounding or death. Armoured car guards there know that they are likely to be shot if they give their attackers a chance. A 'shoot first, ask questions later' culture is established. The rules that apply in New South Wales prevent the development of such a culture. I would deplore any change in those rules that allowed such a culture to develop.
>
> One feature of robberies on armoured cars in London was that they were often carried out by what I have called 'non-professional criminals' using weapons other than firearms. Indeed, the most common weapon in use in London in robberies is the 'cosh'."

> In my opinion, armoured car crews would inevitably be exposed to a much higher rate of attack by a wider range of offenders if they were not armed."

He concluded by expressing the view that it would be "wrong and dangerous to disarm armoured car crews or to further restrict their use of firearms".

He observed:

> "The industry is noted by its lack of firearm mishandling. In fact their proper use has probably saved lives. Although it is uncommon for criminals, unprovoked, to shoot at guards, it can happen and does happen. The guards need that extra security. As an experienced police officer I am comfortable with a well-trained CIT employee having possession of a handgun, even in these uneasy days of firearm control. I do have grave concerns with those individuals not well trained. As far as firearm training is concerned there can never be enough."
> (Ex.94A par.50)

Detective Dein said that he also thought soft-skin operators should be armed, although he had greater concerns about the level of training afforded to those employees.

He added that unarmed guards will attract the less professional criminal element away from other less secure *"soft targets"*. Disarming the guards would throw the balance in favour of criminals who will not give up their practice of using firearms.

Professor Wilson said that firearms should be carried by armoured vehicle crews as a deterrent to potential robbers. He relied on the evidence from the United Kingdom to support his view (Ex.217 para 5.7.1).

However, Prof. Wilson said that firearms should not be carried by soft-skin operators who should carry out discreet or covert operations. However, he proposed an exception to this rule concerning soft-skin operators as follows:

(i) Where intelligence from the client or another source indicates that a robbery may be imminent; or

(ii) cash is being carried above the allowable limit but where the presence of an armoured vehicle may increase the risk to client premises

(iii) where there have been previous robberies on unarmed operations.

Industry Practices and Opinions - Amoured Vehicle Companies

All armoured vehicle companies the subject of evidence in the proceedings supply roadcrew with 38 calibre revolvers such as the Smith and Wesson .38 6-shot. All weapons are maintained in accordance with licensing requirements by armourers. The reasons advanced for weapon carriage are exemplified by Mr. Cunningham's evidence:

(i) They act as a deterrent;

(ii) they may be the last line of defence when a colleague’s life is under direct threat;

(iii) some clients require that Armaguard carry firearms;

(iv) it is an insurance requirement that guards are armed;

(v) insurers who handle world-wide insurance and have extensive experience regarding armed hold-ups and cash loss-rates believe that guards should be armed; and

(vi) the company has conducted a review to compare the history of armed hold-ups against employees who were armed as distinct from those who were unarmed. This showed that it was safer to be armed.

Kunama Securities

Armoured car crews carry .38 calibre 6-shot revolvers with 4-inch barrels. Soft-skin operators carry .38 calibre 5-shot revolvers with 2-inch barrels.

Kunama will continue to equip its armoured vehicle guards with pistols. Mr Dyhrberg said that taking away their firearms would result in a substantial increase in attacks on armoured vehicles. The company is researching the position in countries like New Zealand and the United Kingdom, where firearms are not used in armoured operations. However, Kunama takes a very different view regarding its soft-skin operations.

Roden Security Services

Roden supplies CIT operators with .38 calibre Smith and Wesson 5- and 6-shot pistols.

Industry Views and Practices - Soft-skin Companies

Mr Dyhrberg said that some employees of Kunama carried the weapon in a bum bag. They prefer to do this and Kunama does not discourage them.

Mr Dyhrberg said his company has approached its insurer and requested that its soft-skin operations not be required to carry firearms. This request was initially refused. However, in February 1996 the insurance company approved the request. The company has yet to disarm its soft-skin operators as it wants to consult with them first. There is a degree of resistance but Mr. Dyhrberg feels that once the company's case for removing them has been put it will overcome the resistance. These reasons are:

(i) The absence of a firearm will make employees more likely to comply with demands of offenders;

(ii) employees may be injured if they do not comply and attempt to use a firearm;

(iii) possessing a firearm can give a false sense of security to the employee; and

(iv) possessing a firearm may cause an unwise reaction to events.

Mr Dyhrberg said that firearms have no deterrent value in soft-skin operations.

In substance, Kunama's revised Guards Manual would call for the employee to run away on the principle that he would have a better chance running away than trying to draw a pistol (particularly a concealed weapon). As a matter of principal this also applies to armoured operations.

Other security companies which provide soft-skin type carriage from time to time supply guards with either revolvers or semi-automatic pistols, examples are Access Security and Ultimate Security. Wormalds (Chubb) supplies its employees with .38 calibre Smith and Wesson revolvers which it considers sufficient.

Again the basis for the supply appears to be the perception of the value as a deterrent to a robbery. Mr. McCormack of Wormalds said:

> " ... would make it ten times (more) likely to be assaulted, because the gun is the only deterrent we have got. Even though you still get assaulted with a gun, if you did not have a visible gun I think your chance is greatly increased of being assaulted and robbed in that situation, because that is the only thing that keeps the majority of people, (sic - away) the fact that you have got the gun on you and you are there."
> (Mr. McCormick T2763.5-19)

However, it is clear that carrying a pistol did not reduce the risk of incident occurring in relation to the two Wormalds robberies at Parramatta.

Two examples of the sorts of problems which attach with the use of weapons in the soft-skin side are that sometimes guns are issued to subcontractors who appear to have been able to have passed the weapons on to their employees. This opportunity occurred in relation to the evidence of Security Cash Transit.

The other problem concerns the approach or policy of the person who is licensed to carry a weapon and does so as either a direct contractor or a subcontractor. An example arises in relation to Ridout Security where Mr. Ridout carries a semi-automatic pistol with a 15-round capacity. He also carries an extra 30-rounds of ammunition. This gave Snr. Const. Donald cause for serious concern about public safety in the event of an incident. Mr. Ridout indicated his response to confrontation by an armed robber would depend on many factors. He said:

> "My own policy as far as shopping centres (go) would be to give up the cash to avoid injury to the public. But out in a carpark or street, one would have to weigh up the circumstances, the surroundings to formulate one's action in that situation."

It is difficult to conceive any reason why a guard engaged in CIT operation should carry 45-rounds of ammunition with a semi-automatic pistol.

What Sort of Weapons Should be Used?

Det. Roach and Snr. Sgt. Lupton both dealt particularly with the qualities of three types of weapons available.

(i) Revolvers (like the .38);

(ii) single-action self-loading pistols; and

(iii) double-action self-loading pistols.

In substance the view of both of the witnesses was that the revolvers are appropriate for use. Det. Roach observed that they have certain disadvantages but they are simpler and safer weapons to use than self-loading pistols. He said that single-action self-loading pistols can have an appropriate use

> "when such a firearm is used by an expert gun handler with either law enforcement or military hostage rescue teams, who are highly trained. In my opinion, the typical security guard or police officer is not going to have anywhere near the high level of training required to safely and effectively use a single action firearm under operational conditions."

He said the double action self-loading pistol, which is similar to single action types but with a trigger pull which remains constant from the first to the last shot, is easier to train but its principal advantage of a longer sight radius is of little application in this industry.

RECOMMENDATION

1. Armoured vehicle crews should continue to be equipped with appropriate firearms.

2. Soft-skin operators should only be equipped with firearms where they are able to demonstrate to the licensing authority that their usage is relevant in the context of their particular operations.

I would consider there to be serious doubt that single person soft-skin deliveries could justify the carriage of a weapon and the risk of the weapon being lost to a robber may well outweigh the value in the weapons carriage. In this respect I am unable to distinguish between discreet or non-discreet soft-skin operations.

COMMUNICATION EQUIPMENT

Most armoured car and soft-skin operators provide their staff with radios or mobile phones. However, many soft-skin operators do not always have someone at their base to receive calls whether by radio or telephone. As a consequence, some supervisors can only be contacted with pagers.

In the armoured car context radio networks are operated and the base stations are manned while crews are on the road. A frequent complaint of crew members is that radio network is

not able to maintain contact in some situations such as multi-level carparks. They are affected by geography on occasions. Mobile telephones are provided in the armoured vehicle also which should defeat the problem of a broken contact with the base although the phone will be likely to make contact.

Another aspect of relevance is the ability of the crew member to maintain contact with his vehicle particularly when out of sight. Usually hand-held mobile radios are provided for use by armoured car crew in that context.

There is no evidence which would permit the conclusion that the radio systems in operation are inadequate for their purpose. Their inability to provide contact in all circumstances has not been demonstrated in the evidence as a deficiency which is capable of being overcome by alternative methods of communication other than telephone. Whilst it would seem that armoured and soft-skin operators should always be able to establish contact with their base or the guard remaining in an armoured vehicle, it is difficult to see how this may actually be effected in the context of an emergency. There is no doubt that the use of a pager in this context is absurd and should be strongly discouraged. However, the ability to contact police may be just as useful if not more useful in a given situation than contact with the base.

It is obviously desirable that armoured vehicles and soft-skin operators working in a context where a network is provided should be able to make reasonably immediate contact

with their supervision and/or the police. The question of the style of equipment necessary to achieve that objective ought lie with the licensing authority when granting an employer business licence.

TERM 7 : THE ROLE OF ALL PARTIES (Including Clients) IN ENHANCING SAFETY IN THE INDUSTRY

The evidence relating to this term of reference concerned the following matters:

1. The propensity for government departments to let government contracts for CIT work to the lowest tenderer;

2. the way in which the private sector of industry as major users of CIT carriers appear to be concerned with two primary aspects only - the time of delivery and the overall cost.

GOVERNMENT DEPARTMENTS

There is of course no conceptual difficulty in contracts being let to the lowest tenderer where the successful tenderer complies with legal requirements including the payment of award wages and the provision of licensed services. However, the evidence indicates that there is a widespread acceptance in the industry that the facts are very different from the theory. It appears that the common requirement in relation to government contracts is that a contractor must indicate a willingness to comply with the law in the respects identified but, very often, if successful as the lowest tenderer, that contractor will be unable to comply with those requirements. This means that the persons delivering the service will often be paid less than award wages and perhaps be unlicensed. They

will often be subcontractors rather than employees, which itself is usually in breach of the tender conditions.

Health Insurance Commission

An illustration of the problem is the Commonwealth Health Insurance Commission ('HIC') which Mr. Byrne of Brambles referred to in evidence as apparently taking into account costs considerations before others including safety. Brambles had formerly done HIC work utilising armoured vehicles but the work is now undertaken by soft-skin vehicles utilising a tight time window for deliveries so that Mr. Byrne contended, the operation is unable to remain fully discreet.

No satisfactory explanation in relation to these allegations was advanced by the HIC. Over a period of approximately six months attempts were made by counsel assisting to clarify the facts. Although it ultimately provided a written statement of evidence by an officer of the HIC it refused to submit the maker of the statement for cross-examination. It relied upon the provisions of s.130(3A) and (4) of the *Health Insurance Act* 1973 (Cwth) which provide that:

> 130(1) A person shall not, directly or indirectly, except in the performance of his duties, or in the exercise of his powers or functions, under this Act or for the purpose of enabling a person to perform functions under the *health Insurance Commission Act* 1973, and while he is, or after he ceases to be, an officer, make a record of, or divulge or communicate to any person, any information with respect to the affairs of another person acquired by him in the performance of his duties, or in the exercise of his powers or functions, under this Act.

Penalty: $500.

...

(3A) Notwithstanding anything contained in the preceding provisions of this section, the Secretary or the Managing Director of the Commission may divulge any information acquired by an officer in the performance of duties, or in the exercise of powers or functions, under this Act to an authority or person if:

(a) the authority or person is a prescribed authority or person for the purposes of this subsection; and

(b) the information is information of a kind that may, in accordance with the regulations, be provided to the authority or person.

(4) An authority or person to whom information is divulged under subsection (3) or (3A), any any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations.

In providing two statements of evidence the HIC noted that the persons to whom the information was disclosed, who were identified as *Peterson* J., Mr. *Walton* and a number of identified members of the staff of counsel assisting and other identified persons and companies were said to be "pursuant to s.130(4) of the *Health Insurance Act* 1973, subject to the secrecy provisions contained in subss.130(1) and (2) of the Act in relation to the use and disclosure of the information contained in this statement".

Whatever be the effect of that suggestion so far as the Commission is concerned, I do not intend to explore it. It is obviously not possible to come to a considered conclusion in relation to an issue which has been raised and not fully contested. Whether the statutory protections afforded by

s.130 were relied on by the HIC to withhold information or, alternatively, in conformity with the statutory intention, remains a question but I need not answer it. It is noteworthy that although Mr. Byrne feels some concerns in this regard, which may be justified, the contract has been let to Kunama whose standards of operation appear generally to be good.

Conclusion

There is sufficient material before the Commission on this topic of the letting of tenders by government departments to warrant the Commission recommending that an audit of tendering practices of government departments be undertaken. The rules governing tendering for the transport and delivery of cash and valuables should be varied to include:

(a) a requirement to hold a business security licence;

(b) a stipulation of and demonstration of compliance with the code of practice and licensing requirements;

(c) a commitment to pay award rates including calculations demonstrating that the rate quoted fully comprehends award payments.

THE PRIVATE SECTOR

A Major Retail Chain

In the course of his evidence Mr. Dyhrberg, the Managing Director of Kunama, trading as ASAP, adverted to his company having withdrawn from a large N.S.W. contract which it had won based on misleading information supplied by the client in the tendering process. After the work was commenced concerns related to safety and security were raised with the directors of the client and also their bankers. A proposal was put to minimise related risks but when the proposal was not accepted Kunama withdrew from the contract. This evidence provoked a detailed analysis of the work to be done under the contract and evidence was called from the security manager of the retailer concerned.

Mr. Dyhrberg's evidence was that the safety of his guards was being compromised under the current system of cash collection which was forcing multiple trips to the banks. There were problems with time delays, both waiting at the retailer's premises and also waiting for service at the bank. There were breaches of the insurance limit. The retailer's evidence was that the proposed methods suggested by ASAP were not capable of being introduced given the franchising arrangements in place without substantial increase in costs. He said "it worked out we had to employ three or four people simply to analyse the bankings". This was disputed by Mr. Dyhrberg.

ASAP continues to work for this retailer in Victoria in spite of these events. Mr. Dyhberg's evidence was that the proposal he made for New South Wales would be consistent with the arrangements operating in Victoria.

Counsel assisting has submitted that it is appropriate to prefer the evidence of Mr. Dyhrberg over the evidence adduced on behalf of the retailer for a variety of the usual reasons. I think this submission has been made out. In general terms I prefer Mr. Dyhrberg's evidence that he determined to withdraw from the operation, which would have been financially satisfactory to him had the safety questions he was concerned been resolved. I note that the withdrawal in New South Wales was effected in spite of the fact that ASAP was working for the retailer in Victoria.

Given that view of the evidence it follows that the work under the contract was not capable of being safely performed by a dedicated soft-skin operation without some revision of the kind ASAP was suggesting.

After the withdrawal of ASAP the retailer let the contract to a soft-skin operator, Ultimate Security Services, the operator of which, Mr. Nagi, failed to attend to give evidence.

A Major Food Retailer

A major food retailing franchise was also the subject of detailed evidence in the context of Mr. Dyhrberg having declined to tender for services which were required but which he considered inherently unsafe. Much was said in the evidence about this. I do not intend to detail it. I think the appropriate course is to conclude that the answer to the types of operations which are required to be supplied to such clients are often fixed basically by reference to costs rather than security considerations. For example, repeated deliveries from business premises to a night safe by a single person, whether uniformed or not is inherently dangerous and it is just this sort of operation which is so often sought and provided.

It is not enough for the client to indicate the nature of the service required and then to expose the service provider to a level of danger which is reflected essentially in the cost structure for the service.

The answer to such requirements must lie in a code of practice for the industry so that it is not permissible for persons to operate by providing services of that kind.

BEFORE THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

No. 1880 **of 1995**

Re: a reference by the Minister for Industrial Relations into the transport and delivery of cash & other valuables industry pursuant to s.345(4) of the *Industrial Relations* Act 1991

Pursuant to section 345(4) of the *Industrial Relations Act* 1991, the Minister for Industrial Relations hereby refers to the Industrial Relations Commission of New South Wales the following terms of reference regarding the transport and delivery of cash & other valuables industry:

1. the adequacy of Government regulation of occupational, health and safety standards in the industry;
2. the adequacy of industrial regulation of the industry in relation to all issues;
3. the adequacy of training and licensing procedures for workers in the industry;
4. employers' employment and recruitment procedures;
5. safety practices and procedures in the industry;
6. the adequacy of equipment used in the industry, including firearms, body protection and the armoured vehicles; and
7. the role of all parties (including clients)in enhancing safety in the industry.

Dated: 18.8.95

Signed:

Minister for Industrial Relations

Reference by the Minister for Industrial Relations

PRINCIPAL ADVOCATES

Mr. M. Walton, with him Messrs. B. Docking and P. Menadue, counsel assisting the Commission.

Mr. F.L. Wright, Q.C., and also Mr. A. Hatcher for the Transport Workers' Union of Australia, New South Wales Branch

Mr. R.J. Buchanan, Q.C., with Mr. I. Neil of counsel for Mayne Nickless Ltd., trading as Armaguard.

Mr. I. Temby, Q.C., with Mr. J. Higgins of counsel for Brambles Security Services Ltd.

Mr. R. Dubler of counsel for the Australian Bankers' Association.

Mr. K. Mapperson, Ms. G. Gregory and Mr. D. Chin for Labor Council of New South Wales and the Australian Liquor Hospitality and Miscellaneous Workers' Union.

Mr. C. Delaney for Australian Security Industry Association Ltd.

Mr. D. Graham for Kunama Securities Pty. Ltd., trading as ASAP Security Services and National Armoured Express.

Mr. A. Barrie of counsel for NSW Police Service and the NSW Commissioner of Police.

Mrs. K. Robertson with Mr. A. Pearce for the Courier and Taxi Truck Industry Association.

Mr. D. Roff of counsel and Mr. M. Baroni for the NSW Road Transport Association.

Mr. M.F. Adams, Q.C., for WorkCover Authority of NSW.

Mr. M. Taylor of counsel for the NSW Minister for Industrial Relations.

Mr. L. Boccabella of counsel for the State of Queensland.

Messrs. R.F. Crow, S.B. Benson and S.G. Wilson, all of counsel for Westfield Ltd.

LIST OF WITNESSES

Date	Name/Title	Ex. No.
31/10/95	Mr. Edmond French, Consultel.	12
31/10/95	Senior Sergeant Gary Dawson, Firearms Registry, NSW Police Service.	16
1/11/95	Mr. Rose, Teacher, Security Installers Course, TAFE,	31
14/11/95	Mr. Jeffrey James Roser, President, ALHMWU, NSW.	34
	Sergeant D.M. Hatte, Policy Academy, NSW Police Service.	35
	Ms. Janet Stewart, General Manager, TAFE Marketing.	36
15/11/95	Sergeant J.C. King, Riverstone Police.	37
	Associate Professor Don Robertson, Faculty of Arts and Social Sciences, University of Western Sydney, Macarthur.	38
	Senior Constable Donald, Firearms Registry, NSW Police Service.	40
16/11/95	CIT1, Unidentified Witness (D Classification)	42 D class
	Mr. I. Toga, Security Operator.	
	Mr. Jeffrey Russell Brooks, Exec. Officer, Property Services Industry Training Advisory Board Ltd.	44
	Mr. Christopher Liam Aylmer, General Manager, Operations, Totalizator Agency Board.	46
	Mr. John Lawrence Bowe, Chief Executive, Officer, NSW Taxi Industry Association.	47
17/11/95	Mrs. Kathleen Patricia Robertson, Courier Taxi and Truck Association	48
	Mr. Leo Terence Scully, Totalizator Agency Board.	49

Date	Name/Title	Ex. No.
17/11/95	CIT 2 - Unidentified witness (D classification)	50,51, 52,53 D class
21/11/95	Mr. Grahame Gowing Leslie, Lecturer, Firearms Course.	54
	Mr. Keith William Spiers, General Operations Manager, Hazelton Airlines.	56
	Mr. Nicholas Paul Barry, Registered Clubs Association.	57
	Mr. James Wilson Robertson, T.A.B. Agent.	58
22/11/95 7/6/96 13/6/96	Mr. Norman Edward Cunningham, General Manager, Armaguard.	59, 62
29/11/95 6/6/96	Mr. Ronald Edward Byrne, National Manager, Brambles.	71 166
29/11/95	Mr. Stephen David Grant, Manager, NSW Motor Registry, Bondi Junction.	74
30/11/95	Mr. Barry Edward Jackson, Jewellers Association of Australia, NSW Branch.	75
30/11/95 6/6/96	Mr. Tony Vincent Sheldon, Assistant Secretary, Transport Workers' Union.	76
19/ 2/96	Mr. Christopher John Carey, Branch Security Advisor,Armaguard.	
21/ 2/96	Mr. Geoffrey Alderton, Branch Manager, Armaguard.	
	Mr. Raymond Maurice Opitz, Centre Manager Warringah Mall.	79
23/ 2/96	Mr. Russell John Dullow, Building Management System Design Engineer and Consultant to Lend Lease.	81
	Mr. David Miles Stray, Manager, Development Branch, South Warringah Council.	82
	Mr. Randall R'aison, Senior Manager, Industry, Commonwealth Bank.	83A, 83B

Date	Name/Title	Ex. No.
26/2/96	Mr. Brian William Stewart, TWU Delegate, Brambles.	88
	Mr. Brian Stewart Lee, TWU Organiser.	89
29/2/96	Mr. William Charles May, Chief Inspector, Tactical Training, Tricorp.	90
	Mr. Larry Circosta, President, Australian Security Industry Association Ltd.	92
	Mr. Brian Francis Wright, Senior Manager, Security Projects, Westpac.	93, 93A
11/3/96	Detective Senior Sergeant Peter Edward Dein, NSW Police Service.	94, 94A
	Mr. Anthony Joseph Kava, Ex-Brambles Supervisor.	100
12/3/96	Mr. Stephen Solomon, Brambles Supervisor.	95
13/3/96	Mr. Robert Richmond Jordan, Asset General Manager, Westfield Ltd.	96
	Mr. Max John Wheelwright, Operational Manager, Westfield Ltd.	97
14/3/96	Mr. Fouad William Youssef, Dispatch Supervisor, Brambles.	95
	Mr. Craig Fogarty, Branch Manager, Brambles.	98, 98A
	Mr. Andrew Peters, Guard, Brambles.	99
18/3/96	Mr. Darren Peake, Branch Manager, Brambles.	100
	Mr. Russell Ian Chandler, National Security Manager, Westpac.	95
	Mr. Leslie Robert Coventry, Reserve Bank.	101
19/3/96	Mr. Glen Cawthorne, Town Planner, Sutherland Shire Council.	102

Date	Name/Title	Ex. No.
19/3/96	Det. Superintendent William G.F. Bull, Commander of the Major Crime Squad, South Region (since retired from Police Force and now employed as the NSW Security Manager, Brambles).	103, 103D
20/3/96	Mr. Paul Charles Rishman, Security and Risk, Property Division, National Australia Bank.	100
	Mr. Roger Dowsett, Botany Bay City Council.	105
	Mr. Graham Leslie Blake, TWU Delegate, Brambles.	106, 106A
	Mr. Kenneth John Roy, Westfield Centre Manager, Leasing Executive.	107
21/3/96 27/3/96	Mr. Douglas John Stanyon, National Security Manager, Brambles.	108 108A 108B
25/3/96	Det. Sen. Const. Shaun Patrick Roach, NSW Police Service.	109
	Mr. Robin Kenneth Sobel, Director, Protea Diamonds.	110
	Ms. Gail Marie Manglesdorf, Administrative Manager, Universal Retailers (Aust.) Limited.	111
	Mr. Alexander Anderson, Lease Production Manager, Nichols and Cook Pty. Ltd.	112
26/3/96	Sergeant Glen William Ross, Detective Inspector, Major Crime Squad, South Region.	113
26/3/96 24/6/96 3/7/96	Detective Snr. Const. Neil Ashley Parker, NSW Police Service.	115 200, 201
27/3/96	Mr. Robert David Foxley, Security Officer, Brambles	116 116A 116B
10/4/96 11/4/96 28/6/96	Mr. John Harold Dyhrberg, Kunama Securities Pty. Ltd.	117-122

Date	Name/Title	Ex. No.
12/4/96	Detective Sergeant Murrary Keith Edwards, NSW Police Service.	123
	Ms. Mary Sylvia Kelly, Kunama Securities Pty. Ltd.	118
	Mr. Matthew Gerard Holden, Signal One Pty. Ltd.	125 125A 125B 125C
15/4/96	Mr. Russell Glen De Lacey, Kunama Securities Pty. Ltd. t/as ASAP	
15/4/96 16/4/96	Mr. Stephen James Moores, Operations Manager, Roden Securities.	126
16/4/96	Senior Sergeant Lupton, NSW Police Service, Surry Hills.	127
	Mr. Peter James Small, Security Guard.	126
16/5/96 17/5/96	Mr. Richard William Jennings, Security Consultant.	129
20/5/96	Mr. Cornelius Kole, AMAK Security Pty. Ltd.	130
	Mr. Allan Raymond McCormick, Wormald contractor, AMAK Security Pty. Ltd.	130
21/5/96	Mr. Nicholas John Grindle, Director, West Lake Security Pty. Ltd.	130
22/5/96 3/6/96	Mr. Meng H'ng, Wormald Security. Mr. H'ng	130 148
23/5/96	Mr. Frederick James Morris, Shopping Centre Manager, Westfield Ltd.	135
	Mr. Maxwell Arthur Wilson, Chief Executive Officer, ASIAL.	136
23/5/96	Mr. Frederick Khoury, Access Security.	137 137A
	Mr. Anthony Joseph Mansour, Employee, Access Security Protection Services.	138

Date	Name/Title	Ex. No.
23/5/96	Mr. Roger William Ridout, Ridout Security.	139 139A 139B
23/5/96	Mr. Malcolm Ross McFarlane, South West Security.	140
23/5/96 24/5/96	Mr. William Joseph Cowell, Ultimate Security.	141
24/5/96	Mr. Kevin John Morgan, Insurance Consultant.	143
24/5/96	Mr. Paul John O'Dwyer, Director, Tamzac Security Pty. Ltd.	144
3/6/96	Mr. Lubo Raskovic, Security Cash Transit, Divisional Holdings.	142
4/6/96	Mr. Stephen Shane Roberts, Danbeckim.	154 157
	Mr. Christopher Dominic Gethen, Capricorn Securities.	156
	Mr. Robert Edward Benson, Private Agent, Rokoga.	155 155A
	Mr. Ronald Maxwell Swan, Principal, Swan's Security Services.	159
	Mr. Martin Reddington, Reddington Security.	159
5/6/96	Mr. William Desmond Hynes, Director, Environmental Services, Parramatta City Council.	163
	Senior Sergeant Lewis, Training Co-ordinator, Firearms & Operational Response Training Unit, Surry Hills.	164
12/6/96	Mr. Christopher Emile Suljic, employee West Lake Security Pty. Ltd.	130
	Mr. Robert David Jeremy, TNT Australia.	170
	Mr. Bruce John Bolam, Managing Director, MidState Security.	171, 171A-D

Date	Name/Title	Ex. No.
13/6/96	Mr. Stephen Michael Beer, National Development Manager, Stockland Contractors Pty. Ltd.	172
	Mr. Robert James Sadler, General Manager, Express Courier Group.	173
14/6/96	Mr. Robert William Bruce, National Security Manager, Armaguard.	174
24/6/96	Mr. Alexander Noel Smith, Managing Director, Security Cash Transit and Postal Services Pty. Ltd.	175 175A
	Mr. Peter John Coleman, Security Manager, Philip Morris Ltd.	179
25/6/96 26/6/96	Mr. Peter Dukes, Marketing Director, Spinnaker Group.	183A 183B 183C
26/6/96	Mr. John Cecil Jenkins, Acting Executive Director, Australian Chamber of Shipping Ltd.	182 182A
	Mr. Warren Leslie Grant, National Operations Manager, On Line Distribution Services.	184
27/6/96	Mr. Drenth, Security Operations Manager, Harvey Norman.	187
	Mr. Sidney John Guinane, Assistant Vice President, Director of Design and Construction, McDonalds Aust. Ltd.	188
28/6/96	Mr. Martin Kenneth Milner, Operations Manager, Brinks Australia.	194
1/7/96	Detective Senior Sergeant Dein, NSW Police Service.	94A
1/7/96	Senior Sergeant McCamley, NorthWest Region Command, NSW Police Service.	196
2/7/96	Mr. Stephen Edward Frost, Security Consultant.	197
3/7/96	Ms. Betty Politsopoulos, District Court Criminal Registry.	199

Date	Name/Title	Ex. No.
3/7/96	Mr. James Wilton Cox, Manager, Regional Operations Division, WorkCover Authority of NSW.	202
4/7/96	Mr. Andrew Heaney, Sales Representative, SouthWest Security.	215
4/7/96	Mr. Michael Frederick Feuerstein, Director, Community Protective Service, aka Feuerstein Pty. Ltd.	216
5/7/96	Mr. Paul Richard Wilson, Dean and Professor of Humanities and Social Sciences, Bond University.	217

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: PETERSON J

DATE: 15 DECEMBER 1995

Matter No. IRC 1880 of 1995

TRANSPORT AND DELIVERY OF CASH AND OTHER VALUABLES INDUSTRY.
Reference by the Minister for Industrial Relations pursuant to s.345(4) of the Industrial Relations Act 1991.

INTERLOCUTORY RULING

The Minister for Industrial Relations has referred to the Commission under s.345(4) of the *Industrial Relations Act*, 1991 ('the Act') a number of questions for report in relation to "the transport and delivery of cash and other valuables industry".

On 31 August 1995 the Commission adopted a preliminary view of the breadth of the terms of reference which was capable of requiring investigation into areas of industry which now, with the passage of a degree of evidence in the inquiry, appear to be outside the intended scope of the terms of reference.

That view specified the industry to include "in house" as well as "fee for service" transport. It is the inclusion of "in house" transport (by which is meant the transport of goods by employees of the owner of the goods, or the owner) which

needs reconsideration, together with the meaning to be afforded to the word "valuables".

Having called for and received submissions concerning these matters, it is now necessary to determine the questions to ensure the proceedings do not expand to an unintended extent.

The submissions of counsel assisting in the inquiry and the parties in this respect were not unanimous. I do not intend to relate the submissions in full but I will refer to what I consider to be the vital aspects.

Counsel assisting, Mr. M.J. *Walton,* has suggested the terms of reference now ought be treated as involving in substance the following:

1. The transport and delivery of cash or valuables by armoured vehicles or security companies or businesses.

2. The transport and delivery of cash or valuables by unarmoured vehicles including persons engaged in escort and monitoring duties therefor.

3. Couriers, taxi trucks and other contract carriers engaged in the transport and delivery of cash and valuables.

4. Persons who transport and/or deliver cash or valuables by other means, for example air, rail, shipping, foot or otherwise.

"Valuables" is defined in counsel's submission as including jewellery, art, drugs, cigarettes, negotiable securities, bullion, precious metal, precious gems, instant lottery tickets, credit/debit transactions, smart cards and casino chips.

It was submitted that paragraph 7 of the terms of reference embraces, in the reference to "clients" of any person coming within the above definition, a wide range of identified activities such as banks, building societies, insurance companies, clubs and hotels, service stations, racing clubs, the Sydney Casino and the Totalizator Agency Board of N.S.W. ('the TAB').

Mr. R.J. *Buchanan* Q.C., with Mr. I. *Neil* of counsel for Mayne Nickless Limited, submitted that the use of the word "industry" in the phrase "transport and delivery of cash and other valuables industry" is a clear indication that more is required than merely the carriage of relevant goods. The phrase should be read as a composite one, referring to operators who offer the service of carrying both cash and other valuables. It was submitted that the terms of reference should not be read to include the provision of general transport services where the carrying of cash or valuables is not the essential ingredient in the provision of the service

but is incidental to the performance of some other activity; the "industry" should not include the carriage of cash or valuables by proprietors, employees or others which is incidental to the operation of the business with which those persons are concerned. Some examples given of this exclusion were the banking of business takings, TAB agents and employees, public servants, bank officers, charitable organisations, bus drivers, rent collectors and take away food deliveries.

Thus it was submitted the inquiry should confine itself to the cash in transit industry ('the CIT industry'), including armoured car operators, established soft-skin operators and any other business which offers services in direct competition with them. It was submitted that the term "cash and valuables" should be restricted to include cash, bullion and negotiable instruments of the kind carried for reward by operators in the CIT industry.

Mr. I. *Temby* Q.C., with Mr. J. *Higgins* of counsel for the other main armoured car operator, Brambles Armoured, adopted the submissions for Mayne Nickless with respect to the scope of the industry with which the inquiry should be concerned. It was submitted that the activities to be investigated should be confined to those which are undertaken on a fee-for-service basis. In relation to "cash and other valuables" the Commission should restrict its inquiries to "cash and valuables which are consigned as such". This would exclude the carriage of such things incidentally or unknowingly or

where security of the cash or valuables to be carried is not an essential requirement.

A slightly wider definition of valuables was submitted as appropriate. It was suggested that not all articles of value such as computers would be within the scope of the phrase but it would cover cash, bullion, negotiable instruments and all cash substitutes, for examples travellers' cheques and plastic credit cards and the like.

Mr. A. *Hatcher* for the Transport Workers' Union of Australia, New South Wales Branch urged the Commission not to confine the industry to that involving "fee for service" considerations. He submitted that the scope should embrace a business where the transport of cash etc. is an important but not predominant function of the business. Otherwise he agreed with the proposals of Mr. *Walton* and Mr. *Temby.*

Ms. G. *Gregory* for the Labor Council of New South Wales and a number of unions including the Australian Liquor, Hospitality and Miscellaneous Workers Union, New South Wales Branch adopted Mr. *Temby's* position. Cash movements which occur within an organisation, building or premises should not be included: they are more appropriately categorised as cash handling arrangements. However, the inquiry should embrace the interface between transport or security operators and other functions covered by other union parties not strictly engaged in the transport function.

Mr. R. *Dubler* of counsel for the Australian Bankers' Association submitted the inquiry should be restricted to fee for service arrangements where cash or valuables are carried as such. Mr. D.R. *Graham* for Kunama Securities Pty. Ltd., trading as ASAP Security Services and National Armoured Express took the same approach.

Mr. C. *Delaney* for Australian Security Industry Association Ltd. supported Mr. *Buchanan's* view of the "industry" but Mr. *Temby's* wider view of "cash and valuables".

Mr. A. *Cunningham*, solicitor for the TAB submitted that it should not be within the terms of reference on any basis, given its use of armoured vehicle operators on very limited occasions. Alternatively, its role should be confined to that of a customer or client of the industry's operators.

Conclusion

As to the phrase "the transport of cash and other valuables industry" I agree with and adopt at this stage the view advanced by virtually all parties that it is and should be confined to persons knowingly engaged in the industry of transporting such goods on a fee-for-service basis. This approach has the affect that the carriage of cash or valuables by an employer or his employees incidentally to the conduct of a business of a different character is excluded. For example, banking business takings by retailers and others; banking of cash by TAB operators or staff; or others who receive and carry cash as an incident of ordinary business or social

activity would be excluded from the primary focus of the inquiry. Such persons may, however, come within the terms of reference as "clients" of the industry. The word "industry" in the context of the phrase seems to me to convey an intention not to cover the activity of for example transporting cash (which could be described without the addition of the word "industry") but the industry of transporting cash etc. It is this approach which justifies the confinement or restriction suggested.

I do not accept that the phrase employed in the terms of reference to describe the industry is a composite one; such a view I consider to be too restrictive. The phrase "transport of cash and other valuables industry" is not one which is known to the parties to have any currency in the industry. The "cash in transit industry" is a phrase used widely to denote the armoured car and soft-skins operators who transport cash. The choice by the Minister of another phrase of obviously wider import suggests an intention to have the investigation look more widely than what is, in effect, the CIT industry.

Further, I consider there to be no good reason to confine attention to operators who offer to carry cash and valuables (of a limited class), leaving unconsidered those who might come within only one arm of the phrase.

This view also encompasses an effective exclusion of persons engaged in the transport of cash etc. NOT consigned as

such. For example, a courier or taxi truck which takes a parcel without knowledge of its contents cannot sensibly be investigated in this context.

As to the definition of "other valuables", I will adopt the broader definition proposed by Mr. *Walton*. While there may be little or no interest in the parties in some aspects thereof for example precious gems, nevertheless their exclusion would seem artificial. If there is no relevant activity in a particular area, its inclusion as a subject of the proceedings should not detain the Commission at all.

These views are formed on the basis of what has been put by those appearing, and in the light of the evidence received so far. Should further developments cast light on the subject matter of this ruling to require some further refinement, I will reconsider the matter as necessary.

The ruling will be in a form which reflects the document marked for identification "MFI6" in the proceedings subject to the following:

(a) Paragraphs 1 and 2, 3 and 4, 5 and 6 shall be merged in the fashion, but not the content, set out on page 2 of these reasons;

(b) The industry will be confined to fee-for-service activities; and

(c) The goods must be consigned "as such".

Counsel assisting will reformulate the description in MFI6 accordingly and file and serve it (on those appearing) by Monday, 5 February 1996.

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: PETERSON J

DATE: 19 FEBRUARY 1996

Matter No. IRC 1880 of 1995

TRANSPORT AND DELIVERY OF CASH AND OTHER VALUABLES INDUSTRY.
Reference by the Minister for Industrial Relations pursuant to s.345(4) of the Industrial Relations Act 1991.

PROCEDURAL RULINGS

1. The Commission is conducting an inquiry pursuant to s.345 of the *Industrial Relations Act* 1991. Section 355 confers on the Commission certain powers under the *Royal Commissions Act* 1923 for the purposes of the inquiry. Parties having been granted leave to appear before the Commission, and persons required to provide information or evidence, and their respective practitioners, should appreciate that the hearing of the Minister's reference is inquisitorial in nature rather than adversarial. I accept that, from their submissions, some of the parties well understand this.

2. It is necessary that the inquiry ensure that all relevant information is placed before it, and in an expeditious manner. The investigation functions of counsel assisting

are critical to this objective. Such an inquiry must, of necessity, deviate from the normal adversarial process. I am confident that those appearing before the inquiry will display the appropriate degree of commonsense and co-operation when dealing with counsel assisting and his staff. However, it must be borne in mind that the coercive and inquisitorial powers conferred on the Commission by the *Industrial Relations Act* 1991 will be resorted to if this becomes necessary. I made this point in the course of counsel assisting's application in chambers which was heard on Monday, 12 February.

3. After reviewing the transcript of the 1995 proceedings, I am concerned that about one-third of last year's hearing time was taken up with procedural matters. This is unsatisfactory and I will take measures to ensure the timely and efficient conclusion of this inquiry and the acquisition of all relevant information needed for my report to the Minister.

4. Accordingly, I propose to make certain procedural rulings which shall operate from today until further notice.

Classification System

5. The classification of documents for confidentiality has substantially contributed to the amount of time devoted to procedural matters during the hearing. Moreover, and as I also noted in the recent chambers' hearing, I have,

with the benefit of the review of documents filed, the hearing of evidence and argument presented by parties in the case, some reservations about the extent to which access to documents has been limited. Counsel assisting has been actively reviewing classifications sought. I shall consider any disputes as to classifications when presented by him, and I shall, if required, review existing confidentiality classifications of evidence when considering those matters.

6. The procedure as to confidentiality classifications shall be as follows:

(a) Counsel assisting will provide statements or documents to a relevant party, together with counsel assisting's classification.

(b) If a party disputes the classification proposed, that party shall nominate its proposed classification to counsel assisting within no more than 48 hours of receipt of counsel assisting's proposed classification. A party's notification of a disputed classification shall be in writing and sent to counsel assisting.

If there is a failure to take this step by a party then the statement or document will be distributed on the basis of counsel assisting's classification.

(c) If notice is given by any party and if no agreement is reached between counsel assisting and that party, the issue will be resolved by counsel assisting arranging a hearing in chambers. The chambers' hearing will involve the party and counsel assisting.

(d) In general, it is my intention, so far as practicable, to limit classification hearings to chambers.

(e) Notwithstanding counsel assisting's best endeavours, a number of parties will have received late on Friday only some materials on the Armaguard Brookvale and Camperdown incidents in a form edited by Armaguard. These documents will have been served with my direction limiting rights of cross-examination. I do not intend to permit any argument concerning those materials or any claimed right of cross-examination to interrupt the presentation of the briefs today. I shall hear any applications regarding these matters at a time convenient to the Commission and subject to suitable arrangements with counsel assisting. I shall hear all such applications in one sitting in chambers. If any party considers any disadvantage arises from this process it shall be considered then and, if necessary, appropriate procedures will be adopted.

(f) In order to avoid any difficulties concerning Brambles' briefs, I expect any classification issues to be resolved by 21 February 1996.

Any witness required for cross-examination

7. As to any statements or documents served hereafter on a party by counsel assisting, if a party requires the relevant witness for cross-examination, the party must no later than one week from the receipt of the statement or document advise counsel assisting that the witness is required for cross-examination.

8. In the case of statements of witnesses previously served but not yet called, parties should give notice of the intention to cross-examine within seven days of today's date. This ruling applies to briefs concerning Brambles at Miranda, Kent Street and Eastgardens.

9. I intend that legal representatives and advocates will have their cross-examination restricted to matters bearing directly on their client's interests. In making any request that a witness be made available for cross-examination, the party concerned should pay strict regard to this limitation.

Any objections as to jurisdiction

10. Any objections as to the scope of the inquiry or other jurisdictional matters are to be noted on transcript by the legal representative or advocate, but without any

further elaboration. Such objections will be dealt with in chambers at a time convenient to the Commission.

Other objections

11. I expect any other objections should be limited. Given the inquisitorial nature of the proceedings, as a general rule I expect legal representatives and advocates to keep objections to a minimum.

Annexure 6

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: PETERSON J

DATE: 23 MAY 1996

Matter No. IRC 1880 of 1995

TRANSPORT AND DELIVERY OF CASH AND OTHER VALUABLES INDUSTRY.
Reference by the Minister for Industrial Relations pursuant to s.345(4) of the Industrial Relations Act 1991.

INTERLOCUTORY RULING

The question with which this ruling is concerned is whether the terms of reference giving rise to these proceedings embrace and require consideration of:

- the regionalisation of policing particularly the Armed Hold-up Squad, and

- sentencing policy with respect to persons convicted of armed hold-ups of armoured vehicles.

The matter is raised by the submissions of Armaguard, which contends positively that the matters are within the terms of reference and should give rise ultimately to recommendations which, in essence, would favour a centralisation of approach leading to more effective policing, and ultimately harsher sentencing of convicted criminals, with

a view to removing actual threats to the safety of armoured vehicle crews.

The terms of reference are as follows:

> "Pursuant to section 345(4) of the Industrial Relations Act 1991, the Minister for Industrial Relations hereby refers to the Industrial Relations Commission of New South Wales the following terms of reference regarding the transport and delivery of cash & other valuables industry:
>
> 1. the adequacy of Government regulation of occupational, health and safety standards in the industry;
>
> 2. the adequacy of industrial regulation of the industry in relation to all issues;
>
> 3. the adequacy of training and licensing procedures for workers in the industry;
>
> 4. employers' employment and recruitment procedures;
>
> 5. safety practices and procedures in the industry;
>
> 6. the adequacy of equipment used in the industry, including firearms, body protection and the armoured vehicles; and
>
> 7. the role of all parties (including clients) in enhancing safety in the industry."

It is the seventh paragraph upon which Armaguard relies as bringing within the scope of the proceedings the questions identified above. These questions require firstly an interpretation of the terms of reference and, secondly, in the event that the terms are held to be sufficiently wide, an exercise of discretion as to whether the subject areas should be investigated. The views expressed by the parties to the proceedings varied on these matters although it ought be recorded that all recognised that the concerns underlying the raising of the issues are concerns of substance.

I have come to the view that the terms of reference may not be read as embracing either the manner in which the police force conducts itself with respect to the collection of intelligence for, and the actual investigation of, offences in relation to armoured vehicles, or sentencing policy and its application by the courts.

The terms of reference are expressed to be in regard to the transport and delivery of cash and other valuables industry. Each of the numbered paragraphs in the terms of reference relate to that industry; indeed six of the seven paragraphs include reference to "the industry". The other paragraph (no. 4) could only be read as a reference to procedures of employers in that industry. The principal question is whether the word "parties" in paragraph 7 may be read to widely as to include the police force and the courts. I accept the submission made by Armaguard that "parties" is meant to be understood as "parties in or to the industry". However, I consider that the class of persons or bodies incorporated in the reference is much more restricted than that contended for by Armaguard. True it is that the Inquiry has received evidence from or about many sources including the Property Services Training and Advisory Body; the security arrangements at Sydney Airport involving the Federal Airports Corporation; industrial tribunals; the role of insurers; the design, development and management of shopping centres; local councils; the Reserve Bank and the WorkCover Authority but this is not an illustration that either the Commission of Counsel Assisting have understood "parties" in the way that

Armaguard contends. Each of the areas identified may, it seems to me, be referable to the obligation to investigate the first six heads in the terms of reference, not only the seventh.

In any event, were that not so, the admission of evidence without objection by Counsel Assisting or without check from the Commission, cannot establish "relevance" finally. The nature of the process of investigation in which the Commission is engaged diminishes the significance of the "relevance" objection to the admission of evidence. Evidence which is admitted either on the periphery or which strictly might be thought irrelevant cannot acquire a status from its admission which causes a need to inquire and report; either the terms of reference include this area or they do not.

Although I would prefer, as I have intimated to the parties on a number of occasions, to err on the side of the admission of the evidence to which objection is taken rather than to exclude it, in the end the Commission will be required to undertake a sifting process to ensure that any conclusions to which it comes in its report and any recommendations it might consequently make, are confined to the terms of reference.

I find myself simply unable to perceive how the seventh paragraph in the terms of reference could be read to extend to the contentious areas. There would be, by such an interpretation, an introduction of the Inquiry through a most

oblique or indeed obscure reference an area requiring such a tremendous effort of investigation that it is inconceivable that it would not have been specified expressly.

I conclude that the terms of reference do not permit the Inquiry to investigate and report upon these contentious subjects.

SCHEDULE OF RECOMMENDATIONS

TERM 1: THE ADEQUACY OF OH&S STANDARDS

1. Section 90 of the Environmental Planning and Assessment Act 1979 should be amended so as to require the consent authority to take into account crime impact or risk including particularly the transport and delivery of cash and valuables in determining development applications.

2. Shopping centre developers and managers, large financial institutions including banks and CIT operators should introduce as soon as possible the recommendations made by Sen. Sgt. McCamley as to existing and new or proposed shopping centres and malls (as well as other major developments).

3. Developers should be required to consider the introduction into all new designs of shopping centres requiring large cash deliveries, clustered financial courts serviced by secure delivery docks and secure access ways. The Environmental Planning and Protection Act should be amended to require this outcome.

4. The industry in consultation with the Registrar should monitor whether these changes have been introduced particularly in relation to existing centres. Where the changes have not been introduced, and where legislation has not already been brought into existence to regulate the matters, appropriate regulations should be made under the Environmental Planning and Protection Act or the Local Government Act to achieve the outcomes recommended by Sen. Sgt. McCamley.

5. Wherever appropriate after a proper security assessment offsite ATMs in shopping centres and malls should be contained within bunkers.

(p.92-93)

6. That there be a lifting of parking restrictions for armoured and overt soft skin vehicles.

(p.96-97)

TERM 2: THE ADEQUACY OF INDUSTRIAL REGULATION

1. That there should be a single award covering armoured car and soft skin operations of the transport industry within the coverage of the Transport Workers` Union of Australia, New South Wales.

(p.102)

2. That persons who perform CIT industry work as subcontractors, whether personally or through a corporation of the family company type, should be deemed to be employees of the entity which would otherwise be the principal.

(p.109)

3. That the Inspectorate of the Department of Industrial Relations target particularly the soft-skin side of the CIT industry and commence a comprehensive audit of award compliance.

(p.110)

4. I recommend that the structure of car crew provide for one person to be designated, and paid as, crew leader.

(p.123)

5. I conclude and recommend that the role of the fourth person ought be able to be performed by a staff supervisory person where required by the employer.

(p.129)

TERM 3: THE ADEQUACY OF TRAINING AND LICENSING PROCEDURES

I. LICENSING

1. That there be provided to the Commissioner of Police a right of appeal to the Industrial Relations Commission of New South Wales in Court Session, constituted by a Full Bench, from a decision of a Local Court granting a security licence over the objection of the Commissioner.

(p.31)

2. The *Firearms Act* 1996 or Regulations should include a licence similar to the Business Pistol Licence (although with tighter controls on storage, maintenance and record keeping than at present, and with heavier penalties for non-compliance).

3. A security guard should not be allowed to access a pistol under his employer's licence unless:

   A. He has the proposed CIT Guard's licence;

   B. He has also obtained a firearms licence IN HIS OWN RIGHT; and

   C. He is an employee rather than a franchisee, licensee or sub-contractor.

(p.149)

4. An application for a CIT guard's licence should be refused if the applicant has:

   A. During the previous ten years, been *convicted* of an offence which would disqualify an applicant for a firearms licence under the *Firearms Act* 1989 (see Section 25(1) of the *Firearms Act* 1989 and Regulation 21 and Schedule 4 of the *Firearms Regulations* 1990);

   B. During the previous five years, been *found guilty* of an offence which would disqualify an applicant for a firearms licence under the *Firearms Act* 1989 (see Section 25(1) of the *Firearms Act* 1989 and Regulation 21 and Schedule 4 of the *Firearms Regulations* 1990);

   C. During the previous ten years, been convicted of any offence involving fraud, dishonesty or stealing;

   D. During the previous five years, been *found guilty* of any offence involving fraud, dishonesty or stealing.

   E. At any time, been *convicted* of an offence referred to at 1 to 4 above where the person was sentenced to a period of imprisonment of more than three months.

   F. At any time, been *found guilty* of an offence involving robbery (armed or otherwise).

   The regulations to the new *Firearms Act* 1996 should contain a list of disqualifying convictions at least as comprehensive and as strict as those contained Schedule 4 of the *Firearms Regulations* 1990.

(p.167-168)

5. Applicants for licences to act as security guards in the CIT sector should have to:

   A. pass psychological and medical assessments to determine whether they are fit to operate in the sector; and

   B. provide references from two people stating that they are fit and proper to work in the industry and handle a firearm.

(p.172)

6. To obtain, keep and renew its CIT Business licence, a business should have to:

   A. Lodge a substantial bond or bank guarantee which will be forfeited if its licence is revoked for breach of one of these conditions;

   B. comply with the SPI Act;

   C. comply with the Code of Practice to be developed for the industry;

   D. comply with the Firearms Act;

   E. comply with the relevant awards;

   F. provide appropriate training to employees;

   G. have the following insurances from a reputable insurer:

      (a) workers' compensation or self-insurer status for every employee carrying out CIT duties;

      (b) death and total and permanent disability insurance of at least $250,000 per employee for injury occasioned by criminal attack while carrying out CIT duties;

      (c) public liability insurance of at least $10 million;

   H. ensure that all individuals employed or engaged to carry out CIT duties (including managers, supervisors and guards) as well as directors hold appropriate licences under the SPI Act (see below);

J. ensure that those whom it engages to carry out CIT duties:

(a) are employees; or

(b) hold CIT business licences;

K. in relation to sub-contractors, franchisees and licencees:

(a) verify that they hold a CIT business licence;

(b) not use them if they do not;

(c) inform the regulatory agency responsible for the security industry (see below) of all such arrangements; and

(d) be responsible for all failures by their franchisees, licensees and subcontractors to satisfy minimum conditions while working for them. This is a two-fold requirement. The principal must exercise supervision and control to ensure that all requirements of the Code of Practices are met, as well as rectify and be responsible for any failures by his franchisees, licensees and sub-contractors to meet the conditions referred to above.

(e) if the license of a franchisee, licensee or sub-contractor is revoked or not renewed show cause why the business's licence should not also be revoked or not renewed.

7. Breach of any of the licence conditions referred to above should be a ground for:

A. Refusing or revoking a licence.

B. Forfeiting the bond or guarantee.

C. Imposing a fine (which can be met out of the bond or bank guarantee).

(p.180-182)

8. All directors and partners of CIT business licence holders should be required to hold a CIT Director's licence (unless they hold another CIT licence)

To obtain, keep and renew a CIT Director's licence, a director or partner should have to satisfy the same probity check as a CIT guard, but should not have to satisfy any other requirements.

9. All persons involved in the CIT industry (including consultants) who:

   A. Perform risk assessments;

   B. supervise road crews;

   C. instruct road crews; or

   D. establish, design, supervise, monitor or review security operational procedures

should have to hold a CIT Manager's licence.

10. To obtain, retain and renew a CIT Manager's licence, a person should have to:

   A. Satisfy the same probity requirements as an applicant for a CIT guard's licence;

   B. complete the mandatory approved training courses within an approved period; and

   C. have a minimum of experience in the industry (unless he or she has completed sufficient training courses to compensate for his or her lack of experience) as may be determined by the industry regulator in consultation with the industry.

11. All people involved in the CIT industry who do not hold a CIT licence and have access to operational information (ie, delivery and collection times, routes, sums collected, etc) should have to obtain a CIT Employee's Permit:

12. To obtain, keep and renew the CIT Employee's Permit, the employee must:

   A. Notify the industry regulator where he or she works; and

   B. satisfy the same probity check as a CIT guard.

(p.186-187)

13. Adjudications of applications for security industry licences should be made by a central body, although local police should retain responsibility for accepting applications and making identity checks.

14. All security industry licences should contain photographs of the licence holder.

(p.196)

15. CIT guards whose firearms licences are revoked or suspended should be required to:

    A. Deliver up their CIT licences so that they can be endorsed "NO FIREARM ACCESS"; and

    B. inform the police, on demand, of the identity of their present employer(s).

16. When a CIT guard has had his firearm's licence cancelled or revoked, the licensing authority should advise all CIT business licence holders of that fact.

(p.204)

17. The licensing authority should ensure that:

    A. CIT Business licence holders keep proper records of who has access to pistols.

    B. Only employees of CIT Business licence holders are given access to pistols.

    C. All CIT Business licence holders who give access to non-employees (ie sub-contractors) are prosecuted.

18. A Security Industry licence should not be renewed unless the applicant for renewal can demonstrate substantial involvement in the industry during the term of the expiring licence. If the applicant cannot show that substantial involvement, the applicant should have to apply for a new licence and satisfy all threshold conditions, including pre-entry training, subject to any exemption granted by the licensing authority.

(p.206-207)

19. Generic licences should be created for the security industry, but special conditions and endorsements should be utilised.

(p.208)

20. The Office of Security Industry Registrar be established within the Firearms Registry to control licensing in the security industry. It should perform the following tasks:

    A. Adjudicate on licence applications;

    B. impose conditions on licences;

    C. monitor and enforce licence conditions (see above) ;

    D. revoke/cancel licences;

    E. establish and oversee industry training, including compliance auditing;

    F. devise, and update from time to time, a code of practice for the industry and, in particular, the CIT sector;

    G. monitor and ensure compliance with the Code of Practice;

    H. adjudicate on breaches of standards;

    J. promote a national approach to security industry licensing and training;

    K. research issues affecting the industry, including technology; and

    L. advise the Commissioner.

21. The Registrar should report to the Commissioner of Police and receive advice from a panel made up of representatives from different sectors of the industry, industry users and the community.

22. The Registrar should have access to police criminal data information services and be assisted by seconded police officers.

23. The Registry should be funded by licence application and renewal fees levied on CIT business licences, and fines.

(p.220-221)

II. TRAINING

1. CIT guards should be trained in the safety procedures for CIT guards referred to in relation to Term 5, and first aid. A large component of that training should be in their pre-entry training course.

(p.259)

2. National Competency Standards should be developed for:

   A. Guards working in armoured vehicles and soft-skin guards.

   B. Managers and supervisors in the CIT industry who design, implement or monitor safety procedures and conduct risk assessments; and

   C. On-the-job training `supervisors' in the CIT industry.

(p.260)

3. New entrants into the CIT sector should be required to complete a pre-entry training course related specifically to the transport and delivery of cash and valuables before obtaining a provisional licence to work in that sector. Where appropriate, specific additional units to a basic course could be constructed for armoured and soft-skin operations.

(p.264)

4. Training courses should conform to a pre-set minimum period of time, having regard to the time it would take a reasonable instructor to teach the course materials to a less-than-average student. This should be a matter specifically dealt with by the licensing authority in conjunction with the industry advisory panel and training providers.

(p.265)

5. When suitable competency standards have been developed for the CIT sector, all existing and prospective training providers should be given provisional accreditation and then allowed sufficient time to obtain approval from the licensing authority to provide pre-entry training courses for:

A. Armoured vehicle operations; and/or

B. Soft-skin operations.

Nobody should be allowed to provide these courses without such approval.

(p.267)

6. The CIT pre-entry training courses should be taught by:

A. TAFE; or

B. private sector training providers working in partnership with TAFE or whose courses have received accreditation from VETAB or the licensing authority; and

C. be subject to regular audits conducted by the licensing authority.

(p.267-268)

7. Providers of pre-entry training courses should be required to:

A. Submit an application to the licensing authority, identifying all persons associated with the management of the agency.

B. All such persons and all prospective instructional staff should be subjected to a probity test.

C. The applicants must provide a curriculum vitae identifying experience in the industry and instructional skills.

D. Applicants satisfying the above test should be granted provisional accreditation subject to the completion of any prescribed industry-based trainer programme.

E. The course providers should then be audited first by way of compliance audit and, secondly, in the context of a review of quality of course delivery.

F. Upon successful completion of the first quality review full accreditation should be granted.

Instructors should have to satisfy the tests identified in paragraphs B, C and E.

8. The licensing authority conduct regular audits of the training providers and their programmes.

(p.270-271)

9. Trainees who undertake pre-entry training courses should be required to pass an examination to successfully complete the course.

10. The licensing authority should consider holding central examinations.

11. Instructors should be required to assess whether trainees undertaking their courses have the appropriate attitude for security industry guards.

12. Regulations should specify:

    A. The maximum class size;

    B. The minimum lighting and floor space;

    C. The minimum standards for personal facilities;

    D. Access to relevant materials; and

    E. The use of appropriate teaching aids

    which those teaching pre-entry and post entry training courses must meet.

(p.272-273)

13. The Goulburn Police Academy should be identified as an example of an appropriate place to conduct pre-entry and post-entry training courses, particularly firearms simulation training courses.

(p.274)

14. Before attending a pre-entry training course for CIT guards, a trainee should have to obtain a criminal history clearance, and satisfy all other probity requirements required to obtain a licence.

(p.276)

14. New security guards in the CIT sector should be issued with 12 months provisional licences after they have:

    A. Completed the pre-entry training course;

    B. completed the firearms training course (where applicable); and

    C. been sponsored by an employer.

15. New CIT guards must successfully complete 12 months of post-entry training before being eligible for a full licence.

16. Sponsoring employers will be responsible for supplying that post-entry training, a large component of which should be 'on-the-job' under the supervision of a qualified supervisor who has appropriate training as required by the structure of the course.

17. Failure to provide adequate post-entry training for new entrants should be a ground upon which an employer's security industry licence can be revoked.

(p.280)

18. The licensing authority should be given ultimate responsibility for security industry training, but with the power to delegate functions to specialist training organisations.

(p.282)

19. CIT guards should be required to undertake, in addition to initial firearms training, a refresher course in firearms training every 6 months.

(p.288)

20. I recommend that the concept of simulation training be further investigated and assessed by the licensing authority in conjunction with the industry.

(p.301)

21. I recommend that armoured vehicle operators should not be permitted supply their staff with batons and handcuffs. Softskin vehicle operators may supply their employees with batons and handcuffs but only after the conduct of proper training and reaccreditation.

(p.303)

TERM 4: EMPLOYMENT AND RECRUITMENT PROCEDURES

1. That access by employers to an applicant's criminal record be limited to the provision of the records to the employer by the prospective employee.

(p.309)

2. That periodic assessments of medical fitnesss be carried out by independent medical practitioners in the context of license issue or renewal.

4. The award should be examined with a view to making provision for a reasonable limitation upon use of casual employees where possible.

(P.314)

3. It is recommended that provision should be made by employers to provide trauma counselling after an employee has been subjected to an attempted or successful robbery.

(p.315)

TERM 5: SAFETY PRACTICES AND PROCEDURES

1. There should be an obligation on business licence holders to establish operating procedures which are relevant to the particular section of the industry. The SOPs should deal with each of the subjects identified relevantly in the Report.

(P.322-323)

2. Whilst there is some substance in Det. Sen. Sgt. Dein's suggestions it is difficult to ignore the balance of overseas opinion and the experience of the companies in this area. The drive-away policy is a matter which should be the subject of a consistent approach throughout the industry and therefore again should constitute a standard operating procedure. This should be formulated consistently with the approach of the Armaguard and Brambles unless the licensing authority is capable of producing some consensus variation after consultation with the industry and the TWU.

(P.330-331)

3. Soft skins operating overtly and with a crew of only one person should be limited to single jobs wherever practicable.

4. Soft skin delivery times and routes taken should be routinely varied in accordance with relevant standard operating procedures, as a means of maintaining a discreet operation.

5. Operations should be discreet wherever possible; that is, no uniforms and no marked vehicles or vehicle decals.

6. On the basis that the operation is discreet only one unarmed crew member should be employed so as to avoid attention and surveillance by offenders, save for jobs which have been assessed through an appropriate risk assessment to be higher risk operations. In these cases two persons should always be used.

(P.339-340)

TERM C: THE ADEQUACY OF EQUIPMENT

1. That body armour be required to be supplied to CIT employees who work across-the-pavement.

2. A security guard should be issued with body armour only after undertaking any appropriate education or training, the content of which should be settled by the Commissioner on the advice of the New South Wales Police Service Weapons Training Unit.

3. There should be immediate consultation between the TWU and employers to decide on the choice between overt and covert body armour. It should be mandatory to wear covert body armour for the whole time engaged in CIT work. It should be mandatory for any crew member to don overt body armour prior to leaving the armoured vehicle and to wear it whilst the crew member is outside the armoured vehicle. In soft-skin operations, whether the body armour be overt or covert, it should be mandatory to wear the body armour at all times while engaged in CIT work.

(p.363-364)

4. The Commission recommends that there be further investigation of the utility of available ATP devices by the licensing authority. This should include questions of cost, viability and other alternative systems. There should be full consultation with the industry parties and a report to the Minister as to whether there should be amendments to the S.P.I. Act, the relevant environmental and planning legislation, or a provision by way of of code of practice.

(p.383-384)

5. Armoured vehicle crews should continue to be equipped with appropriate firearms.

6. Soft-skin operators should only be equipped with firearms where they are able to demonstrate to the

licensing authority that their usage is relevant in the context of their particular operations.

I would consider there to be serious doubt that single person soft-skin deliveries could justify the carriage of a weapon and the risk of the weapon being lost to a robber may well outweigh the value in the weapons carriage. In this respect I am unable to distinguish between discreet or non-discreet soft-skin operations

(p.395)

TERM 7: ROLE OF CLIENTS

1. An audit be undertaken of the practices by government departments in letting CIT contracts.
2. Such government contracts should be subject to the tenderer:

   (a) holding a Business Security Licence;

   (b) compliance with code of practice and licensing requirements;

   (c) compliance with award provisions.

(p.401)