

**IN THE MATTER OF THE *Inquiries Act 2014***

**IN THE MATTER OF A BOARD OF INQUIRY INTO THE COVID-19 HOTEL QUARANTINE PROGRAM**

**WRITTEN SUBMISSIONS OF STERLING PIXXEL PTY LTD (TRADING AS STERLING SECURITY GROUP)**

**INTRODUCTION**

- 1 Sterling Pixxel Pty Ltd (trading as Sterling Security Group) (**SSG**) was a provider of security services at several hotels throughout the operation of the COVID-19 Hotel Quarantine Program, as part of a subcontracting arrangement with Unified Security Pty Ltd (**Unified**). This included, from 11 May 2020, the provision of subcontracted security services for Unified at the Rydges Hotel site.
- 2 SSG was served with the following Notices to Produce:
  - (a) NTP-046 dated 7 August 2020 requiring the production of documents to the Hotel Quarantine Inquiry; and
  - (b) NTP-067 dated 11 August 2020 requiring the preparation and production of a witness statement by Mr Sorav (Sam) Aggarwal, an employee and director of SSG.
- 3 Mr Aggarwal's statement<sup>1</sup> and exhibits were tendered by Counsel Assisting<sup>2</sup> and Mr Aggarwal gave oral evidence as part of the 'sub-contractor panel' on 9 September 2020.<sup>3</sup>
- 4 In closing submissions Counsel Assisting did not recommend any specific findings in respect of SSG. Rather, Counsel Assisting submitted, among other things, that:
 

*[T]he Board is invited by those assisting you to make a firm finding that responsibility for the managing the risk of infection and providing for the safety of those involved in the quarantine program should have remained with the State. No contract should have purported to outsource those matters ...*

*[W]hether or not ultimate responsible (sic) for these things is found to rest with DJPR or DHHS, what can be said is that the State did not take sufficient or sufficien[t] early steps to ensure that the risk of infections at hotels and in hotel environments was appropriately managed. Again, it should have remained with the State. It was just too important a responsibility to be outsourced.<sup>4</sup>*
- 5 SSG respectfully adopts those submissions of Counsel Assisting and supports a finding in those terms.
- 6 In addition to that, SSG also seeks to address two further matters by way of submission.

<sup>1</sup> Exhibit HQI0051, Witness statement of Sorav Aggarwal, SSG.006.0001.0001.

<sup>2</sup> Transcript 2 September 2020, P-704, T:4.

<sup>3</sup> Transcript 2 September 2020, P-702, T:24-35.

<sup>4</sup> Transcript 28 September 2020, P-2224-2225; T:43-44 (P-222) - T10-30 (P-2225).

- 7 The first of these is the general findings that were recommended by Counsel Assisting in respect of certain events that occurred at the Rydges Hotel during the period that SSG was the subcontracted security provider at that hotel (from 11 May 2020),<sup>5</sup> namely:<sup>6</sup>
- (a) the proposed finding that environmental contamination occurred at the Rydges Hotel in part due to poor PPE use, poor training and non-observance of social distancing by frontline staff, including frontline security staff; and
  - (b) the proposed finding that frontline staff at the Rydges Hotel, including frontline security staff, had poor training and education which contributed to the further proliferation of the COVID-19 virus into the community.
- 8 The second is the submission of Counsel Assisting in respect of the witness known as 'Security 16' and the extent to which that witness's evidence should be accepted in respect of an asserted shortage of PPE and also an asserted instruction to preserve PPE by keeping it in his pocket when he went for a break.<sup>7</sup>
- 9 The following submissions address each of these matters in turn.

#### **SUBMISSIONS IN RESPECT OF CONTAMINATION CONTROL AND TRAINING**

- 10 SSG submits that any proper consideration of the issues of contamination control and training must take into account the full context of the work undertaken by SSG at the Rydges Hotel and the nature of the operating environment that was constituted by that 'hot hotel'.
- 11 In doing so SSG again respectfully adopts the following submissions of Counsel Assisting:
- ... On that first weekend it was understood that they [i.e., security guards] would be engaged to support the work of authorised officers who would have the power to detain, and the first documentation prepared by the Department of Jobs, Precincts and Regions over that first weekend reflects that focus ...*
- ... over time it is clear that the Department of Jobs, Precincts and Regions called upon security guards as a more flexible resource that were used to perform a range of non-security related tasks, escorting people for breaks, doing some work in sanitising of facilities, delivering food and parcels, going to the shops to purchase toys, delivering Easter eggs, a whole range of other activities. That gradual function creep, if I might use that expression, for security guards posed a risk for transmission of infection --- infection transmission because we submit that security guards, whatever might have been their proper role in static guarding, were not the appropriate cohort to perform that more expanded role and that suite of roles that were more likely to bring them into contact with people who might be COVID-positive or to move through areas where the infection might be present ...<sup>8</sup>*
- 12 The effect of the "gradual function creep" identified by Counsel Assisting was that it both placed SSG guards at risk at the 'hot' Rydges Hotel and furthermore exacerbated any shortcomings that might have existed in respect of contamination control and training.

<sup>5</sup> Noting that the submissions and the recommended findings do not propose findings directly be made against SSG or refer to SSG by name.

<sup>6</sup> Transcript 28 September 2020, P-2267, T:6-15; P-2236, T:12-22.

<sup>7</sup> Transcript 28 September 2020, P-2256, T:46-47; P-2257, T:1-10.

<sup>8</sup> Transcript 28 September 2020, P-2214-2217; T:27 (P-2214)-T:4 (P-2217).

- 13 It was not open to SSG or its guards to object to the “*gradual function creep*.”<sup>9</sup>
- 14 As it was not open to SSG or its guards to object, the practical effect of the “*gradual function creep*” was that guards were exploited by, in simple terms, being directed to undertake the ‘dirty jobs’ that no one else wanted to do.
- 15 SSG also submits that the extent to which it and its guards were exploited at the ‘hot’ Rydges Hotel, is well demonstrated by the following additional and uncontradicted facts:
- (a) SSG was not informed of the decision made by the Victorian Government on or about 8 April 2020 that the Rydges Hotel was to be established as a ‘hot hotel’ for COVID-19 positive returned travellers;<sup>10</sup>
  - (b) SSG was not told, prior to its involvement at the Rydges Hotel that, on 11 April 2020, the Department of Health and Human Services (**DHHS**) had decided that all hotel staff at the Rydges Hotel, including security staff, would do a tutorial on infection prevention, which was organised by DHHS;<sup>11</sup>
  - (c) the previous subcontractor operating at the Rydges Hotel was stood down on 11 May 2020 and SSG was required to ‘stand up’ a workforce for the hotel by 4pm that day (ie within four hours);<sup>12</sup>
  - (d) prior to 11 May 2020, SSG had not provided services for a ‘hot hotel’ (as at that point, Rydges Hotel was the only ‘hot’ hotel);<sup>13</sup>
  - (e) SSG has never been provided with a copy of any contract between the State and Unified and therefore has never had direct knowledge of who it was (according to that contract) that was responsible for issues of training, PPE and infection control;
  - (f) notwithstanding that it has never seen the relevant contract, SSG followed all directions from Unified for both infection control training and use of PPE, which it understood to have been in conformity with the requirements of that contract and the requirements of the State more generally;<sup>14</sup>
  - (g) despite what would now appear to have been the requirements of the contract (that was never provided to SSG) and despite the witness statement of Ms Kym Peake, Secretary of DHHS, acknowledging DHHS’ awareness of the new security staff at the Rydges Hotel, no specific infection control training akin to that undertaken on 11 April 2020 was undertaken by DHHS for the SSG staff who were by then working at the Rydges Hotel, until after the first diagnosed case in a frontline (non-security) staff member on 26 May 2020;<sup>15</sup> and
  - (h) notwithstanding that there was no obligation for it to do so, SSG paid those of its guards who ultimately became infected by working at the ‘hot’ Rydges Hotel.<sup>16</sup> The

<sup>9</sup> Transcript 28 September 2020, P-2214-2217; T:27 (P-2214)-T:4 (P-2217).

<sup>10</sup> Exhibit HQI0186, Witness statement of Kym Peake, DHS.9999.0009.0001, pg 44, [229].

<sup>11</sup> Ibid. It should be noted that Counsel Assisting’s closing submissions also note the contradictory evidence of Ms Bamert as against that of Ms Peake on this point, namely that the training which occurred on 11 April 2020 is said by Ms Bamert to have been for only general practitioners and nurses at the Rydges Hotel site and did not even include the frontline security staff. See Transcript 28 September 2020, P-2238, T:14-16.

<sup>12</sup> Transcript 2 September 2020, P-709, T:39-46; P-710, T:1-3; SSG.0002.0001.0757; SSG.0002.0001.0767.

<sup>13</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 4, [25].

<sup>14</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 9, [37]-[38].

<sup>15</sup> Exhibit HQI0186, Witness statement of Kym Peake, DHS.9999.0009.0001, pg 45, [234.3].

<sup>16</sup> Transcript 2 September 2020, P-737, T:1-36.

purpose of these payments was so that SSG guards did not have to seek alternative work during the period that they might have been infectious.

- 16 It is the position of SSG that any proper consideration of the issues of contamination control and training at the 'hot' Rydges Hotel must consider these uncontradicted facts and the extent to which they strongly point to the exploitation of SSG and its guards.
- 17 Furthermore, as to the specific conduct identified in the proposed findings recommended by Counsel Assisting, SSG submits the following:
- (a) non-observance of social distancing - SSG submits that this alleged conduct is not relevant to the period of time during which SSG provided security guards at the Rydges Hotel site.<sup>17</sup> No reference to this conduct is made in the Outbreak Management Report for the Rydges Hotel (**Outbreak Management Report**).<sup>18</sup> The only allegation of conduct of this type received by SSG was in relation to conduct allegedly occurring by SSG guards engaged in asset control (rather than hotel quarantine security work) after the Rydges Hotel was closed for a 'deep clean' during June 2020.<sup>19</sup> In that regard, no evidence before the Board supports the suggestion that SSG guards (rather than previous subcontractors) did not observe this infection control requirement and that this would have contributed to the environmental contamination of the Rydges Hotel site<sup>20</sup>;
  - (b) poor PPE use - all PPE used by SSG guards during the operation of the Hotel Quarantine program was provided by Unified, until June 2020.<sup>21</sup> The PPE provided by Unified Security included hand sanitizer, gloves and face masks.<sup>22</sup> As far as SSG was aware all PPE provided by Unified was in compliance with the directions in place from DHHS and DJPR.<sup>23</sup> In addition to this, SSG refers the Board to the finding recommended by Counsel Assisting, that the responsibility for managing infection prevention and control should not have been divested to the head security companies from the State of Victoria; and
  - (c) poor training and education - SSG guards were required to, and did, complete all training that was required of them. That training included the online infection control training requested by the Unified (via the DJPR).<sup>24</sup> Records confirming completion of this training have been provided to the Hotel Quarantine Inquiry.<sup>25</sup> In addition to this, Unified provided an Occupational Health & Safety induction, including in relation to use of PPE, to staff of SSG.<sup>26</sup> PPE guidelines prepared by the DJPR were used by Unified to provide training to the security staff. The completion of PPE training required an acknowledgement and signature from

<sup>17</sup> In particular the references in, for example, the statement of Ms Peake (Exhibit HQI0186), to non-observance of social distancing at the Rydges Hotel site on pg 44, [231] are to be understood as references to the previous subcontracted security guards, and not SSG employees.

<sup>18</sup> Exhibit HQI0104, DHS.0001.0036.0145.

<sup>19</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 14, [72(l)]; Transcript 2 September 2020, P-735, T:42-46; P-736, T:1-7.

<sup>20</sup> In this regard, the timeline of 12 May 2020 for complaints about social distancing at the Rydges Hotel site set out by Ms Peake in paragraph [231] of her statement (Exhibit HQI0186), whilst post-dating the time at which SSG started at the Rydges Hotel site, clearly deals with a series of complaints made about the previous sub-contracted security provider at the site, including allegations of sexual harassment which do not pertain to, and were not made against, SSG. Indeed the timeline set out in Ms Peake's statement refers to the replacement of the previous subcontracted security guards on 12 May 2020, a process which had occurred on the evening prior being 11 May 2020 after the complaints were first raised with Unified.

<sup>21</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 11, [56], [57]-[59].

<sup>22</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 11, [57].

<sup>23</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 8, [33]-[35].

<sup>24</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 9, [37]-[38].

<sup>25</sup> SSG.0002.0001.0003.

<sup>26</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 9, [36].

each security staff member and all the signed original acknowledgment documents are with Unified.<sup>27</sup> Furthermore, references to poor training and education in the Outbreak Management Report prepared in relation to the Rydges Hotel specifically discuss training and education issues only in the context of the cleaning practices at the site, not in relation to infection control training relevant to security guards.<sup>28</sup>

If the training that SSG guards undertook was inadequate, that is a matter for those who designed and implemented the training requirements. SSG guards did all that was asked of them.

There is no evidence before the Board that SSG guards did not observe proper training and education requirements.

- 18 In addition to the above points, SSG also notes that it received positive feedback from the DHHS team leader on site at the Rydges Hotel on 20 May 2020 regarding the performance of the SSG guards after taking over on 11 May 2020.<sup>29</sup> No issues of the kind set out above were identified in that feedback email from DHHS.
- 19 SSG further notes that it staffed over 700 guards on shifts at 13 hotels during the COVID-19 Hotel Quarantine Program and only recorded six infections in staff at the Rydges Hotel site.<sup>30</sup>
- 20 Accordingly, SSG submits that any finding in relation to the contribution to environmental contamination which may have occurred at the Rydges Hotel, or the proliferation of the COVID-19 virus in the community arising from conduct at that hotel, must have regard to these matters.

#### **EVIDENCE OF 'SECURITY 16'**

- 21 As set out above, Counsel Assisting submitted that the Hotel Quarantine Inquiry should accept the evidence of 'Security 16' in relation to the following matters relevant to SSG:
- (a) that after two or three days there was a shortage of PPE masks and gloves at the Rydges Hotel site;
  - (b) that he was only given one pair of mask and gloves for each shift; and
  - (c) that he was instructed to put his mask and gloves in his pocket and to avoid doing so in front of the security cameras at the Rydges Hotel site.
- 22 Counsel Assisting submitted that there was no reason why this evidence should not be accepted by the Board and in doing so sought to place some emphasis on the fact that this witness was not cross examined in respect of these matters.<sup>31</sup>
- 23 With respect to Counsel Assisting (and notwithstanding the absence of any cross examination), this evidence was directly contradicted by other evidence and as such should not be accepted by the Board.

<sup>27</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 11, [62].

<sup>28</sup> DHS.0001.0036.0145, pg 12-13.

<sup>29</sup> See, eg, SSG.0001.0001.0001; Transcript 2 September 2020, P-736, 1-7.

<sup>30</sup> See, eg, Exhibit HQI0051, witness statement of Sorav Aggarwal, pg 4-7, [25].

<sup>31</sup> Transcript 28 September 2020, P-2256, T:46-47; P-2257, T:1-10.

- 24 In that regard, the first source of contradictory evidence is set out in the statement of Ms Kym Peake, Secretary of DHHS that:
- (a) a complaint was received by DHHS about 'overusing' of PPE at the Rydges Hotel (which predated the engagement of SSG, which occurred on the evening of 11 May 2020 after this complaint and other complaints were first received by Unified);<sup>32</sup> and
  - (b) in response, after a PPE audit was undertaken on 12 May 2020 a DHHS Rydges team leader moved all PPE on site to a locked storeroom and left the key with the overnight nurse.<sup>33</sup>
- 25 This timeline directly correlates with the period of two to three days after SSG was engaged to perform security services at the Rydges Hotel site on the evening of 11 May 2020.
- 26 In that regard, instead of there being a 'shortage' of PPE as stated by 'Security 16', the PPE was rather now under the direct control of DHHS and a nurse at the Rydges Hotel site (despite still being supplied by Unified).
- 27 Secondly, contradictory evidence was also provided to the Board by Mo Nagi, an employee of Unified, as follows:

*MS ELLYARD: Mr Nagi, you will be aware, I think, of some evidence given by a security guard who was referred to as Security 16 earlier in these hearings. Are you aware of his evidence?*

*MR NAGI: Yes, correct.*

*MS ELLYARD: And you will recall that he gave evidence of working at Rydges and observing a change in practice where at first there was plenty of PPE and he was encouraged to change his gloves and mask as he needed, but then later on there was a view that it was scarce and he was only given one mask and one pair of gloves. Are you familiar with that evidence he gave?*

*MR NAGI: Yes, correct.*

*MS ELLYARD: Can I ask you, was that the position? Was there relevantly at Rydges a shortage of PPE in May of this year?*

*MR NAGI: No, there was no shortage of PPE at all, we still have ample supply of PPE within that business. The changes that occurred is all guards were wearing PPE through all our hotels. When the changes came through DHHS advising PPE reductions, where the guidelines from DHHS --- once we went into the Rydges, we were advised by the YNA nursing team who then came out and trained our guards, they created packs with ziplock bags and put gloves and masks in that and said to the guards, "No PPE is required unless you come within 1.5m of a guest." So they had packs in their pockets, which was directed by the Department of Human Services and YNA, the nursing team.*

<sup>32</sup> Exhibit HQI0186, Witness statement of Kym Peake, DHS.9999.0009.0001, pg 44, [231].

<sup>33</sup> Exhibit HQI0186, Witness statement of Kym Peake, DHS.9999.0009.0001, pg 45, [234.4], [234.5].

*MS ELLYARD: I'll just unpack that a bit more. So G16 was right when he recalled that there was a change in PPE usage practices at Rydges?*

*MR NAGI: Correct, from the information provided by the Department of Human Services and the YNA nurses.*

*MS ELLYARD: And the relevant change was that there was a directive that, in certain circumstances, floor guards wouldn't need to wear PPE but they could have it in their pockets if they needed it?*

*MR NAGI: Correct. Within a ziplock bag. So it wasn't contaminated anyway. It was sealed in a ziplock bag which was supplied by the YNA team and the Department.*

*MS ELLYARD: G16's evidence was a bit different. It was to the effect that he was given one to wear and he was told to take it off out of sight of the cameras if he went outside and then put it back on again. From your knowledge, did anything like --- was any direction like that given?*

*MR NAGI: No, that's completely incorrect.* <sup>34</sup>

- 28 The evidence given by Mr Nagi corroborates the evidence provided by Ms Peake on this issue, in that there was relevantly:
- (a) no shortage of PPE at the Rydges site;
  - (b) DHHS had made a decision to reduce use of PPE at the site and implemented that with nursing staff from Your Nursing Agency; and
  - (c) that a set of masks and gloves provided by DHHS and nursing staff to frontline staff were provided in a ziplock bag which was to be kept by the PPE user in their pocket, as directed by DHHS and nurses from Your Nursing Agency.
- 29 Relevantly, as set out above, these matters were not at the direction or control of SSG despite the statement of 'Security 16' suggesting that these matters were.
- 30 Thirdly, insofar as an allegation is made by 'Security 16' that the removing of masks and gloves and storage in a ziplock bag was to be done in a way to avoid the security cameras both Mr Aggarwal<sup>35</sup> of SSG and Mr Nagi of Unified gave unchallenged evidence expressly denying that a direction of this type was ever provided to anyone by either SSG or Unified.<sup>36</sup>
- 31 For their part, Counsel Assisting submits that the matters raised by 'Security 16' should be accepted by the Board as:
- (a) 'Security 16' was not cross-examined on these matters; and
  - (b) he was not challenged on his evidence 'at all'.
- 32 With respect, the evidence set out above amply represents challenges to the evidence of 'Security 16' on these matters. It was evidence which was received by the Board during its

<sup>34</sup> Transcript 2 September 2020, P-867, T:15-47, P-868, T:1-30.

<sup>35</sup> Transcript 2 September 2020, P-727, T:20-47, P-728, T:1.

<sup>36</sup> Transcript 2 September 2020, P-867, T:26-47, P-868, T:1-30

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inquiry and cannot be ignored. It is also evidence that was not contradicted, or the subject of any attempt to cross examine.

- 33 SSG submits that the evidence of 'Security 16', at least in respect of these matters, should accordingly not be accepted.

**JUSTIN BRERETON**

**HALL & WILCOX**