



DECISION AND REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a decision to transfer an existing renewable limited licence for the premises known as Wood Oven Pizza, located at 56 Mercer Street, Geelong to Friends of Company Pty Ltd

Commission:

Mr Ross Kennedy, Chair

Mr Des Powell, Commissioner

Dr Dina McMillan, Commissioner

Appearances:

Sergeant Ross Fitzgerald (for the Applicant)

Ramesh Anthonypillai (for the Respondent)

Ms Caitlin McAlister, Counsel Assisting the Commission

Date of Hearing:

8 March 2017

Date of Decision:

18 May 2017

Date of Reasons:

18 May 2017

Decision:

The Commission has determined to vary the decision of the Delegate to impose the conditions as set out at paragraph 37

Signed:

A handwritten signature in black ink, appearing to read 'Ross Kennedy'.

Ross Kennedy

Chair

REASONS FOR DECISION

BACKGROUND

1. On 27 January 2016, Friends of Company Pty Ltd (the **Company**) applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for an existing renewable limited licence numbered 36107965 (the **Licence**) to be transferred to it for the premises known as Wood Oven Pizza, located at 56 Mercer Street, Geelong (the **Premises**), under section 32(1) of the *Liquor Control Reform Act 1998* (the **LCR Act**).
2. The Company sought the Commission to grant the transfer of the Licence to authorise the supply of liquor in conjunction with the supply of meals (the **Original Application**).
3. As at January 2017, the corporate structure of the Company was as follows:
 - (i) the directors were husband and wife, Mr Reny Calestus Anthonypillai and Mrs Umadevi Anthonypillai (**the Directors**); and
 - (ii) the proposed nominee for the Company was the Directors' son, Mr Ramesh Anthonypillai (**Ramesh**).
4. In accordance with section 33(1) of the LCR Act, a copy of the Application was served on the Chief Commissioner of Police and the Licensing Inspector¹ (together referred to as **Victoria Police**) on 27 January 2016. Victoria Police informed a delegate of the Commission (the **Delegate**) on 26 February 2016 that it objected to the transfer of the Licence under section 39(2) of the LCR Act (the **Objection**).
5. Victoria Police submitted that without conditions on the Licence, as detailed in paragraph 6 below (the **Proposed Licence Conditions**), the Company was unsuitable given its nominee, Ramesh, had prior criminal convictions relating to an incident of violence against a male and female that occurred on 30 April 2012. Specifically, Victoria Police informed the Commission that Ramesh had prior convictions for making threats to kill, recklessly causing injury, and a burglary of the victims' home involving intentional destruction of property. Following a plea of guilty in the Magistrates' Court on 1 October 2012, Ramesh was fined \$8,000 and a conviction was recorded.² One of the co-defendants of the offence was Ramesh's older brother, Mr Bernard Anthonypillai (**Bernard**). He was also convicted and fined by the Court for the same offences.
6. Victoria Police submitted that if the Company agreed to the Proposed Licence Conditions, as follows, and amended the Original Application accordingly, the Objection would be withdrawn:
 - (i) Ramesh is to be removed by the Company as the nominee of the Premises' restaurant

¹ As to the meaning of "licensing inspector", see section 3 of the LCR Act.

² Victims' compensation was also ordered to be paid.



- and cafe licence numbered 32251657;
- (ii) Ramesh is not to have any direct or indirect involvement in the supply of liquor at the Premises;
 - (iii) Ramesh is not to be on the Premises except to perform inventory management duties involving the purchase of stock and equipment for the licensee³ and then, only when the Premises are not open to the public;
 - (iv) Bernard is not to have any direct or indirect involvement in the supply of liquor at the Premises; and
 - (v) Bernard is not to be on the Premises at any time the Premises are open to the public.
7. In response to the Objection, on 8 July 2016, the Company confirmed that it agreed to the Proposed Licence Conditions save for the third condition (**Condition (iii)**) as detailed in paragraph 6 above.
8. In submissions to the Commission, dated 8 July, the Company stated that:
- (i) for approximately 30 years, Mrs Anthonypillai has worked at the Premises with her sons, Ramesh and Bernard;
 - (ii) Ramesh's responsibilities at the Premises involve making pizzas as well as assisting with inventory and maintenance work;
 - (iii) the manager of the Premises is Ms Mandeep Kaur. She holds a certificate of completion in the Responsible Service of Alcohol (**RSA**) Program. She will be responsible for managing the supply of liquor at the Premises. Ramesh will not be the nominee on the Licence; and
 - (iv) Condition (iii) would leave Ramesh jobless, particularly given his main work history has been at the Premises.
9. A delegate of the Commissioner (the **Delegate**) decided to grant the Application on 22 December 2016 without the Proposed Licence Conditions and provided reasons for that decision (the **Original Decision**). In summary, the Delegate's reasons were:
- (i) given no action was previously taken by Victoria Police relating to the Licence since Ramesh and Bernard were sentenced in 2012, the Proposed Licence Conditions should therefore not apply; and
 - (ii) there have been no compliance issues with the Premises since the Company took over in 2011.⁴
10. On 12 January 2017, Victoria Police made an application for internal review of the Original

³ The Commission notes that it has not been provided with details as to the meaning of the words, "inventory management duties involving the purchase of stock and equipment for the licensee".

⁴ The Commission acknowledges that the Company took over the Premises in 2011. Up until January 2016, no application for a transfer of the Licence was made by the Company.

Decision (**Review Application**).

11. In submissions to the Commission, dated 28 February 2017, Victoria Police stated that in granting the Licence without the Proposed Licence Conditions, the Delegate had placed undue weight on the absence of previous action by Victoria Police in connection with the Licence.

LEGISLATION AND THE COMMISSION'S TASK

The Commission's internal review power

12. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152 of the LCR Act, the Original Decision is a reviewable decision, and Victoria Police is eligible to apply for review of that decision. The Review Application was made under section 153 of the LCR Act.
13. Pursuant to section 157(1) of the LCR Act, the specific task of the Commission regarding the Review Application is to make a fresh decision that:
 - (i) affirms or varies the Original Decision; or
 - (ii) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.⁵
14. In effect, the Commission on internal review stands in the shoes of the original decision maker and makes a fresh decision in regard to the Review Application.
15. Subject to Division 6 of Part 2 of the LCR Act, the Commission must on review:
 - (i) grant the application (and may do so subject to conditions);⁶ or
 - (ii) refuse to grant the application.⁷
16. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**VCGLR Act**) requires the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.⁸
17. The objects of the LCR Act are set out in section 4(1), which provides:

The objects of this Act are—

 - (a) to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—
 - (i) providing adequate controls over the supply and consumption of liquor; and

⁵ Section 157(2) to (5) of the LCR Act and section 25(3) of the VCGLR Act further prescribe the manner in which the Commission is to undertake internal reviews.

⁶ LCR Act, sections 44, 49 and 158.

⁷ LCR Act, section 44.

⁸ VCGLR Act, section 9(3) and (4). There are no decision-making guidelines relevant to the determination of this matter.



- (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and
 - (iii) restricting the supply of certain other alcoholic products; and
 - (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and
- (b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and
- (c) to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and
- (d) to regulate licensed premises that provide sexually explicit entertainment.

18. Section 4(2) of the LCR Act provides further that:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.⁹

19. Where an application is contested, such as in this instance, the determination of this application is governed by section 47 of the LCR Act. The Commission may under section 47(2) of the LCR Act refuse to grant a contested application on any of the grounds set out in section 44(2) of the LCR Act, with the ground most relevant to this Review Application being that the:

“...applicant or proposed transferee is not a suitable person to hold or carry on business under the licence...”¹⁰

20. There is no statutory definition of “suitable person” in the LCR Act. In the absence of any statutory guidance as to what might be taken into account in assessing “suitability,” the Commission must view it in the context of the particular legislation.¹¹

21. Section 47(3) of the LCR Act provides that the Commission may have regard to any matter the Commission considers relevant and may make any enquiries the Commission considers appropriate. This section also requires the Commission to give the Company and Victoria Police a reasonable opportunity to be heard.

⁹ See further *Kordister Pty Ltd v Direction of Liquor Licensing* [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

¹⁰ The Commission notes in determining this matter, it has also considered each of the grounds set out in section 44(2) of the LCR Act.

¹¹ See *West Heidelberg RSL Sub-Branch Inc v Director of Liquor Licensing* [2006] VCAT 347 at [10] per Megay SM; *Egan v Director of Liquor Licensing (Occupational and Business Regulation)* [2007] VCAT 806 at [23] per Coghlan DP.

22. In addition, pursuant to section 49, the Commission may impose any conditions the Commission thinks fit on the grant of an application, including a condition that the grant is not effective until any requirements specified in the grant have been met.

Conduct of an inquiry

23. Section 34 of the VCGLR Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct any inquiry in any manner it considers appropriate.

24. Relevant provisions governing the conduct of an inquiry by the Commission in this matter are:

- a) section 33 of the VCGLR Act, which provides, inter alia:

- (1) The Commission may conduct an inquiry for the purposes of performing its functions or duties, or exercising its powers under this Act, gambling legislation or liquor legislation.

...

- (3) When conducting an inquiry for the purposes of performing its functions under section 9(1)(a), (b), (c) or (d) the Commission is taken to be a board appointed by the Governor in Council and Division 5 of Part I (including section 21A) of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before the repeal of that Division, applies accordingly.

...

- b) section 25(3) of the VCGLR Act, which provides:

In performing a function or duty the Commission—

- (a) except when exercising a power under Division 5 of Part I of the **Evidence (Miscellaneous Provisions) Act 1958**, is not bound by the rules of evidence but may inform itself in any way it thinks fit;
- (b) is bound by the rules of natural justice. (*Note omitted*)

MATERIAL BEFORE THE COMMISSION

25. The Commission on review had before it, and considered, all of the material before the Delegate at first instance, which included:

- a) the Original Application attaching:

- (i) statutory declaration from Ramesh, dated 25 January 2016, in which he stated that the Original Application was made because the Licence is still in the previous owner's name; and
- (ii) questionnaires signed by the Directors on 21 January 2017;



- b) statutory declaration of Mr Reny Calestus Anthonypillai, dated 25 January 2016, confirming that Bernard has not purchased the Company's business;
 - c) letter from Mrs Anthonypillai, dated 21 March 2017, seeking removal of Condition (iii);
 - d) materials from Victoria Police, undercover of letter dated 27 July 2016, in support of the Objection;
 - e) letter from Mrs Anthonypillai, dated 23 August 2016, seeking the Licence and removal of Condition (iii);
 - f) character reference from Mr Japneet Singh, undated, in support of the Original Application.
 - g) the Licence; and
 - h) letter from Victoria Police, dated 28 February 2017.
26. The Commission on review also had before it the following materials:
- a) email from Ramesh, dated 8 March 2017, seeking removal of Condition (iii); and
 - b) email from Victoria Police, dated 13 March 2017, in support of the terms of the Review Application.

PUBLIC HEARING

- 27. A public hearing was held in relation to the Review Application on 8 March 2017.
- 28. Ramesh attended the hearing, gave evidence and made oral submissions on behalf of the Company.
- 29. Victoria Police confirmed that the basis of the Review Application is that without the Proposed Licence Conditions, the Company is not a suitable person to hold or carry on the business under the Licence.
- 30. The Company confirmed that it was agreeable to the Proposed Licence Conditions save for Condition (iii).

ISSUE FOR CONSIDERATION

- 31. In considering this Review Application, the issue of focus by the Commission is whether the Company is a suitable person to hold or carry on the business under the Licence.

Suitability of the Company

- 32. At the hearing, when questioned in relation to the management and operation of the Company's business at the Premises, the evidence of Ramesh can be summarised as follows:
 - a) he has worked at the Premises for almost seven years;



- b) he is the manager of the Premises, and Ms Kaur is the acting manager;¹²
 - c) approximately 16-17 staff members are employed by the Company to work at the Premises;
 - d) apart from the business under the Licence, the Company has an import and export business, which requires him to travel to India and China every month for about 10 days;
 - e) even though he is regularly overseas, he still frequently contacts the Premises, via the telephone; and
 - f) he would be happy if Ms Kaur managed the supply of liquor at the Premises, and he had nothing to do with it.
33. Victoria Police objected to the suitability of the Company to hold or carry on the business under the Licence without the Proposed Licence Conditions. In summary, the concerns of Victoria Police come from the criminal convictions, as discussed in paragraph 5 above, the scope of Ramesh's work on behalf of the Directors at the Premises, and the potential influence that can be exercised by Ramesh over the Directors in relation to the operation of the business of the Company involving the sale of liquor.
34. The Commission finds that Victoria Police's concerns are justifiable. By imposing conditions on the Licence as outlined in paragraph 37 below (the **Licence Conditions**),¹³ the Commission considers that the potential influence which can be exercised by Ramesh over the Directors in relation to the operation of the business of the Company under the Licence can be minimised. The nature of the Licence Conditions are based on the Proposed Licence Conditions as detailed in paragraph 6 above.¹⁴ The Commission considers that the Licence Conditions are reasonably necessary to ensure compliance by the Company with its obligations as a licensee under the LCR Act.¹⁵
35. Subject to the Licence Conditions as set out in paragraph 37 below, the Commission concludes that the Company is a suitable person to hold or carry on its business under the Licence.

DECISION

36. In light of the Commission's finding, as outlined above, and pursuant to sections 47(3), 49 and 157, as well as the objects of the LCR Act, and in particular, harm minimisation, the Commission

¹² The Commission notes that parts of Ramesh's oral evidence at the hearing differed from the submissions made on behalf of the Company, as set out in paragraph 8 above.

¹³ Section 49 of the LCR Act.

¹⁴ The Commission notes in imposing conditions, it has also considered a restaurant and cafe licence of the Company, numbered 32334382, for the premises known as House of Shalimar, in which the special conditions detailed on the licence are the same as Condition (ii) to (v) of the Proposed Licence Conditions, as detailed in paragraph 6 above.



has determined to vary the Original Decision to impose the Licence Conditions as set out in paragraph 37 below.

Licence Conditions

37. In addition to the existing conditions, the Commission considers it appropriate to place the following conditions on the Licence –

- (i) *Ramesh Anthonypillai and Bernard Anthonypillai must not be a nominee of the licensee within the meaning of “nominee” under the LCR Act;*
- (ii) *Ramesh Anthonypillai is not to have any direct or indirect involvement in the supply of liquor at the premises;*
- (iii) *Ramesh Anthonypillai is not to be on the premises at any time the premises are open to the public;*
- (iv) *Bernard Anthonypillai is not to have any direct or indirect involvement in the supply of liquor at the premises;*
- (v) *Bernard Anthonypillai is not to be on the premises at any time the premises are open to the public.*

The preceding 37 paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy (Chair), Mr Des Powell (Commissioner) and Dr Dina McMillan (Commissioner).