



CASE NOTE B (Liquor – Internal Review) [2020] VCGLR 34 (1 May 2020)

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse to transfer a late night (on-premises) licence.

Commission: Ms Helen Versey, Deputy Chair
Ms Deirdre O'Donnell, Deputy Chair
Mr Des Powell AM, Commissioner

Date of Hearing: 11 December 2019

Date of Decision: 8 January 2019

Date of Reasons: 8 January 2019

Date of Publication: 1 May 2020

Decision: The Commission determined to set aside the decision of the Delegate and grant the application for transfer.



CASE NOTE

1. On 26 July 2019, a delegate of the Victorian Commission for Gambling and Liquor Regulation (**Commission**) refused to transfer late night (on-premises) licence for the premises on the basis that the proposed Transferee was not a suitable person to hold a liquor licence (**Original Decision**) because the proposed nominee made a false declaration on the liquor licensing questionnaire regarding his criminal history, and an individual associated with the proposed Transferee had a criminal history.
2. On 26 August 2019, the Transferee applied for internal review of the Original Decision under section 153 of the *Liquor Control Reform Act 1998* (**LCR Act**) (**Review Application**).
3. In accordance with section 154 of the LCR Act, the Commission notified Victoria Police of the Review Application. Victoria Police confirmed that they maintained their objection on the ground that the Transferee was not a suitable person to hold the licence. During the review process, Victoria Police withdrew its objection to the suitability of the proposed nominee, but submitted that a second individual associated with the Transferee was unsuitable due to his involvement in another regional licensed premises with a significant history of alcohol related violence and disorder and because of the second individual's recent drink driving conviction.
4. On 8 January 2020, the Commission handed down its decision in the Review Application.
5. In relation to the question as to whether the Transferee is not a suitable person to hold the late night (on-premises) licence, the Commission considered four main issues (amongst other factors):
 - the suitability of the proposed nominee of the Transferee
 - whether the first individual is an associate of the Transferee
 - whether the second individual is an associate of the Transferee and his suitability; and
 - the compliance history and risk profile of the premises.
6. With regard to the suitability of the proposed nominee, the Commission considered the circumstances regarding the false declaration and accepted the explanation of the proposed nominee who wrongly assumed that only 10 years of history was applied based on his experience obtaining security licences. Noting that the proposed nominee had successfully managed the premises for four years with very few compliance issues in that time regarding RSA and liquor licensing, the Commission found the proposed nominee was not unsuitable to be involved in the business of the licence the subject of the Review Application.
7. Regarding the suitability of the first individual, the Commission again considered the circumstances regarding their alleged association with the proposed Transferee. The Commission noted that the first individual had been removed from the proposed Transferee company during the review process and, consequently, there was no evidence to suggest that individual was or would be an associate or director of the proposed Transferee.
8. The Commission considered the proposed involvement of the second individual in the business of the proposed Transferee and determined that individual was an associate of the proposed Transferee. However, while noting some issues of potential non-compliance at the other licensed premises the second individual is involved with, there was no evidence of any



enforcement action being taken during the period of the second individual's involvement. Therefore, the Commission did not consider it appropriate in the circumstances to impose a condition prohibiting the second individual from being involved in the management and control of the business of the proposed Transferee or from being on the premises.

9. The Commission ultimately determined that the proposed Transferee was a suitable person to hold or carry on the business of the late night (on-premises) licence for the Premises, having not identified any unsuitable associates. In all the circumstances, and having regard to the objects of the LCR Act in particular the primary object of harm minimisation, the Commission was not satisfied that it was appropriate to exercise its discretion to refuse to transfer the late night (on-premises) licence.
10. The Commission decided not to publish its reasons for decision in this instance due to privacy considerations relating to the Transferee and the associated individuals, but publishes this case note in the interests of transparency.