



Victorian Commission for Gambling and Liquor Regulation

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 grant an application by St Salvador Pty Ltd to transfer an existing Restaurant and Café licence 32302050, for the premises known as Beach 162, located at 160 Beach Street, Frankston.

Commission:

Mr Ross Kennedy, Deputy Chair

Ms Helen Versey, Deputy Chair

Ms Deirdre O'Donnell, Commissioner

Appearances:

Sergeant Ross Fitzgerald for Victoria Police (Applicant)

Mr John Larkins, Counsel for the Licensee (Respondent)

Mr Cameron Warfe, Counsel Assisting the Commission

Date of Hearing:

6 October 2015

Date of Decision:

15 December 2015

Date of Reasons:

15 December 2015

Decision:

The Commission has determined to affirm the decision of Commissioner Powell subject to the conditions outlined at paragraph 72.

Signed:

Ross Kennedy

Deputy Chair



REASONS FOR DECISION

BACKGROUND

1. On 21 January 2015, St Salvador Pty Ltd (**the Licensee**) applied under the *Liquor Control Reform Act 1998* (**the Act**) for a transfer of Restaurant and Café Licence 32302050 (**the Licence**) for the premises known as Beach 162, located at 160 Beach Street, Frankston (**the Premises**).
2. Pursuant to section 33 of the Act, a copy of the transfer application was served on the Chief Commissioner of Police and the Licensing Inspector (**Victoria Police**).
3. On 19 February 2015, the Commission received an objection from Victoria Police on the basis that the Licensee was unsuitable due to having unsuitable directors, who at the time were Mariam Adel Jamil and her daughter, Jamila Dib. Victoria Police contended that:
 - (a) Mariam Adel Jamil had a prior criminal history involving illicit drugs and dishonesty offences; and
 - (b) Jamila Dib was:
 - (i) under investigation regarding a dishonesty offence of providing false information to the Commission; and
 - (ii) unsuitable due to her relationship with an unsuitable associate (i.e. her mother).
4. On 1 May 2015, the transfer application was referred to a single Commissioner to be determined at first instance by way of an inquiry.
5. On 19 June 2015, the Commission held a public hearing of the Application. Both oral and written submissions were made on behalf of the Licensee and Victoria Police. Ms Jamila Dib was the only witness called at the hearing, where she provided both oral and written evidence, and was cross-examined by Victoria Police.
6. On 3 August 2015, Commissioner Powell determined to grant the transfer application (**the Original Decision**), finding that:
 - (a) Ms Jamil was removed as a director of the Licensee with effect from 5 March 2015;
 - (b) the Applicant was open to the Commission imposing a condition that required both the removal of Ms Jamil as trustee of the Jamil Family Trust (in which ownership of the shares of the Licensee is held), as well as requiring that Ms Jamil not participate in the management or control of the Licensee or Premises in any way whatsoever, including in relation to its day-to-day operations;
 - (c) Ms Dib's completion of a statutory declaration dated 9 February 2015, which confirmed settlement and the transfer of ownership and operation of the Premises to the Licensee, was erroneously completed on the basis of advice received from a liquor consultant; and
 - (d) that error was a genuine error and was not intended to mislead the Commission.



7. The Original Decision was made subject to the following conditions:
- (a) *Mariam Adel Jamil must not participate in the management or control of the subject premises;*
 - (b) *St Salvador Pty Ltd must provide the Commission, to its satisfaction, with a Venue Management Plan by 1 October 2015 outlining the –*
 - (i) *structure of the corporate entity;*
 - (ii) *key personnel in management and control of the Premises; and*
 - (iii) *roles and responsibilities that Mariam Adel Jamil will have in the operation of the business.*
 - (c) *Mariam Adel Jamil may not be an associate of St Salvador Pty Ltd within the meaning of “associate” under the Liquor Control Reform Act 1998;*
 - (d) *The trustee of the Jamil Family Trust must not be Mariam Adel Jamil or any legal or corporate entity for which Mariam Adel Jamil is listed as a director or trustee;*
 - (e) *St Salvador Pty Ltd must not cause to allow for ownership of company shares to be held by Mariam Adel Jamil or by any legal or corporate entity for which Mariam Adel Jamil is the director or trustee.*
8. On 31 August 2015, Victoria Police lodged the Application for Internal Review pursuant to section 153 of the Act (**the Review Application**).

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

9. The objects of the Act are set out in section 4(1), which provides:
- (1) *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*
 - (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.*



10. Section 4(2) 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.

11. The Court of Appeal of the Victorian Supreme Court has made it clear in *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325 (**Kordister**) that harm minimisation is a fundamental principle of the Act, and can properly be regarded as “the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions”.¹ However, as was also noted by the Court of Appeal, “this is not to say ... that it [harm minimisation] is to be taken into account, or given such weight, to the exclusion of the other objects”.²

12. Pursuant to section 157(1) the specific task for the Commission with respect to the Review Application is to make a fresh decision—

- (a) that affirms or varies the reviewable decision; or
- (b) that sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.³

13. As a contested application, and pursuant to section 47(3) of the Act, the Commission may have regard to any matter the Commission considers relevant and may make any enquiries the Commission considers appropriate. In circumstances where an inquiry is conducted as part of a decision at first instance, section 47(3A)(c) of the Act specifically permits the Commission to consider evidence of anything said and done at the inquiry conducted as part of the original decision.

14. In effect, the Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision with respect to the transfer application. In so doing, sections 47(2) and 44(2)(a) and (b) of the Act empower the Commission to refuse to grant the transfer application on various grounds including, *inter alia*:

- (a) that the proposed transferee is not a suitable person to hold or carry on business under the licence; and
- (b) that no director of the applicant or proposed transferee has an adequate knowledge of this Act.

¹ See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

² See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

³ *Liquor Control Reform Act 1998*, sub-sections 157(2)-(5) further prescribes the manner in which the Commission is to undertake internal reviews.



15. In relation to the suitability of an applicant, section 44(3) of the Act states:

(3) *Without limiting the reasons why a person is not a suitable person to hold, or carry on business under, a licence or BYO permit, a person is not a suitable person to hold, or carry on business under, a licence or BYO permit if the person or, if the person is a body corporate, any director of the person has, within the preceding 3 years—*

(a) *been convicted, whether in Victoria or elsewhere, of an offence of supplying liquor without a licence or of supplying adulterated liquor or of an offence against any law relating to customs or excise; or*

(b) *engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of this Act.*

16. Section 3AC(1) of the Act defines an associate of a person as:

(a) *a person who –*

(i) *holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the right of the person or on behalf of any other person) in any business of the first person involving the sale of liquor; and*

(ii) *by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or*

(b) *a person who is or will be a director, whether in right of the person or on behalf of any other person, of any business of the first person involving the sale of liquor; or*

(c) *if the first person is a natural person, a person who is a relative of the first person, other than a relative –*

(i) *who is not, and has never been, involved in any business of the first person involving the sale of liquor; or*

(ii) *who will not be involved in the business the first person proposes to conduct as a licensee or permittee.*

17. Section 3AC(2) of the Act defines a *relative* as:

(a) *the spouse or domestic partner of the person; or*

(b) *a parent, son, daughter, brother or sister of a person; or*

(c) *a parent, son, daughter, brother or sister of the spouse or domestic partner of the person.*

18. Section 3AC(2) of the Act defines a *relevant financial interest* as:

(a) *any share in the capital of the business; or*

(b) *any entitlement to receive any income derived from the business; or*

(c) *any entitlement to receive any payment as a result of money advanced.*

19. Section 3AC(2) of the Act defines a *relevant power* as:

any power, whether exercisable by voting or otherwise and whether alone or in association with others –

(a) *to participate in any directorial, managerial, or executive decision; or*



- (b) to elect or appoint any person as director.

MATERIAL BEFORE THE COMMISSION

20. The Commission on review had before it, and considered, all of the information, material and evidence before Commissioner Powell at first instance, which included:
- (a) Application to transfer an existing licence or permit, dated 21 January 2015 with supporting documents;
 - (b) Further application documents under cover of email dated 10 February 2015, attaching:
 - (i) Declaration – Right to occupy the premises signed by Ms Jamil and Ms Dib dated 17 January 2015; and
 - (ii) Statutory declaration of Ms Dib dated 9 February 2015;
 - (c) Liquor licensing application objection report, dated 20 February 2015;
 - (d) Written submissions of the Licensee dated 4 March 2015, 19 March 2015, 16 April 2015, 5 June 2015, 19 June 2015, 24 June 2015 and 6 July 2015;
 - (e) Statement of Ms Jamila Dib, dated 5 June 2015;
 - (f) Correspondence from Ben Stokes of GKRA Pty Ltd and ASIC company extract, both dated 24 June 2015;
 - (g) Written submissions of Victoria Police dated 16 March 2015, 31 March 2015, 28 May 2015, 5 June 2015, 10 June 2015 and 2 July 2015; and
 - (h) Memorandum from Inspector Ben Considine, dated 22 April 2015.
21. The Commission on review also had before it the following:
- (a) the Decision and Reasons for Decision of Commissioner Powell dated 3 August 2015;
 - (b) the Review Application dated 31 August 2015, attaching additional information in support; and
 - (c) at the request of the Commission, a written submission and supporting documents filed by the Licensee after the hearing to demonstrate compliance with the conditions of the Original Decision.

Submissions of Victoria Police

22. The submissions of Victoria Police in support of the Review Application mainly concerned matters arising as a result of the inquiry that was conducted as part of the Original Decision. At that time, Ms Dib was cross-examined by Victoria Police in relation to an alleged false declaration of right to occupy dated 17 January 2015 and an alleged false statutory declaration pertaining to the settlement of the business, dated 9 February 2015.
23. Victoria Police submitted that Ms Dib had intentionally provided false and misleading information



to the Commission, where Ms Dib had signed the declarations confirming legal possession of the Premises by the Licensee and the completion of business settlement. However, Victoria Police indicated that the Licensee did not have the right to occupy the Premises when the declarations were executed, nor had settlement of the business occurred.

24. Victoria Police sought review of the Original Decision on the basis that the Commission at first instance failed to address the issue regarding the declaration of right to occupy in its Reasons for Decision and it ought to have considered that document in determining the suitability of Ms Dib as a director of the Licensee.
25. Victoria Police argued, after considering the false declarations and the evidence that was adduced at first instance, that the Commission ought to have found that Ms Dib was an unsuitable director. Specifically, Victoria Police stated that while Ms Dib confirmed that she possessed accounting qualifications and had prior experience in managing businesses, her explanation that she had failed to fully understand the contents contained within the declarations was contradictory in nature.
26. It was put to Victoria Police during the hearing for the Review Application that although the declaration of right to occupy was dated 17 January 2015, the Commission records confirm that the document was in fact submitted together with the statutory declaration on 10 February 2015. In effect, it appeared to the Commission that the Licensee had withheld the declaration of right to occupy and had only submitted it after the date of settlement, at which time the transfer of lease was also signed by the Licensee.
27. Victoria Police maintained that regardless of whether the document was withheld, Ms Dib had made the declaration at a time when the information contained in the document was factually incorrect.
28. Victoria Police further submitted that the Commission erred in its Original Decision by finding that Ms Jamil was not an associate of the Licensee. Pursuant to the definition of associate contained at section 3AC(1)(c) of the Act, an associate includes a relative of a licensee (being a natural person) who is involved with the licensed premises, hence, the Commission ought to have found that Ms Jamil was an associate for the purposes of the Act. Additionally, although the provision relates to licensees who are natural persons, Victoria Police contended that the definition should also apply to relatives of a body corporate. To do otherwise would, according to Victoria Police, render the definition meaningless, as unsuitable associates would be able to circumvent the legislation by making family members the directors of licensee companies.
29. Victoria Police also indicated that, to its knowledge, Ms Jamil remained as the trustee of the Jamil Family Trust (**the Trust**) and in effect, she had the ability to exercise control over the financial interests of the Licensee.
30. Finally, Victoria Police submitted that the Licensee had contravened section 108(1)(a) of the Act,



where the Licensee had supplied liquor other than in accordance with the Licence and the Act. Victoria Police indicated that the Licensee had failed to file with the Commission a venue management plan by 1 October 2015 as required by the special conditions on the Licence, while continuing to supply liquor on the Premises.

Licensee submissions

31. Counsel for the Licensee made submissions at the hearing and called upon Ms Dib to provide oral evidence in response to the matters raised by Victoria Police.
32. In summary, the Licensee submitted that the Review Application was lodged to the Commission at the end of the period permitted under section 153(2)(a)(i) and (ii) of the Act and a stay of the Original Decision was not sought by Victoria Police. Consequently, a significant period of time has lapsed since the Premises was taken over by the Licensee and it would be difficult, if not impossible, for the Commission to reverse the Original Decision.
33. Counsel for the Licensee submitted that the false declarations and the overall confusion in the transfer process was mainly a result of substandard advice received by Ms Dib and Ms Jamil from their previous consultants.
34. Further, a previous agreement with the vendor for the Licensee to assist with the operation of the Premises during a trial period resulted in Ms Dib's mistaken belief that the Licensee had the right to occupy the Premises. To add to this confusion, the transfer of lease for the Premises had been executed by the parties and only remained to be finalised by the vendor.
35. At the time the statutory declaration was signed by Ms Dib, the outstanding amount of \$780,000 for the sale of business had also been transferred to the vendor's account and, as such, Ms Dib mistakenly thought that settlement had been completed.
36. While Ms Dib had made honest mistakes during the transfer process, Counsel for the Licensee submitted that she did not intend to deceive the Commission. Counsel for the Licensee reiterated the finding in the Original Decision that Ms Dib did not intend to mislead the Commission and according to the Licensee, this finding should be upheld in determining the Review Application.
37. Counsel for the Licensee submitted that, regardless of whether the declaration of right to occupy was specifically referred to in the Original Decision, the issue was put before Commissioner Powell at first instance, and it is unlikely that it was omitted as a consideration. Counsel for the Licensee stated that it is unnecessary for written reasons to address every piece of material or information before a decision-maker and as such, this ground for review as submitted by Victoria Police was invalid.
38. It was further submitted that Ms Jamil was not an associate of the Licensee given the definition provided in the Act. Ms Jamil might be deemed as an associate if the Licence was transferred to



Ms Dib as a natural person, however the Licence was transferred to a body corporate. Additionally, Counsel for the Licensee contended that Ms Jamil's ability to legally influence the business had since been removed.

Evidence of Ms Jamila Dib

39. Ms Dib clarified at the hearing that Ms Jamil's duties at the Premises included assistance with waitressing. She stated that all the relevant paperwork necessary to remove Ms Jamil as the trustee of the Trust had been signed off and provided to her accountant, Mr Ben Stokes of Bizally Small Business Advisers and Accountants.
40. During cross-examination by Victoria Police, Ms Dib was questioned as to whether Ms Jamil had been formally removed as the trustee. Ms Dib stated that she believed Ms Jamil had been removed as the relevant paperwork was provided to Mr Stokes approximately seven to eight days ago. Ms Dib further confirmed that the Licensee had supplied liquor at the Premises prior to the submission of the paperwork.
41. It was put to Ms Dib by the Commission that the Licensee had failed to comply with the conditions of the Licence which were imposed as a result of the Original Decision, specifically the requirement for the Licensee to provide a venue management plan to the Commission by 1 October 2015. In response, Ms Dib advised that the plan was now finalised and would be provided to the Commission shortly. Although a similar venue management plan was drafted in June this year, Ms Dib advised that the delay in submitting the final plan was due to the distraction of her becoming aware of the Review Application.
42. Ms Dib further explained that although the paperwork relating to the amendment of the Trust structure was submitted to Mr Stokes approximately a week prior to the review hearing, the arrangement for Ms Jamil to be removed as the trustee commenced immediately after receiving notification of the Original Decision. Ms Dib stated that a reasonable amount of time was required for Mr Stokes to organise the necessary paperwork and time was also required for her to review the documents before sign off.
43. Finally, when questioned in relation to how she proposed to ensure that the Licensee remained compliant with its obligations under the Licence and the Act, Ms Dib confirmed that she had engaged a "nominee", Ms Alisha Porteli, to manage the Premises. Ms Porteli has a great deal of experience in managing licensed premises and has been employed as a floor manager at the Premises. Ms Dib advised that Ms Porteli would be her point of call on all matters relevant to the Premises.



Further submissions

44. Following the hearing, the Licensee provided additional submissions to the Commission to address the matters that were raised regarding non-compliance of the Licence conditions. Specifically, the Licensee filed the following documents with the Commission:

- (a) Letters from Bizally Small Business Advisers and Accountants dated 6 and 12 October 2015, confirming that:
- (i) on 14 January 2015, Ms Dib became the sole director of the Licensee;
 - (ii) on 16 January 2015, the two issued shares of the Licensee were transferred from Ms Jamil to the Trust, where 100% of the share capital of the Licensee is owned by the Trust;
 - (iii) on 1 August 2015, Ms Dib replaced Ms Jamil as the sole principal of the Trust;
 - (iv) on 31 August 2015, Ms Dib replaced Ms Jamil as the trustee of the Trust;
 - (v) the primary beneficiaries of the Trust are Ms Dib, Ms Jamil, Mr Marcus Dib and Mr Carlos Dib. Ms Dib as the trustee has the sole power to determine income distributions of the Trust on an annual basis; and
 - (vi) despite the Deed of Amendments regarding the changes to the structure of the Trust being signed and lodged with ASIC on 24 September 2015, the change to the principal and trustee of the Trust took effect on 31 August 2015;
- (b) Venue Management Plan outlining the expected roles and responsibilities of the key personnel within the business. Relevantly, the following structure was outlined in the document:

Director / Manager (Jamila Dib)

- Payroll Duties
- Accounts Payable and all other accounts management
- Inventory Control
- All Banking and reporting
- BAS
- Weekly Meeting with my Floor Manager and Head Chef
- Overlooking all Roistering [sic]
- Dealing with all suppliers directly
- Customer Service

Floor Manager (Alisha Porteli)

Alisha has worked in this business as a manager for over 3 years and i [sic] intend to maintain her role and she will be a key person for the business as a support role. Alisha knows the business better than anyone else with her current position as a manager.

Alisha will also be my nominee to handle any issues in relation to alcohol consumption and situations that arise in my absence from the business.

Alisha hires and manages all floor staff responsible for rosters and general management of service.



Mariam Jamil Duties

- Creating and handling all Function packages and enquires [sic].
- Assisting with Kitchen Rosters
- Ordering and pick up of all Fresh produce from Seaford Market daily
- Organizing and overlooking all equipment and garden maintenance and laundry
- Kitchen assistance when required
- Assistance on floor/ waitress when required
- Running the dessert department

(c) Statement by Ms Dib dated 14 October 2015, advising of the steps that were taken by the Licensee to comply with the conditions on the Licence. In her statement, Ms Dib confirmed that:

- (i) she was first notified in relation to the grant of the transfer application on 3 August 2015, however, she had instructed Mr Stokes to arrange for the amendment to the Trust structure prior to this on 1 August 2015;
- (ii) Mr Stokes was advised of the Licence conditions via telephone on the day after the grant of the application, at which time, Mr Stokes advised her that he was on annual leave and would ensure compliance with the Licence conditions upon his return;
- (iii) during the period when the relevant documents were prepared to amend the structure of the Trust, Mr Stokes provided her with progress updates and she was content that Mr Stokes was working hard to ensure compliance with the Licence conditions;
- (iv) she was advised by Mr Stokes that all relevant documents would be prepared by 31 August 2015 and the final documents would be provided to her via mail for execution;
- (v) due to a change to the business name of Mr Stokes' firm from GKRA to Bizally Small Business Advisers and Accountants, she misplaced mail that was sent to her by Mr Stokes;
- (vi) she was only aware that the documents were posted to her on 5 September 2015 after she followed up with Mr Stokes via telephone;
- (vii) the documents were then signed on 22 September 2015 and posted back to Mr Stokes immediately;
- (viii) she is now content that all requirements of the Licence conditions have been complied with; and
- (ix) in relation to the venue management plan, she acknowledges that it was a requirement for it to be filed with the Commission on 1 October 2015 and it was her intention to do so, however, she was distracted by receipt of the Review Application on 16 September 2015.



FINDINGS ON MATERIAL FACTS

45. The Commission has considered the submissions and evidence put to it prior to, during, and after the hearing of the Application.

Suitability of Ms Jamil

46. To the extent that Victoria Police maintain their objection on the basis that Ms Jamil remains a director or associate of the Licensee, the Commission finds that Ms Jamil:
- (a) has been removed as a director of the Licensee pursuant to the ASIC records;
 - (b) has ceased to have any ownership or interest in the shareholding of the Licensee, either directly or by way of a trust;
 - (c) will only be involved in the business of the Licensee as an employee in a role with responsibilities that do not include participation in the management and control of the business of the Licensee;
 - (d) can no longer exercise influence with respect to the financial and legal decisions of the Licensee.
47. As a result of the above findings, the Commission is satisfied that Ms Jamil is not currently a director of the Licensee as defined under section 3 of the Act, nor is Ms Jamil an associate of the Licensee as a director under section 3AC(1)(b) of the Act.
48. The Commission is also satisfied that Ms Jamil is not an associate of the Licensee under section 3AC(1)(a) of the Act on the basis that she no longer holds a *relevant financial interest* in the Licensee or is able to exercise *any relevant power* in the business of the Licensee within the meaning of the Act.
49. For clarity, the Commission considers that Ms Jamil cannot be an associate of the Licensee under section 3AC(1)(c) as that sub-section specifically relates to associations where the first person is a natural person. As the first person (i.e. the Licensee) is a body corporate, this sub-section is not relevant to this consideration.

Suitability of Ms Dib

50. The Commission must determine the suitability of Ms Dib, as sole director of the Licensee. It was the submission of Victoria Police that Ms Dib is an unsuitable person and, as the sole director of the Licensee, it followed that the Licensee is an unsuitable person to hold a licence and the Commission should refuse the Application under section 44(2)(a) of the Act.
51. The Commission considers that the suitability of Ms Dib is raised on three bases:
- (a) the making of false representations by way of a declaration of right to occupy dated



17 January 2015 and a statutory declaration dated 9 February 2015;

- (b) her association with an unsuitable person, namely her mother Ms Jamil; and
- (c) the alleged unauthorised trading of the Licensee following notification of the Original Decision on 3 August 2015.

52. In the Review Application, Victoria Police submitted that the Original Decision did not mention or consider the false declaration of right to occupy dated 17 January 2015 signed by both Ms Jamil and Ms Dib. It is argued that this, along with the statutory declaration dated 9 February 2015, is a relevant consideration when considering the suitability of the Licensee and its sole director, Ms Dib.
53. The Commission is not satisfied that Ms Dib sought to wilfully deceive or mislead the Commission through the provision of either the declaration of right to occupy or the statutory declaration. From the evidence put to the Commission by the Licensee, the Commission accepts that Ms Dib placed clear reliance on the advice provided by the liquor consultant and that she held a reasonable belief in the accuracy of the documents at the time they were submitted to the Commission.
54. The Commission also considers that the provision of the two distinct declarations does not indicate a pattern of behaviour that negatively impacts on the suitability of Ms Dib in this case. The Commission finds that the two declarations are sufficiently linked in their subject matter and the nature in which they were created by Ms Dib and provided to the Commission that the explanation (as previously accepted by the Commission) applies equally to each of the declarations.
55. Ultimately, the Commission finds Ms Dib's evidence of how the documents were completed and submitted to the Commission provides a reasonable explanation in all the circumstances. As such, the Commission does not accept that Ms Dib is an unsuitable person by reason of the creation or provision of the false declarations as part of the Transfer Application.
56. With regard to the association with an unsuitable person, the Review Application submits that while the Original Decision determined that Ms Jamil was not an associate of the Licensee under section 3AC(1)(a) or (b) of the Act, the Original Decision did not consider the impact of Ms Jamil as an associate of Ms Dib pursuant to section 3AC(1)(c) of the Act.
57. The Commission finds that Ms Jamil is the mother of Ms Dib and is involved, and will be involved, in the operation of the business of the Licensee as an employee. Ms Jamil is therefore an associate of Ms Dib pursuant to section 3AC(1)(c) of the Act and her association is relevant in the consideration of Ms Dib's suitability as the sole director of the Licensee.
58. However, the Commission finds that the impact of that association and the potential influence that can be exercised by Ms Jamil over Ms Dib has been minimised by the restrictions and controls in place as outlined in paragraph 46 above.
59. Despite the above finding, and to mitigate against any residual risk that Ms Jamil could attempt



to influence Ms Dib in relation to the operation of the business of the Licensee, the Commission can impose appropriate conditions to oblige the Licensee and any responsible person (e.g. a director of the Licensee or nominee under the Licence) to prevent the occurrence of any such influence in the management and control of the business.

60. The Commission concludes that the association of Ms Jamil to Ms Dib does not result in a finding that Ms Dib is an unsuitable director of the Licensee.
61. Finally, it was submitted by Victoria Police at the hearing that the Licensee had been in breach of section 108 of the Act since the time of the Original Decision as it had been supplying liquor not in accordance with the conditions of the Licence as imposed by Commissioner Powell. The Commission has considered this submission in terms of whether the alleged breach of licence conditions could impact on the suitability of the Licensee and/or its sole director, Ms Dib, during this time.
62. The Commission finds that the Licensee gave practical effect to the conditions in a reasonable time following the Original Decision dated 3 August 2015, and has since given legal effect to those arrangements in compliance with its licence conditions. As such, the Commission does not consider that trading by the Licensee since the time of the Original Decision has an impact on the suitability of the Licensee or Ms Dib.
63. Given the above findings in respect of the suitability issues raised by Victoria Police against Ms Dib, the Commission determines that Ms Dib is a suitable person to be a director of the Licensee.
64. In light of the Commission's findings in relation to Ms Jamil and Ms Dib, the Commission is satisfied that the Licensee is a suitable person to be the holder of a licence for the purposes of section 44(2)(a) of the Act.

Adequate knowledge of the Act

65. Finally, the material before the Commission raises the question, for the purpose for section 44(2)(b)(iv) of the Act, as to whether Ms Dib, as the sole director of the Licensee, has an adequate knowledge of the Act.
66. The evidence of Ms Dib before the Commission was that she placed significant reliance on her floor manager, Ms Porteli, in relation to ensuring the Licensee complied with its obligations under the Act and the licence.
67. During her oral evidence before the Commission, Ms Dib referred to the floor manager as her "nominee". The Commission notes that there is a defined position and role of "nominee" under the Act and, in relation to the licence, the current nominee appointed under section 54 of the Act is Ms Dib. As a result, while it is open for Ms Dib to rely on the floor manager to assist in the Licensee's compliance under the Act, Ms Dib remains responsible and liable for the actions of the



Licensee operating under the licence and in accordance with the Act.

68. The Commission has considered the level of experience of Ms Dib, the availability of guidance from her floor manager, the business operations of the Licensee and the risk-profile of the licence type relevant to this application. Taking into account all of the circumstances, the Commission is satisfied that Ms Dib, as the sole director of the Licensee, has an adequate knowledge of the Act for the purposes of section 44(2)(b)(iv) of the Act.
69. Despite this, the Commission encourages Ms Dib to take all necessary and reasonable steps to ensure that she develops an enhanced understanding of the Act in order to ensure that both she and the Licensee maintain strict compliance with their respective obligations under the Act, regulations and the licence on an ongoing basis.

DECISION

70. Accordingly, having regard to the findings made by the Commission as outlined above, the Commission has determined to affirm the Original Decision and transfer the licence to the Licensee subject to the conditions outlined in paragraph 72 below.
71. The Commission considers that the conditions imposed as part of the Original Decision remain appropriate, save for original condition (b) which has been complied with by the Licensee and is no longer required as a condition of the licence.
72. The conditions that the Commission considers appropriate to be placed on the Licence are –
- (a) *Mariam Adel Jamil must not participate in the management or control of the subject premises;*
 - (b) *Mariam Adel Jamil may not be an associate of St Salvador Pty Ltd within the meaning of "associate" under the Liquor Control Reform Act 1998;*
 - (c) *The trustee of the Jamil Family Trust must not be Mariam Adel Jamil or any legal or corporate entity for which Mariam Adel Jamil is listed as a director or trustee;*
 - (d) *St Salvador Pty Ltd must not cause to allow for ownership of company shares to be held by Mariam Adel Jamil or by any legal or corporate entity for which Mariam Adel Jamil is the director or trustee.*

The preceding seventy-two (72) paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy (Deputy Chair), Ms Helen Versey (Deputy Chair) and Ms Deirdre O'Donnell (Commissioner).