



# Victorian Commission for Gambling and Liquor Regulation

## REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for review of a decision made on 7 December 2012 to refuse an application made to the Victorian Commission for Gambling and Liquor Regulation by Eastern Promenade Pty Ltd to refuse a restaurant and café licence.

**Commission:** Miss Gail Owen, Deputy Chairman  
Mr Des Powell, Commissioner  
Mr Robbie Kerr, Commissioner

**Date of decision:** 7 May 2013

**Date of reasons:** 7 May 2013

**Decision:** That the decision of the Commission's Delegate is set aside and the liquor licence is granted as set out in paragraph 24 of the Reasons for Decision below.

**Signed:**

A handwritten signature in black ink, appearing to be 'Gail Owen', written over a dotted line.

**GAIL OWEN**

Deputy Chairman



## REASONS FOR DECISION

### BACKGROUND

1. On 10 August 2012, the Victorian Commission for Gambling and Liquor Regulation (**Commission**) received an application from Eastern Promenade Pty Ltd trading as Promenade Kitchen (the **Applicant**), for a restaurant and café licence, for the premises located at 120 Brougham Street, Geelong (the **Application**).
2. The Application was completed by the then director of the Applicant, Mr Douglas Constable.
3. Mr Constable disclosed on the Application that he has been convicted of the offence of obtaining financial advantage by deception in 1997 at Prahran Magistrates' Court, for which he received a good behaviour bond.
4. By notice dated 14 September 2012, a Victoria Police liquor licensing inspector objected to the Application on the basis that the Applicant was not a suitable person to hold a liquor licence (the **Original Objection**).
5. The Original Objection stated that the grounds for the objection were that Mr Constable was unsuitable to hold a liquor licence as the director and nominee of the Applicant due to prior convictions for dishonesty and traffic offences, outstanding Sherriff warrants and the failure to disclose full particulars of his prior convictions on the Application.
6. There was no objection received from the Council.
7. On 23 October 2012, a copy of the Original Objection was served on the Applicant.
8. The Applicant was invited by a delegate of the Commission (the **Delegate**) to provide a submission in response to the Original Objection.
9. The Applicant did not lodge a submission with the Commission in response to the Original Objection.
10. By letter dated 7 December 2012, the Delegate refused the Application on the basis that the Applicant was unsuitable to hold a liquor licence due to the failure of Mr Constable to disclose his full criminal history and the Original Objection.
11. On 17 December 2012, the Applicant lodged an application for an internal review of the decision of the Delegate.
12. On 28 February 2013, Victoria Police lodged a submission outlining a statement of reasons for the Original Objection, in accordance with Commission directions made on 18 February 2013.



13. In March 2013, the Applicant removed Mr Constable as the sole director, secretary and shareholder and appointed Ms Carol Newby to those positions.
14. By notice dated 11 March 2013, a Victoria Police liquor licensing inspector objected to the Application on the basis that the Applicant was not a suitable person to hold a liquor licence due to the failure of the Applicant to provide a declaration of associates subsequent to the change in director (the **Second Objection**).
15. In a statutory declaration made on 30 April, Ms Newby declared that the Applicant has no associates as defined in the *Liquor Control Reform Act 1998* (the **Act**).<sup>1</sup>
16. In a notice dated 2 May 2013, a Victoria Police liquor licensing inspector stated that there was no longer an objection to the Application.

#### **THE LEGISLATION AND THE TASK BEFORE THE COMMISSION**

17. Pursuant to s 152 of the Act, the decision of the Delegate to refuse to grant the Application under s 49 of the Act is a reviewable decision and the Applicant is an eligible person to apply for an internal review of that decision.
18. Section 157 of the Act provides that, on internal review, the Commission must make a fresh decision that affirms or varies the reviewable decision or sets aside the reviewable decision and substitutes another decision that the Commission considers appropriate.

#### **MATERIAL BEFORE THE COMMISSION**

19. The Commission on review had before it, and considered, all of the information, material and evidence before the Delegate.
20. The Commission also had before it:
  - the Statement of Reasons of the Delegate, dated 7 December 2012;
  - the Questionnaire of Ms Carol Newby signed on 14 March 2013;
  - an Australian Securities and Investment Commission company search of the Applicant dated 24 April 2013 listing Ms Newby as the sole director, secretary and shareholder of the Applicant; and
  - the Statutory Declaration of Ms Newby made on 30 April 2013 declaring that the Applicant has no associates as defined by the Act.

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<sup>1</sup> Section 3AC of the Act



## **DECISION AND REASONS FOR DECISION**

21. The decision of the Delegate to refuse the Application was based on the Applicant being unsuitable to hold a liquor licence due to the failure of Mr Constable to disclose his full criminal history and the Original Objection.
22. The Commission is satisfied that the Applicant has varied the Application to remove the basis for the Delegate's decision, in particular, Ms Newby is now the sole director, secretary and shareholder of the Applicant and Ms Newby is not associated with the former director of the Applicant, Mr Constable.
23. Victoria Police withdrew its objections following the change to Ms Newby as the director of the Applicant.
24. The Commission has determined to set aside the decision of the Delegate and to grant the Application for a restaurant and café licence with the following trading hours:
  - (a) Monday to Saturday – between 7am and 11pm;
  - (b) Sunday – between 10am and 11pm; and
  - (c) Good Friday & ANZAC Day – between 12pm and 11pm.

**The preceding document is a true copy of the Reasons for Decision of Miss Gail Owen (Deputy Chairman), Mr Des Powell (Commissioner) and Mr Robert Kerr (Commissioner).**