

## CASE NOTE E (Liquor – Internal Review) [2021] VCGLR 36 (19 October 2021)

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for the internal review of a decision to refuse to grant a restaurant and cafe licence.

**Commission:**

Ms Deirdre O'Donnell PSM, Deputy Chair

Ms Danielle Huntersmith, Commissioner

Mr Des Powell AM, Commissioner

**Date of Hearing**

3 September 2021

**Date of Decision:**

30 September 2021

**Date of Publication:**

19 October 2021

**Decision:**

The Commission determined to affirm the decision of the Delegate and refused to grant the application for a restaurant and cafe licence.

## Case note

1. On 29 April 2021, a delegate of the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) refused to grant an application for a restaurant and cafe licence, on the basis that the Applicant (a body corporate) was not a suitable person to hold a liquor licence given its association with a person who was an undischarged bankrupt and had demonstrated a disregard for compliance with regulatory requirements (**Person A**) (**the Original Decision**).
2. On 25 May 2021, the Applicant lodged an application for an internal review of the Original Decision (**Review Application**) under section 153 of the *Liquor Control Reform Act 1998* (**LCR Act**).
3. In accordance with section 154 of the LCR Act, the Commission notified Victoria Police and the local Council of the Review Application. Victoria Police and the Council did not provide any further information to the Commission.
4. On 30 September 2021, the Commission handed down its decision in the Review Application.
5. In relation to whether the Applicant is a suitable person to hold a restaurant and cafe licence, the Commission considered three main issues (amongst other factors):
  - (a) The suitability of Person A;
  - (b) The Applicant's association with Person A; and
  - (c) The probity and credibility of the evidence given on behalf of the Applicant.
6. With regard to the suitability of Person A, the Commission found the Applicant had not provided any new evidence under the Review Application to assure the Commission that appropriate steps would be taken to ensure Person A would not be managing the Applicant or the proposed liquor business while Person A remained an undischarged bankrupt. The Commission also noted Person A was not present at the hearing and therefore the Commission did not have the opportunity to question Person A about any outstanding issues regarding Person A's ability to comply with regulatory regimes. On this basis the Commission found that the Applicant did not sufficiently address the issue regarding the suitability of Person A.
7. Regarding whether Person A was an associate of the Applicant, the Commission was informed a few days prior to the hearing that Person A would no longer be associated with the Applicant due to Person A's spouse suddenly resigning from their position as a director of the Applicant. At the hearing the Commission was informed that Person A's spouse had not only suddenly resigned as a director but that all shares in the company would be transferred to the sole director, without any form of payment or division of business assets that were held by the Applicant. The sole director of the Applicant stated there was no written documentation or agreement regarding the change in directorship and ownership for the company as all transactions were undertaken on a basis of trust and friendship, between the three individuals associated with the Applicant.
8. The Commission raised that the application for a liquor licence had stated that Person A would be in day-to-day management of the proposed licence premises and that Person A would continue working at the proposed licence premises. While the sole director of the Applicant advised that Person A had not been managing the business for some time, he was unable to provide a clear or consistent response as to when Person A had ceased managing the business. The sole director of the Applicant did not appear to have a good understanding of business operations. The Commission found the Applicant had not provided sufficient credible evidence about how Person A's current role in the business would be structured to ensure they did not have any role in directing, managing, or making executive decisions with respect to the Applicant and the business.
9. Regarding the overall evidence that was given on behalf of the Applicant, the Commission found it to be inconsistent, and lacking probity and credibility. Based on all the material before it, the Commission was not satisfied that the Applicant was presently a suitable person to hold, or carry on business under, a liquor licence.

10. Consequently, the Commission determined to affirm the decision of the Delegate and refused to grant the application for a restaurant and cafe licence.
11. The Commission decided not to publish its reasons for decision in this instance due to privacy considerations relating to the Applicant and the associated persons, but publishes this case note in the interests of transparency.