

# Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by EO for an internal review of a decision by a delegate of the Victorian Gambling and Casino Control Commission made on 6 May 2022 under section 47 to refuse a joint application by EO and IG on 2 January 2022 under section 32 to transfer the restaurant and cafe licence and associated renewable limited licence from the licensee, IG, to EO for premises located in Melbourne's south-east

**Commission:**

Ms Danielle Huntersmith, Chair  
Mr James O'Halloran, Commissioner  
Ms Susan Timbs, Commissioner

**Appearances:**

Mr Daniel Sala, Counsel for EO (instructed by Theo Magazis & Associates)  
Sergeant Walter Soto on behalf of Victoria Police  
Ms Caitlin McAlister, Counsel Assisting the Commission

**Date of Hearing**

**11 October 2022**

**Date of Decision:**

**29 December 2022**

**Date of Reasons:**

**29 December 2022**

**Decision:**

The Commission has determined to affirm the decision of the Delegate and refuse the application for transfer of the licences

**Signed:**



**Danielle Huntersmith, Chair**

## Preliminary issue

1. These reasons for decision include references to significant personal information. Accordingly, the Victorian Liquor Commission (**the Commission**) considers it appropriate that these reasons are not to be published without appropriate redactions.

## Background

2. On 2 January 2022, EO, jointly with IG, applied to the Victorian Gambling and Casino Control Commission (**the VGCCC**)<sup>1</sup> under section 32(1)(a) of the *Liquor Control Reform Act 1998* (**the LCR Act**)<sup>2</sup> for the transfer of a Restaurant and Cafe Licence and an associated Renewable Limited Licence (**the Licences**)<sup>3</sup> for premises located in Melbourne's south-east (**the Premises**) from IG to EO (**the Original Application**).<sup>4</sup>
3. The current licensee of the Premises is IG.<sup>5</sup> The premises serves meals to eat-in, take-away or for home-delivery.
4. As part of the Original Application, EO was required to complete and lodge a separate Liquor Licensing Questionnaire (**the Questionnaire**)<sup>6</sup>. In completing this Questionnaire, EO, in the section headed "Other Names", responded "no" to the question: "*Have you ever been known by any other names?*"<sup>7</sup>
5. Further in completing the Questionnaire in the section headed "Criminal History" she responded "no" to the question: "*Have you ever been found guilty of any offence in Australia or overseas (including findings without conviction and good behaviour bonds not including traffic offences)?*"<sup>8</sup>
6. On 4 January 2022, a delegate of the VGCCC provided a copy of the Original Application to the Chief Commissioner of the Victoria Police under section 33(1).
7. In response, on 24 January 2022, the Licensing Inspector Cath Wilkins advised that she objected to the Original Application on behalf of the Chief Commissioner of the Victoria

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<sup>1</sup> Before 1 July 2022, the Victorian Gambling and Casino Control Commission was the regulator of liquor in the State of Victoria.

<sup>2</sup> All references to legislation are references to the LCR Act unless stated otherwise.

<sup>3</sup> A renewable limited licence would no longer be required due to changes made to section 9A of the LCR Act in 2022 allowing holders of a restaurant and cafe licence to supply limited amounts of alcohol for take-away/home delivery with a meal.

<sup>4</sup> EO's name at birth was her maiden name and, by virtue of her marriage on 16 January 2021, she changed her name.

<sup>5</sup> As to the meaning of "licensee", see section 3 of the LCR Act.

<sup>6</sup> Liquor Licensing Questionnaire, Liquor Control Reform Act 1998 (Reference: CD/16/6750).

<sup>7</sup> The Original Application and the Questionnaire were entered online.

<sup>8</sup> EO also answered "No" to the question, "*Have you ever been convicted of any offence in Australia or overseas (not including traffic offences)?*".

Police (together referred to as **Victoria Police**).<sup>9</sup>

8. The objection by Victoria Police was made on the basis that EO was unsuitable to hold a liquor licence due to:
  - (a) failing to disclose that she had been previously known by her maiden name; and
  - (b) failing to disclose her previous criminal history recorded under her previous name, which included dishonesty offences and multiple driving offences, which Victoria Police believes shows a disregard for road safety and a difficulty in complying with a regulatory scheme.
9. On 5 April 2022, Sergeant Walter Soto for Victoria Police further submitted:
  - (a) in completing the transfer application EO did not include her surname prior to her marriage and used an email address which was under her maiden name which Victoria Police believes indicated that EO was not acting honestly;
  - (b) by EO classifying the offence of drive whilst suspended as a 'mere traffic offence' and that it was therefore not required to be disclosed by her in completing the application Questionnaire was an incorrect approach;<sup>10</sup>
  - (c) by EO signing the Questionnaire before the Nationally Coordinated Criminal History Check Certificate (**NCHC**) was provided to her, she cannot argue that she relied on the NCHC when completing the Questionnaire;
  - (d) irrespective of the NCHC content, it is noted that EO should have taken action to set the record straight before lodging the Questionnaire;
  - (e) little weight should be given to character references submitted by EO as they make no reference to her criminal history;
  - (f) EO has apparent difficulty in complying with regulatory schemes over many years; and
  - (g) for the foregoing reasons, it would not be in the public interest to transfer to EO a liquor licence and it would undermine public confidence in the liquor industry.
10. On 6 May 2022, a delegate of the VGCCC (**the Delegate**) refused to grant the Original Application under section 47. The reason for the decision was that the Delegate was not satisfied that EO was a suitable person to hold the Licences (**the Original Decision**) based on the reasons submitted by Victoria Police.

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<sup>9</sup> As to the meaning of "licensing inspector", see section 3 of the LCR Act.

<sup>10</sup> Victoria Police submissions, dated 5 April 2022, p7. The Commission has also observed the contents of the submissions made on behalf of EO, dated 25 February 2022, by Theo Magazis & Associates.

## Application for Internal Review

11. On 3 June 2022, EO made an application for internal review of the Original Decision (**the Review Application**). Victoria Police confirmed that they maintained their objection on the ground that EO is not a suitable person to hold the Licences.
12. On 8 August 2022, Mr Theo Magazis, solicitor on behalf of EO, submitted:
  - (a) EO was not attempting to mislead in any way and clearly included in the Original Application an email address under her maiden name;<sup>11</sup>
  - (b) “traffic offences” were not required to be disclosed;
  - (c) while the dishonesty offences were required to be disclosed, they were not disclosed because the NCHCs did not disclose them;<sup>12</sup>
  - (d) when asked whether she has ever been charged with drink driving or driving whilst disqualified, EO answered “no” because the NCHC did not disclose such offences and she considered there was a distinction between “drive whilst suspended” and “drive whilst disqualified”;
  - (e) EO’s ‘traffic history’ is an irrelevant factor for consideration;
  - (f) whether, or not, a person is a bad driver is of no relevance in considering suitability under the LCR Act; and
  - (g) there is no requirement that a referee have personal knowledge of EO’s ‘offence history’. Rather, a reference is largely limited to a referee’s actual knowledge of the applicant’s management of the subject venue.
13. On 3 October 2022, Mr Daniel Sala of Counsel on behalf of EO further submitted:
  - (a) the Original Application was made because IG has sold the business to EO, who has had a full-time managerial role at the Premises for the past two years;
  - (b) information contained within the references made on behalf of EO relevantly address matters included within the objects of the LCR Act and show that she provides a culture of responsible consumption of alcohol and ensures that the Premises are free from amenity complaints;
  - (c) the references from the referees are relevant as to what they have witnessed in their dealings with EO at the Premises. It is irrelevant whether they consider a person who has a previous history with the law is suitable to hold a liquor licence;
  - (d) while EO may have been careless in filling out the Original Application, this is not sufficient to warrant a refusal of the Original Application;

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<sup>11</sup> Submissions from Theo and Magazis & Associates, dated 8 August 2022, p1.

<sup>12</sup> Mr Magazis said EO had obtained two NCHCs: Submissions, dated 8 August 2022, p 2.

- (e) EO had utilised her maiden name in her email address on at least eight occasions and her maiden name came across in the NCHC. Her failure to disclose her offending was not a deliberate act. She applied for an NCHC and thereby opened herself up to scrutiny. If she had wanted to hide her offending, she wouldn't have applied for an NCHC; and
- (f) the Court outcome for the dishonesty offences involved a finding without conviction and there has been no repeat of the offending since the Court outcome some eight years ago.

## Legislation and the Commission's task

### The Commission's internal review power

- 14. Legislative changes were enacted from 1 July 2022 which transferred the necessary functions and powers to conduct reviews of applications previously made to the VGCCC to the Commission.
- 15. Division 2 of Part 9 governs internal review applications. Under section 152, the decision made by the Delegate in the Original Decision is a reviewable decision and EO is an eligible person to apply for a review of that decision. The Review Application was made pursuant to section 153.
- 16. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
  - (a) affirms or varies the reviewable decision; or
  - (b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.<sup>13</sup>
- 17. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Original Application. In this case, the Commission must decide whether to:
  - (a) grant the Original Application, and if so, whether to do so subject to conditions;<sup>14</sup>
  - or

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<sup>13</sup> Section 157(2) to (5) of the LCR Act further prescribes the manner in which the Commission is to undertake internal reviews.

<sup>14</sup> LCR Act, sections 44, 49 and 157.

- (b) refuse to grant the Original Application.<sup>15</sup>

## Determination of a contested application

18. Where an application is a contested application, pursuant to section 47(1):

*Subject to Division 3, the Commission must, after the period for making an objection under Division 5 has expired, including any extension of time granted for making an objection, grant or refuse a contested application.*

19. Section 47(2) provides that the Commission may refuse to grant a contested application on any of grounds set out in section 44(2) and section 44(3) applies accordingly.
20. Section 44(2)(a) provides the following ground for refusal –

*in the case of a grant or transfer of a licence or BYO permit, that the applicant or proposed transferee is not a suitable person to hold or carry-on business under the licence or BYO permit.*

21. Section 44(3) states that:

*Without limiting the reasons why a person is not a suitable person to hold, or carry on business under, a licence... a person is not a suitable person to hold, or carry on business under, a licence ... 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.*

22. The Commission also considers it appropriate to have regard to the suitability of any persons who are associates of an applicant. Section 3AC provides a definition of associates being:

(1) *For the purposes of this Act, an **associate** of a person (the **first person**) is—*

- (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 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*

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<sup>15</sup> LCR Act sections 44 and 157.

- (b) a person who is or will be a director,<sup>16</sup> 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.

(2) In this section—

**relative**, in relation to a person, means—

- (a) the spouse or domestic partner of the person; or
- (b) a parent, son, daughter, brother or sister of the person; or
- (c) a parent, son, daughter, brother or sister of the spouse or domestic partner of the person;

**relevant financial interest**, in relation to a business involving the sale of liquor, means—

- (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;

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable 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 a director.

23. Further, section 3 provides a definition of “director”, being:

- (a) any person occupying or acting in the position of director of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act.

24. Section 47(3) provides that before granting or refusing a contested application under subsection (1), the Commission may:

- (a) ...have regard to any matter the Commission considers relevant; and
- (b) make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.

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<sup>16</sup> As to the meaning of “director”, see section 3 of the LCR Act.

## Exercising the internal review power

25. Section 172U(3)(b) requires the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines in respect of the regulation of liquor issued by the Minister. The objects of the LCR Act are set out at section 4(1) and provide that:

*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.*

26. Section 4(2) further provides 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.<sup>17</sup>*

27. In exercising the internal review power, the Commission:

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<sup>17</sup> See further *Kordister Pty Ltd v Director 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).



- (a) must consider all the information, material and evidence before the original decision maker<sup>18</sup>; and
  - (b) may consider further information or evidence.<sup>19</sup>
28. The Commission considers that while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of a contested application is ultimately to be made pursuant to section 47(1) and section 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.
29. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.

## Conduct of an inquiry

30. Section 44(4) provides that the Commission may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate. Section 172W(3) provides that the Commission is not bound by the rules of evidence but may inform itself in any manner it thinks fit and is bound the rules of natural justice.

## Material before the Commission

31. The Commission on review had before it, and considered, all the materials received by the Delegate. The Commission also received and considered the following materials:
- (a) Original Decision and Reasons of the Delegate, dated 6 May 2022;
  - (b) Review Application, received 3 June 2022;
  - (c) submissions of Mr Theo Magazis, solicitor, on behalf of EO, dated 8 August 2022;
  - (d) email communication of Sergeant Walter Soto on behalf of Victoria Police, dated 9 August 2022;
  - (e) email communication of Sergeant Soto, dated 25 August 2022, confirming the charge against EO for allegedly making a false statement was withdrawn by

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<sup>18</sup> LCR Act, section 157(2).

<sup>19</sup> LCR Act, section 157(3).

Victoria Police and enclosing a statement of Sergeant Robert Hickey, dated 21 August 2022;

- (f) email communication of Sergeant Soto, dated 26 August 2022, enclosing Traffic Camera Office material and confirming incorrect information contained in part within the statement of Sergeant Hickey, dated 21 August 2022;
- (g) email communication from Mr Magazis on behalf of EO, dated 31 August 2022, in response to the additional materials lodged on behalf of Victoria Police;
- (h) submissions of Mr Daniel Sala, barrister, on behalf of EO, dated 3 October 2022;
- (i) email communication of Mr Magazis on behalf of EO, dated 21 October 2022, enclosing submissions of Mr Sala, dated 21 October 2022, bank statement, dated 1 April 2021 to 30 April 2021, and email from Mr GS regarding part of the Premises, dated 16 October 2022;
- (j) submissions of Sergeant Soto, received 1 November 2022;
- (k) submissions of Mr Sala on behalf of EO, dated 9 November 2022; and
- (l) submissions of Sergeant Soto, dated 11 November 2022.

## Hearing

- 32. A hearing was held in relation to the Review Application on 11 October 2022 (**the Hearing**).
- 33. EO, IG and a referee, DK, gave oral evidence in support of the Review Application. Mr Sala of Counsel appeared on behalf of EO. Sergeant Walter Soto appeared on behalf of Victoria Police.<sup>20</sup>

## Reasons for decision on review

### Issues for determination on review

- 34. In deciding whether to exercise its discretion to affirm, vary or set aside the Original Decision and in turn grant or refuse the Original Application that is the subject of the Review Application, the key issues to be determined by the Commission are:

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<sup>20</sup> The Commission notes that Sergeant Hickey attended before the Hearing commenced, at the request of EO's legal representation, but left given that EO's legal representation indicated that they no longer required him to be made available for cross-examination.

- (a) whether EO is a suitable person to hold or carry on business under the Licences for the purposes of section 44(2)(a);
  - (b) whether EO has adequate knowledge for the purposes of section 44(2)(b)(iii);
  - (c) whether there is sufficient evidence as to EO's right to occupy the Premises; and
  - (d) having considered the previous issues, whether the Original Application should be granted or refused, having regard to the objects of the LCR Act, particularly the primary object of harm minimisation.
35. Each of these issues is discussed in turn.

## *Suitability*

36. The primary issue for the Commission to determine is whether EO is a suitable person to hold or carry on business under the Licences for the purposes of section 44(2)(a) and the Commission notes that the Original Application was refused by the Delegate on the basis that EO was not a suitable person to hold the Licences.
37. It is also noted that the sole ground for Victoria Police making their objection to the Original Application was based on suitability pursuant to section 44(2)(a).
38. Victoria Police submitted to the Commission a LEAP report dated 13 January 2022. It records that a person with EO's maiden name (born 11/02/1988), who has been confirmed as the applicant in this Review Application, between 2009 and 2016, had convictions for nine separate offences, including one in 2009 for stating false name or address, and three findings of guilt in 2014 for dishonesty offences where a fine was imposed.<sup>21</sup> Victoria Police also submitted that EO has an extensive traffic history.<sup>22</sup> The last court appearance for EO was in 2016 resulting in imposition of a conviction and an aggregate fine for the offence of failing to answer bail and two charges of drive whilst authorisation suspended which is apparent in both the LEAP report and the NCHC.
39. Victoria Police submitted that this indicates EO has had a disregard for compliance with regulatory schemes for many years.
40. The Commission finds that EO gave contradictory and unsatisfactory evidence in the Hearing when seeking to explain the answer to the question in the Questionnaire of *"Have you been found guilty of any offence in Australia or overseas (including findings without conviction and good behaviour bonds, not including traffic offences)?"*, where

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<sup>21</sup> EO was found guilty in the Dandenong Magistrates' Court for dishonestly receiving stolen goods, making a document to the prejudice of other and using a false document to the prejudice of other. No conviction was recorded. The NCHC contained less court outcomes than the LEAP report.

<sup>22</sup> Victoria Police submit that EO has 80 infringement notices in a 20-year timeline, leading to periods of incarceration for driving whilst being suspended to drive. The Commission understands that EO was granted appeal bail on 9 November 2015: Line 20, page 75 of the Hearing transcript.

she answered “No”.<sup>23</sup>

41. The Commission notes that the Questionnaire does not require disclosure of traffic offences and accordingly the Commission has not given any weight to the fact that EO did not declare the various traffic offences. However, the Commission considers the volume and frequency of her speeding and other traffic offences to be relevant to her ability to comply with regulatory schemes and finds the various explanations given by her in evidence at the Hearing for the numerous traffic infringement notices to be lacking credibility.
42. EO also failed to disclose more substantive offences. EO stated that the reason she had applied for and obtained the NCHC was to make sure that she filled out the Questionnaire correctly and carefully. The Commission notes that this is consistent with the uncontested facts that, although she electronically signed the Questionnaire in November 2021, she did not lodge the application until 2 January 2022. She obtained the NCHC in December 2021 and lodged the Questionnaire with the transfer application form on 2 January 2022.
43. The Commission notes that, despite the NCHC being provided to EO in December 2021 which records that “*At the time of issue there are seven (7) disclosable court outcomes*”, she chose to make no changes to the Questionnaire before lodgement. The NCHC gave details of each of the seven court outcomes, including that in 2016 where she had been convicted and fined for an offence of failing to answer bail as well as driving whilst authorisation suspended. The NCHC also recorded a number of other court outcomes where a term of imprisonment had been imposed. EO, even with this documented did not amend or update her transfer application to report the convictions. In her evidence during the Hearing, EO repeatedly asserted that she obtained the NCHC to ensure the accuracy of her answers on the Questionnaire: “*I stopped the application for quite some time and I personally did a National Criminal Check so it would bring up all my priors to answer the question correctly*”,<sup>24</sup> and later in evidence “*I stopped the application to go and make sure my criminal – what would come up in my criminal history*”.<sup>25</sup>
44. The Commission notes that, prior to the Hearing, EO gave a contradictory explanation to Victoria Police when questioned about her failure to disclose these court outcomes in the Questionnaire. EO told Sergeant Hickey that she was aware of previous court

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<sup>23</sup> The Commission notes that EO also answered “No” to the question, “*Have you ever been convicted of any offence in Australia or overseas (not including traffic offences)?*”.

<sup>24</sup> Line 15, page 11 of the Hearing transcript.

<sup>25</sup> Line 2, page 20 of the Hearing transcript.

- outcomes, but she had not made mention of these court outcomes in her application because she had asked her father about it, and he told her that because they were old, they had probably lapsed.<sup>26</sup>
45. The Commission notes this is inconsistent with her evidence at the Hearing, where EO's explanation for her failure to disclose those offences was that she *"was heavily pregnant at the time and I can't – I could not answer to you as to why – it was my mistake that I didn't go back and to clarify"*.<sup>27</sup>
  46. The Commission also notes that the Questionnaire requires the applicant to acknowledge that *"...failure to provide requested information (no matter how minor) may be detrimental to the outcomes of your application"* and *"...I understand that it is a criminal offence under section 118 of the Act to provide false or misleading statements..."*. These questions were acknowledged by EO at the time of completing and lodging the Questionnaire.
  47. Additionally, the Commission finds that EO also gave contradictory and unsatisfactory evidence in the Hearing regarding the explanation for her answer to the question in the Questionnaire, *"Have you ever been known by any other names?"*, where in response to this question she responded: *"No"*.
  48. It is not contested that EO's name at birth was her maiden name and, by virtue of her marriage on 16 January 2021, she changed her name to EO. Her marriage took place only approximately 12 months before applying for the transfer of the Licences. Prior to that she was known by her family surname for her entire life.
  49. In evidence at the Hearing, EO highlighted that she was *"...a big believer in double checking and triple checking..."* but didn't do so in this instance.<sup>28</sup> In evidence at the Hearing she also advised that she *"stopped the application for quite some time"* and obtained the NCHC before lodging the Questionnaire and the transfer application.<sup>29</sup>
  50. The Commission notes that even though the NCHC refers to both her surnames and was obtained, according to her evidence at the Hearing, to assist her to accurately complete the Questionnaire, she did not amend her incorrect answer to the question as to whether she had ever been known by any other name before lodgement of the Questionnaire.
  51. Given her history in relation to police dealings and the court appearances since 2009, it is difficult for the Commission to accept that EO would have no recollection of these

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<sup>26</sup> Signed statement of Sergeant Hickey, dated 21 August 2022.

<sup>27</sup> Line 10, page 31 of the Hearing transcript.

<sup>28</sup> Line 20, page 9 of the Hearing transcript.

<sup>29</sup> Line 15, page 11 of the Hearing transcript.

events at the time that she completed the Questionnaire or that she would need to totally rely on the NCHC. This would suggest that she had no independent recollection of any of these events which took place between 2009 up until 2016. EO acknowledged that she did not ask the Commission staff for assistance in completing the form. The Commission finds her explanations for her incorrect answers on the Questionnaire unsatisfactory and concerning.

52. Finally, the Commission observed inconsistent and contradictory evidence given by EO and others in the Hearing as to:

- (a) **the role and responsibility of EO's father in the business conducted under the Licences:** EO gave evidence that her father's role involves "*just polishing cutlery or glasses*"<sup>30</sup> and "*not serving alcohol*",<sup>31</sup> whereas IG gave evidence that EO's father "*worked behind the bar probably say three, four times a week*".<sup>32</sup> IG further stated that EO answered to her and that she answered to "*maybe [EO's father]*",<sup>33</sup> who was until recently IG's domestic partner.

Further, DK gave evidence that from his observations as a regular customer over the last 7 years that "*[EO's father] generally works – from my observations works behind the bar, pours the drinks...*"<sup>34</sup>;

- (b) **the owner of the business and the timing and form of payment of a deposit for purchase of the business at the Premises:** EO gave evidence in the Hearing that a deposit was paid 18 months ago to IG by way of a bank transfer whereas IG gave evidence in the Hearing that a deposit was paid to her two months ago and in cash.

Further, the Commission notes from a bank statement, dated between 1 April 2021 and 30 April 2021, in EO's maiden name, that a deposit, in the sum of \$5,000, was paid to BG Pty Ltd on 6 April 2021, however, EO's evidence in the Hearing was that IG was the owner of the business.<sup>35</sup> In contrast, IG gave evidence in the Hearing that the owner of the business is BG Pty Ltd<sup>36</sup> (in respect of which she seems to have ceased being a director on 2 November 2020, in spite of the Licences for the business conducted at the Premises having been transferred to

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<sup>30</sup> Line 40, page 62 of the Hearing transcript.

<sup>31</sup> Line 30, page 66 of the Hearing transcript.

<sup>32</sup> Lines 20-36, page 95 of the Hearing transcript.

<sup>33</sup> Line 5, page 95 of the Hearing transcript.

<sup>34</sup> Line 1 page 85 of the Hearing transcript.

<sup>35</sup> Line 10, page 21 of the Hearing transcript.

<sup>36</sup> Line 35, page 101 of the Hearing transcript.

her on 11 November 2020);<sup>37</sup> and

(c) **the role and responsibility of EO in the business conducted at the Premises:**

EO gave evidence that she was responsible for the ordering of alcohol for the business at the Premises through an online ordering system, *“But you had full authority to order whatever was required, that was completely in your discretion”... “Yes”<sup>38</sup>... “... within reason”<sup>39</sup>.*

However, EO also gave evidence that IG pays all the bills through her business credit card and that she does not have any way of accessing any of the accounts or credit cards.<sup>40</sup> IG conversely gave evidence that EO does not ever order alcohol supplies<sup>41</sup> but has access to online banking and pays bills for the business that way.<sup>42</sup>

53. The Commission also notes the submission of Mr Sala, dated 21 October 2022, on behalf of EO provided after the Hearing. In addition to other matters, he raised whether or not proper consideration had been given by EO to her father being declared an associate in the Original Application. Mr. Sala advised that it was now accepted that based on a reading of section 3AC her father could currently be viewed as an associate and so to her husband. He also stated that the Original Application should have involved their two names and indicated that EO was less than careful in her approach to filling out the Original Application.

### *Adequate knowledge of the LCR Act*

54. The Commission may refuse to grant an application for the transfer of a licence under section 44(2)(b)(iii) on the basis that the applicant does not have an adequate knowledge of the LCR Act.
55. As part of the Original Application, EO submitted her refresher Responsible Service of Alcohol (**RSA**) certificate, dated 26 May 2021.
56. As noted above, on 3 October 2022, Mr Sala of Counsel on behalf of EO submitted EO has had a full-time managerial role at the Premises for the past two years.
57. The Commission notes that there has been no compliance or enforcement action taken by the Commission in respect of the Premises for non-compliance with licence

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<sup>37</sup> The ownership of the business conducted at the Premises is discussed further below.

<sup>38</sup> Line 1, page 70 of the Hearing transcript.

<sup>39</sup> Line 6, page 70 of the Hearing transcript.

<sup>40</sup> Lines 31-43, page 54 of the Hearing transcript.

<sup>41</sup> Line 29, page 99 of the Hearing transcript.

<sup>42</sup> Line 7, page 100 of the Hearing transcript.

conditions including during EO's managerial period.<sup>43</sup>

58. That said, taking into account all written and oral evidence, the Commission is not satisfied that EO has an adequate knowledge of the LCR Act for the purposes of section 44(2)(b)(iii). Specifically, the Commission is not satisfied that EO has taken all necessary and reasonable steps to ensure that strict compliance with the LCR Act was maintained as discussed below.
59. In the Hearing, EO said she didn't know what the term 'associate' meant within the meaning of the LCR Act and never checked with anyone what the term meant when making the Original Application.<sup>44</sup>
60. In the Hearing, EO said:
  - (a) as the manager of the Premises, she rosters on staff, deals with any issues that arise in the business,
  - (b) she handles the operation of the business together with IG;
  - (c) she takes on IG's responsibilities when she is not there; and
  - (d) she is able to order alcohol through IG's business account, but the food is ordered by the chef.
61. In the Hearing, IG said:
  - (a) EO runs the kitchen as well as the front of the business;
  - (b) EO orders the food supplies but not the alcohol;
  - (c) EO will use the company account, BG Pty Ltd, to pay bills in connection with the Premises, including insurance bills for the Premises;
  - (d) EO decides what is on the menu;
  - (e) EO deals with the company accountant but emails to IG what needs to be signed; and
  - (f) EO is running the business.
62. In considering section 3AC(1)(a) regarding the business conducted under the Licences, and having regard to all information and evidence provided, although EO's evidence was contradicted in part by the evidence given by IG, the Commission finds that EO is able to exercise a relevant power in the business involving the sale of liquor on the Premises.<sup>45</sup> To this end, the Commission is satisfied that EO is an associate and has been an associate of IG under section 3AC(1)(a) for some time, and the Commission

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<sup>43</sup> The Commission takes compliance and enforcement action in respect of licensed premises that are found to be non-compliant with their licence conditions. The Commission notes that no prosecution, penalty infringement notice or formal warning has been issued against these licensed premises since the Licence was transferred to IG on 11 November 2020.

<sup>44</sup> In the Hearing, EO said that she understood the term "associate" under the LCR Act meant a partner.

<sup>45</sup> See definitions of 'relevant financial interest' and 'relevant power' in paragraph 22 above.



should have received notification in writing of EO becoming an associate of IG for the purpose of section 103A(2).<sup>46</sup> Whilst the Commission acknowledges that EO was not the licensee and therefore not responsible for any notification, EO's failure to appreciate the significance of her role and the concept of associate under the LCR Act is relevant.

63. Moreover, as noted above, Mr Sala on behalf of EO stated in submissions, dated 21 October 2022, that the Original Application could also have included an oversight on behalf of EO in failing to disclose her association for the purposes of section 3AC with her father and her husband. He also states that the Original Application should have involved their two names and indicates that EO was less than careful in her approach to filling out the Original Application. This also supports the lack of knowledge by EO relating to the key issue of what an associate is under the LCR Act and supports more broadly her general lack of knowledge of obligations under the LCR Act
64. The Commission notes that the community needs to be able to have confidence that they can rely on those to be transferred a licence are aware of the liquor licensing laws.
65. The Commission considers that the matters discussed above which raise some concern as to the adequacy, or otherwise, of EO's knowledge of the LCR Act can also be matters that the Commission may have regard to in assessing whether EO is presently suitable to hold, or carry on business under, a liquor licence.
66. Section 44(2) does not circumscribe the matters that the Commission may have regard to in assessing whether an applicant is suitable to hold, or carry on business under, a liquor licence.<sup>47</sup>

## Finding as to suitability

67. The Commission notes that it is important that the public have confidence in the liquor industry and have confidence in the administration of the liquor industry and that the community can rely on those approved as a licensee as being honest and diligent in their compliance with their obligations as a licensee.

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<sup>46</sup> Section 103A(2) of the LCR Act obliges a licensee to notify the Commission. The provision reads:

(2)A licensee or permittee must, within 14 days after the occurrence of either of the following events, notify the Commission in writing of the event—

- (a) that a person has ceased to be his, her or its associate; or
- (b) that a person has become his, her or its associate.

<sup>47</sup> Similarly, section 44(2) of the LCR Act does not circumscribe the matters that the Commission may have regard to in assessing whether an applicant has an adequate knowledge of the LCR Act.

68. On the evidence before it, the Commission finds that due to the range of inconsistencies in EO's evidence, it can give little weight to her evidence, or to any submissions made on her behalf insofar as they are reliant on her evidence.
69. The Commission does not have sufficient credible evidence before it to satisfy it that EO is currently a suitable person to hold, or carry on business under, a liquor licence.
70. Accordingly, having considered and assessed all the evidence before it, the Commission finds that EO is presently not suitable to hold, or carry on business under, a liquor licence.

### *Sufficiency of evidence as to EO's legal right to occupy the Premises*

71. The Commission is not satisfied that it has sufficient evidence before it as to EO's legal right to occupy the Premises. This is because of the following reasons:
72. **First**, the Commission is not satisfied that there is sufficient evidence as to EO being able to lease both shops that form the Premises itself. The Commission notes that there are two shops comprising the Premises, which are owned by two different landlords. Mr Magazis on behalf of EO submitted an email from one landlord (for one of the two shops), dated 16 October 2022, indicating that he would not oppose transferring the existing lease for that shop to EO, however, there is no evidence of any concluded or pending agreed arrangement at all for the transfer of any leases. Further there is no evidence of any indication at all from the other landlord that they may be agreeable to transfer the existing lease for the other shop to EO.
73. **Secondly**, the Commission is not satisfied that EO has any right to ownership of the business. The Commission finds that there is insufficient evidence as to EO being able to purchase the business conducted under the Licences. This is because at the Hearing EO confirmed that there was no sale agreement, and no agreed essential terms such as a purchase price nor any agreement about a settlement date in relation to the proposed sale of the business conducted under the Licences for the purposes of herself having a legal right to occupy the Premises.
74. **Thirdly**, following on from the second point above in paragraph 73, the Commission is not satisfied that there is sufficient evidence as to how the business conducted under the Licences would be able to be sold to EO for the purposes of her having a legal right to occupy the Premises. This is because the evidence before the Commission is that the business is owned by a company, BG Pty Ltd, not IG<sup>48</sup> and, while IG was once the

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<sup>48</sup> Lines 36-38, page 101 of the Hearing transcript.

director and shareholder of that company, she ceased to be the director and shareholder on 2 November 2020 and that the current sole director and shareholder is MZ, someone that IG has heard of but not met.<sup>49</sup> The Commission has received no evidence from that company director as to the proposed sale of the business to EO.<sup>50</sup> An ASIC search conducted on 8 August 2022 shows that PV was appointed liquidator of BG Pty Ltd on 8 August 2022.

75. In these circumstances, the Commission is not satisfied that it has sufficient evidence before it as to EO's legal right to occupy the Premises.

### *Whether the licences should be transferred having regard to the objects of the LCR Act*

76. In all of the circumstances, having regard to all of the material before it and the objects of the LCR Act, the Commission is satisfied that it is appropriate to exercise its discretion to refuse to grant EO the proposed transfer of the Licences on the basis that she is not currently a suitable person to hold or carry on business under the Licences.

## Decision on review

77. The Commission is not satisfied that the Review Application meets all legislative requirements set out above. Accordingly, based on the reasons set out above, the Commission is not satisfied that transferring the Licences the subject of the Review Application is appropriate in the circumstances.
78. The Commission has therefore determined to affirm the Original Decision.

**The preceding 78 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith (Chair), Mr James O'Halloran (Commissioner) and Ms Susan Timbs (Commissioner).**

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<sup>49</sup> The Commission understands from the evidence given by IG that the bills for the business conducted under the Licences are paid by BG Pty Ltd.

<sup>50</sup> As a side note regarding the involvement of the company and its current director, the Commission observes the obligations of a licensee under section 103A(2) of the LCR Act.