

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: B R D

First Intervenor: Commissioner of Police
(represented by Mr Andrew Mason of State Solicitor's Office)

Second Intervenor: Director of Liquor Licensing
(represented by Mr Andrew Mason of State Solicitor's Office)

Commission: Mr Eddie Watling (Deputy Chairperson)
Mr Alex Zilkens (Member)
Mr Paul Heaney (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* ("the Act") for a review of the decision of the delegate of the Director of Liquor Licensing finding Mr B R D not a fit and proper person to be authorised as an approved unrestricted manager.

Date of Hearing: 10 October 2016

Date of Determination: 15 November 2016

Determination The application is dismissed and the decision of the delegate of the Director of Liquor Licensing is affirmed.

Background

- 1 On 16 April 2016 Mr B R D (“the applicant”) applied to the Director of Liquor Licensing to be authorised as an approved unrestricted manager under section 102B of the *Liquor Control Act 1988* (“the Act”).
- 2 The application incorporated a copy of a Statement of Attainment, evidencing the completion of a course in Management of Licensed Premises (MLP1), and a National Police Certificate which showed that the applicant had been convicted of 46 criminal and 40 traffic offences in Western Australia, accumulated from 1995.
- 3 On 25 May 2016 the Commissioner of Police (“the Police”) lodged a Notice of Intervention on the ground that, due to his antecedents, character and reputations, in particular the nature and number of his convictions, the applicant is not a fit and proper person to hold a position of authority in licensed premises.
- 4 On 13 June 2016 the applicant lodged a responsive submission stating that the Police cannot call his character into question when the officers have never met with or spoken with his friends, colleagues, other associates or himself, to obtain an insight into his character. It was further asserted that the applicant is currently the owner of two businesses dealing with the public daily and therefore he is already demonstrating a large degree of honesty, integrity and responsibility. An explanation for the most serious issues listed on the National Police Certificate was also included in the submission. The applicant provided four character references.
- 5 On 21 July 2016 the Delegate of the Director (“the Director”) determined that, based on the evidence before him and given the most serious nature and number of offences, he was not satisfied that the applicant has established himself as a different person since the commission of his most serious offences. The applicant was therefore not deemed to be a fit and proper person to be considered as an approved manager and the application was refused.
- 6 On 15 August 2016 the applicant, in accordance with section 25 of the Act, lodged with the Liquor Commission (“the Commission”) an application for review of the decision of the Director.
- 7 On 25 August 2016 the Director, in accordance with section 69(11) of the Act, lodged a Notice of Intervention with regard to the review application and on 27 September 2016 lodged an outline of submissions in relation to the intervention. The Police, respondents in this matter, lodged an outline of submissions on the basis of adopting the principles outlined in the submissions of the Director, the first intervener in these proceedings.
- 8 A hearing of the Commission was held on 10 October 2016.

Hearing

Preliminary Matter

- 9 The applicant confirmed that he was aware that he was entitled to legal representation and had elected to represent himself.

Submissions on behalf of the applicant

- 10 The applicant spoke to his written submissions emphasising the fact that his last criminal conviction was some 6 years ago and that he had learned from his mistakes and was now a different person. In fact, whilst regretting the past, his offence record had become the basis of him learning and putting into place personal measures to prevent these mistakes from re-occurring, therefore becoming the caring, responsible and hard-working person that he is today.
- 11 The applicant submitted that he had recently married, had purchased a home, owned a rental unit in Scarborough and was running two businesses as well as being a night manager at a hotel property (the position that this application is based upon).
- 12 The applicant further submitted that he had never had a problem with anger, violence, drugs or alcohol and that the majority of traffic issues are well over 15 years old. Working in a popular, local family owned hotel without incident for over 5 months, since lodging the application for approval as an unrestricted manager, also demonstrates the significant change that has taken place in the way the applicant now lives his life and conducts himself in society.
- 13 In summary it was submitted that approval as an unrestricted manager would allow the applicant to continue to demonstrate in his current workplace, that he is a fit and proper person.

Submissions on behalf of the Police and the Director

- 14 It was submitted that section 102B(3) provided that the Director must not grant a manager's approval unless satisfied that the applicant is a fit and proper person to be approved.
- 15 While the Act does not define fit and proper, it is a concept which is not to be narrowly construed or confined and is an expression that takes its meaning from the activities in which the person is or will be engaged pursuant to an approval and from the ends to be served from those activities.
- 16 Some guidance on the factors relevant in considering whether someone is a fit and proper person for the purposes of section 102B(3) of the Act can be found in section 33(6) of the Act which provides that:

Where the licensing authority is to determine whether an applicant is a fit and proper person to hold a licence or whether approval should be given to a person seeking to occupy a position of authority in a body corporate that holds a licence, or to approve a natural person as an approved unrestricted manager, or an approved restricted manager or a trustee –

- (a) The creditworthiness of that person; and*
- (b) The character and reputation of that person; and*
- (c) The number and nature of any convictions of that person for offences in any jurisdiction; and*
- (d) The conduct of that person in respect to other businesses or to matters to which the Act relates; and*
- (e) Any report submitted, or intervention made, under section 69,*

Are relevant and amongst the matters to which consideration may be given.

- 17 It was submitted that in determining whether a person is a fit and proper person to be an approved manager, conduct will be relevant if, although it did not occur in the ordinary course of acting as an approved manager, it is sufficiently closely connected to the role or it manifests the presence or absence of qualities which are incompatible with, or essential for, the carrying on of the role.
- 18 The Director's reasoning in reaching his determination to refuse the application included the following factors:
- (i) the applicant's criminal history showed a course of conduct which demonstrated a "complete disregard for the law" which adversely reflects on his character;
 - (ii) 19 of the offences the applicant was convicted of between 1995 and 2009 relate to offences of dishonesty;
 - (iii) the applicant's criminal convictions for breaches of intensive supervision orders, conditional release orders, bail undertakings and violent restraining orders demonstrate a pattern of behaviour of contempt and lack of respect for the court processes;
 - (iv) the applicant's convictions in relation to driving a motor vehicle when affected by alcohol demonstrated a "blanket lack of respect for the law";
 - (v) the applicant's continuous course of disregard for the law resulted in offences which the applicant considered to be at the lower end of the scale elevating in seriousness so as to require a term of imprisonment;

- (vi) despite serving terms of imprisonment for offences relating to driving without authority, the applicant's recent convictions (namely, in 2014) demonstrate that the applicant appears to have failed to appreciate any understanding of his wrong doing and consequently he reoffended; and
 - (vii) although the applicant has recently married and has had conduct of a number of businesses, the volume and seriousness of his criminal convictions, which includes offences as recently as 26 April 2016, led the Director to find that he was not satisfied that the applicant "has established himself as a different person since the commission of his most serious offences".
- 19 It was submitted that the applicant's grounds for review therefore have no merit and there is no evidence demonstrating:
- (i) Genuine remorse and contrition, true insight and understanding of earlier turpitudes. Instead the applicant's actions which resulted in recent convictions indicate that little weight should be given the applicant's submission that he is genuinely remorseful and contrite;
 - (ii) that there has been a significant period of time passed since the applicant's most recent offences; and
 - (iii) that there has been a change in circumstances to demonstrate that the factors giving rise to the offences have been eliminated.
- 20 In summary it was submitted that the Director correctly found that the applicant is not a fit and proper person to be an approved manager and the decision to refuse the application should be affirmed.

Determination

- 21 On a review under section 25 of the Act, the Commission may –
- a. *affirm, vary or quash the decision subject to the review;*
 - b. *make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance;*
 - c. *give directions –*
 - i. *as to any question of law, reviewed; or*
 - ii. *to the Director, to which effect shall be given; and*
 - d. *make any incidental or ancillary order.*
- 22 In considering whether the applicant is a fit and proper person to be approved as an approved unrestricted manager, the Commission has considered those matters prescribed as relevant under section 33(6) of the Act – refer paragraph 16 above.

- 23 The long history of offences by the applicant demonstrates a clear disregard for the law, with numerous convictions for dishonesty offences, failing to comply with court orders and road traffic offences. These offences, which have occurred over a period of 21 years, comprise of 4 convictions for stealing, 15 convictions for gaining benefit by fraud, 18 convictions relating to breaches of intensive supervision orders and community release orders, 4 convictions for breaches of bail conditions, 20 convictions for driving whilst unlicensed and 5 convictions for driving with excess blood alcohol content.
- 24 Notably the most recent traffic offence occurred in April 2016 with the applicant also being subject to a suspended prison sentence to March 2015.
- 25 The applicant has acknowledged that his past criminal history reflects poorly, however, contends that he had learned from his mistakes and is now a different person. He has been successfully participating in the workforce for many years, mainly in a managerial role, employing and overseeing the success of staff. Since lodging his application he has been working in a popular, local family owned hotel without incident.
- 26 With regard to the status of the applicant as a fit and proper person under the Act, the Commission has closely considered the circumstances and timeframe of the criminal convictions.
- 27 Whilst the applicant maintains that he has turned his life around from past criminal transgressions, the fact remains that little has been presented to evidence this fact, with infringements of the law still occurring in the 5 year period prior to the lodging of this application.
- 28 The Commission is therefore of the view that, in the light of the extensive and serious nature of the offences committed by the applicant, that insufficient evidence has been presented, nor has sufficient time passed, to consider that the applicant can be assessed as a fit and proper person for approval as an approved unrestricted manager under the Act.
- 29 The application is therefore refused.



EDDIE WATLING
DEPUTY CHAIRPERSON