

**Liquor Commission of Western Australia
(*Liquor Control Act 1988*)**

Applicant: Mr Paul Wormley

First Intervener: Director of Liquor Licensing
(represented by *Mr Ed Fearis of State Solicitor's Office*)

Commission: Mr Seamus Rafferty (Chairperson)
Dr Eric Isaachsen (Member)
Mr Alex Zilkens (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of the decision of the delegate of the Director of Liquor Licensing finding that Mr Paul Wormley is not a fit and proper person to hold a liquor licence.

Date of Hearing: 24 April 2017

Date of Determination: 24 April 2017

Determination: The application for review is approved.

Authorities referred to in Determination:

- *Australian Broadcasting Tribunal v Bond and Others (1990)*, volume 170 CLR at page 321

- 1 At the conclusion of the hearing of this application, the Chairperson delivered an extemporaneous decision granting the application for review. These are the reasons for that decision.
- 2 This is an application for review pursuant to section 25 of the *Liquor Control Act* (“the Act”) made by World Brands Australia Pty Ltd, whose sole director is Mr Paul Wormley (“the Applicant”). Originally, the applicant applied for a wholesaler’s licence pursuant to section 58 of the Act. That application was refused by a delegate of the Director of Liquor Licensing.
- 3 The prerequisites for the granting of the licence sought by the applicant are set out in section 37 of the Act. Of relevance to this application is that a person who occupies a position of authority in the body corporate applying for the licence must be a fit and proper person to be a licensee of the premises to which the application relates. Section 33(6) of the Act sets out the relevant matters to which consideration may be given. The list is not exhaustive and is discretionary having regard to the use of the term “may”. The delegate at first instance considered the relevant matters and placed a significant emphasis, properly so, on breaches of the Act that had been committed by Mr Wormley in operating another licence between 2006 and 2013.
- 4 Quite properly, the applicant conceded the various breaches of a licence in which he had previously been involved. The Commission accepted that he was extremely remorseful for having engaged in such conduct, which he submitted was inadvertent and not wilfully done contrary to the requirements of the Act. The Commission considered that there was insufficient evidence to find that any conduct was a deliberate contravention of the relevant requirements of the Act and accepted the submission that the contraventions were inadvertent.
- 5 Having regard to the matters outlined in section 33(6), the Commission considers that the only matter of relevance is the conduct of the applicant in respect to other businesses or to matters to which the Act relates. Clearly, previous breaches of the Act are relevant to the determination of this application.

- 6 The Commission considers that the applicant's performance in other operations was effectively sloppy, particularly in relation to operating from premises that were not the subject of a licence and that is something to which the Commission has given significant consideration.
- 7 Counsel for the Intervener submitted that the Commission could take into consideration in assessing the question of fitness, the effect that the decision of the delegate may have had on the applicant in the context of specific deterrence, that is from deterring him from any further breaches of the Act and in the context of his ongoing education in respect to the Act.
- 8 Taking into account all relevant matters, including the steps that the applicant has taken to better educate himself in respect to the requirements of the Act, the inadvertent nature of previous breaches of the Act and the specific deterrent aspect of the original refusal to grant the licence, the Commission is satisfied that as at the date of the hearing, that the applicant was a fit and proper person to hold a licence.
- 9 The Commission fully understood the basis for the delegate making the decision that he did at first instance. However, given that this is a hearing *de novo*, which allows the Commission to consider the matter afresh as at the date of the hearing, that in considering the relevant matters outlined in s.33(6) of the Act and applying the test of fit and proper person that was outlined by the High Court in *Australian Broadcasting Tribunal v Bond and Others* (1990) 170 CLR 321, that the application for review should be granted.
- 10 The formal orders of the Commission are:
 - a) the decision of the delegate of the Director of Liquor Licensing dated 13 February 2017 is quashed;
 - b) the Director of Liquor Licensing is to reconsider the application pursuant to section 58 of the Act.
- 11 With reference to section 25(4)(c)(ii) of the Act, the Commission directs the Director of Liquor Licensing to consider the fitness of the applicant in the

context of the factual findings made by the Commission relating to his prior transgressions of the Act.



SEAMUS RAFFERTY
CHAIRPERSON