

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Liquorland (Australia) Pty Ltd
(represented by Mr Steven Standing and
Ms Triska DiCicco of Freehills)
- Commission:** Mr Seamus Rafferty (Deputy Chairperson)
Ms Helen Cogan (Member)
Mr Evan Shackleton (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of the decision of the Director of Liquor Licensing to:
- not grant Liquorland leave to apply for the approval of the transfer of conditionally granted licence 6030137613; and
 - cancel conditionally granted licence 6030137613.
- Premises:** 256 Hampton Road, Beaconsfield
- Date of Hearing:** 26 September 2012
- Date of Determination:** 26 September 2012
- Determination:** The Commission makes the following orders:
- a) the decision of the Director to refuse leave to Liquorland to apply for the approval of the transfer of the licence is quashed;
 - b) the decision of the Director to cancel conditionally granted licence 6030137613 is quashed;
 - c) The issue of leave pursuant to section 84(1)(c) of the Act is referred back to the

Director to be considered on its merits, that being the materials attached to the application for transfer filed with the Director on 18 June 2012.

- 1 This is an application pursuant to section 25 of the *Liquor Control Act 1988* ("the Act") for a review of the decisions of the Director of Liquor Licensing ("the Director") to:
 - a) refuse a grant of leave to Liquorland (Australia) Pty Ltd ("Liquorland") to apply for a transfer of conditionally granted licence 6030137613 ("the licence");
 - b) cancel the licence.
- 2 On 13 October 2011, the Liquor Commission ("the Commission") approved the conditional grant of a liquor store licence to Woolworths Limited ("Woolworths") in respect of premises located at 256 Hampton Road, Beaconsfield. On 30 April 2012, Coles Group Property Developments, an associated company of Liquorland purchased the premises, thus making it impossible for Woolworths to fulfill the obligations of the licence. Pursuant to section 37(5)(b) of the Act, Woolworths' interest in the licence was terminated on that date.
- 3 On 18 June 2012, Liquorland applied for a transfer of the licence pursuant to section 82(2) of the Act. The pre-requisites for the transfer of a licence are set out in section 84(1) of the Act. It is accepted that the pre-requisites set out in sections 84(1)(a) and (b) had no bearing on this transfer application. The only pre-requisite for the approval of the transfer of the licence was that leave of the Director was required pursuant to section 84(1)(c) of the Act. The factors to be considered by the Director in determining whether leave should be granted are not defined in the Act.
- 4 On 12 July 2012, the Director cancelled the licence pursuant to section 62(10) of the Act (see Decision No. A220710).
- 5 In a letter dated 12 July 2012, addressed to the lawyers acting on behalf of Liquorland, the Director referred to the following matters, namely:
 - a) GD Crocket & Co acting on behalf of Woolworths advised that there were no legal arrangements between Coles Group and his client to build the proposed licensed premises at the property or to acquire an interest in the licence;
 - b) there is no contract for the sale or assignment of the right of the licensee to carry on the business under the licence;
 - c) no protection order has been granted under section 87 of the Act to Liquorland.
- 6 The letter finished with the following sentence: "*Considering the above, leave is not granted for Liquorland (Australia) Pty Ltd to make application for approval of the transfer of the licence.*" The Commission apprehends that the Director refused leave based on:

- a) information provided by the previous holder of the licence, who at the relevant time had no interest in the licence;
 - b) the fact that the application was not made in accordance with the requirement set out in section 84(1)(a);
 - c) the fact that the application was not made by a person who had been granted a protection order as required by section 84(1)(b)(ii) of the Act.
- 7 Only one of the pre-requisites set out in section 84(1) of the Act needs to apply to an application for the transfer of a licence having regard to the use of the word “or” which is disjunctive in nature. (see section 17 of the *Interpretation Act 1984*) The Director appears to have erred in the consideration of the grant of leave by considering that at least one of the matters set out in section 84(1)(a) and (b) of the Act had to be satisfied before leave would be granted pursuant to section 84(1)(c) of the Act. The Commission has come to that conclusion based on the use of the words “considering the above” with reference to the reasons why leave was refused.
- 8 As the issue of leave needs to be reconsidered by the Director, it follows that the decision to cancel the licence needs to be reviewed by the Commission. It would be otiose to grant the application for review of the decision to refuse leave but not to allow the application for review of the decision to cancel the licence. Liquorland would be left in a position where it was seeking a grant of leave for the transfer of a licence that was no longer in existence. So as to protect the position of the applicant, on the basis that the issue of leave was not properly considered by the Director at first instance, the Commission is prepared to use its powers to quash the decision to cancel the licence so that the issue of leave can be considered by the Director.
- 9 The Commission has determined that the issue of leave pursuant to section 84(1)(c) of the Act was not properly considered by the Director. Accordingly, pursuant to section 25(4)(a) and (c) of the Act, the Commission makes the following orders:
- d) the decision of the Director to refuse leave to Liquorland to apply for the approval of the transfer of the licence is quashed;
 - e) the decision of the Director to cancel conditionally granted licence 6030137613 is quashed;
 - f) The issue of leave pursuant to section 84(1)(c) of the Act is referred back to the Director to be considered on its merits, that being the materials attached to the application for transfer filed with the Director on 18 June 2012.

- 10 In its submissions dated 19 September 2012, Liquorland has requested that, *'the Commission proceed to determine the transfer application on the basis of the material that was before the Director'* (see paragraph 8). Further, the Commission is requested to *'make orders (pursuant to s.25(4)(d) and s.62(6) of the Act) varying some of the conditions to which the Conditional Licence is subject.'*
- 11 In dealing with this matter, the Commission is exercising its powers of reviewing decisions of the Director. The only decisions that fall for review in respect to this application are the decisions to refuse leave and the cancellation of the licence. There is no power conferred on the Commission by the Act to consider the transfer of the licence or a variation of it at this stage. The only circumstances in which the Commission would be able to consider these applications would be:
- a) If the Director referred the matters pursuant to section 24 of the Act;
 - b) If an order for review was made pursuant to section 25 of the Act.
- 12 Accordingly, the Commission is unable to consider the application for transfer and the application for a variation of the licence on the basis that it would be acting in excess of its power to consider such applications.



MR SEAMUS RAFFERTY
DEPUTY CHAIRPERSON