

# Delegate of the Director of Liquor Licensing

## Decision Notice

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**MATTER:** Application for change of manager

**APPLICANT:** [REDACTED]

**PREMISES:** [REDACTED]

**LEGISLATION:** Section 53(5)(b) of the *Liquor Act 2019*

**DECISION OF:** Delegate of the Director of Liquor Licensing

**DATE OF DECISION:** 11 June 2025

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### DECISION

1. For the reasons set out below and in accordance with section 53(5)(b) of the *Liquor Act 2019* (the Act), as a delegate of the Director of Liquor Licensing (the Director) I have determined to refuse the application to change the nominee for the licensee, [REDACTED] to [REDACTED].

### REASONS

#### BACKGROUND

2. On 26 May 2025, an application was lodged by [REDACTED] on behalf of the licensee the [REDACTED] to appoint [REDACTED] as the nominee of the licence pursuant to section 53(5)(b) of the Act.
3. The intention of the application was to replace the existing nominee, [REDACTED] who had resigned and vacated [REDACTED] position.
4. [REDACTED] provided sufficient materials in support of [REDACTED] application, including a National Police Certificate (the Certificate) dated 1 November 2023, disclosing a conviction on 21 April 2016 for a matter of dishonesty.
5. [REDACTED] also provided a statutory declaration dated 26 May 2025 in which [REDACTED] attests to no further criminal matters since the issuing of the Certificate.

## CURRENT SITUATION

6. Section 53 of the Act prescribes if a licence is issued to a body corporate, they must designate an individual to be the licensee's nominee and with reference to subsection (5)(b), may only change the nominee with the written approval of the Director.
7. Section 76 of the Act imposes an obligation on a licensee to appoint a person to act on behalf of the person nominated if they are unable to conduct the business of the licensee for more than seven (7) consecutive days.
8. That is not an application that is approved by the Director, it is a statutory right to appoint any person a licensee considers suitable for the position.
9. A person appointed under section 76(1) of the Act must not act on behalf of the licensee for more than 90 days during any 12-month period, unless the Director otherwise determines through subsection (2).
10. On 4 February 2025, a notification was sent to the Director by the licensee appointing [REDACTED] as the acting nominee until 3 May 2025, necessitating the approval of the Director as it enlivened section 76(2) of the Act.
11. For completeness, this notification and subsequent approval is not subject to the probity considerations necessary for a permanent replacement of a person under section 53(5)(b) of the Act.
12. Accordingly, no examination was undertaken in relation to [REDACTED] with regards to [REDACTED] being fit and proper.
13. [REDACTED] has previously been appointed by the licensee to act as the nominee between 25 November 2024 and 25 February 2025, which was notified to the Director through an email from [REDACTED], the nominee to a delegate of the Director of Gaming Machines on 12 November 2025.
14. In that notification it was marked by the licensee that the appointment was not in excess of the 90 day threshold. As it was marked not in excess of 90 days, no approval was sought or given by the Director and the notification was uploaded to the files.
15. The period listed is in fact 92 days in total making the notification it was not in excess of 90 days an error. It is accepted this is likely an innocent mistake and not one intended to deceive.
16. This position is supported by the materials provided accompanying the notification which included [REDACTED] RSA Certificate, Driver Licence and Certificate which disclosed the conviction in 2016.

17. It would appear the Licensing Officer who processed the notification also relied upon the erroneous marking of the notification as not being in excess of 90 days, and accordingly did not seek approval from a delegate of the Director under section 76(2) of the Act.

18. As a result no probity examination was undertaken of ██████ for that matter.

19. In the statutory declaration date 13 November 2024 to support ██████ original appointment, which was then subjected to a probity examination ██████ states:

“I have not been involved in any criminal activities or legal matters that would result in a criminal record, and to the best of my knowledge, I have no criminal history since my National Police Check was conducted on 01/11/2023”.

20. This declaration was accompanied by ██████ Certificate which disclosed the conviction. It is not suggested ██████ has in any way attempted to hide ██████ history, ██████ has been frank and forthcoming however, the declaration is therefore inaccurate albeit likely an innocent choice of words used.

21. ██████ subsequent declaration on 26 May 2025 reads:

“...I have not committed any criminal acts under the Northern Territory or Australian Law since you received my last current criminal history check”.

22. This is a more accurate reflection of the situation.

23. It is a well-established requirement that a nominee must be a fit and proper person, with a grounds for a complaint against a licensee being:

**160 Making a complaint**

(1) A person may make a complaint against a licensee on any of the following grounds:

...

(i) the licensee's nominee is not a fit and proper person and the licensee should reasonably know that;

24. Further, from the outset the Act prohibits a licence being issued where the applicant, which includes the nominee, is not fit and proper.

25. Of note, section 51(3) of the Act assumes an applicant to be a fit and proper person, in the absence of evidence to the contrary.

26. The licensee also holds ██████ a Gaming Machine Venue Licence issued by the Director of Gaming Machines and which, with reference to the *Gaming Machine Act 1995*, cannot be severed from the liquor licence.

27. If the liquor licence is cancelled, the gaming machine licence is likewise cancelled by statute.

28. It necessarily follows the two, albeit issued under separate legislative frameworks are inextricably linked and any decisions, especially adverse decisions relating to one may have influence on the other.
29. On 24 October 2023, ██████ lodged an application for a gaming machine manager's licence which was refused by a delegate of the Director of Gaming Machines.
30. ██████ lodged an application for a review of that decision, with the Director of Gaming Machines upholding the original decision on 18 May 2024.
31. In their decision the Director of Gaming Machines held:

“28. In all the circumstances and taking account of the matters set out above I, in my capacity as the Director of Gaming Machines, am not satisfied that ██████ is a fit and proper person to be granted a gaming machine manager's licence.”

32. The application therefore remained refused.

#### SUBMISSION FROM APPLICANT

33. As a result of the circumstances of this matter and before a decision was made, on 27 May 2025, ██████ was afforded natural justice and procedural fairness by a delegate of the Director who invited ██████ to make a submission in relation to ██████ criminal history and the previous decision by the Director of Gaming Machines, which found ██████ not to be a fit and proper person to be granted a gaming machine manager licence.
34. ██████ was advised to provide any materials by 30 May 2025.
35. On 11 June 2025, ██████ wrote to the Director stating:

“I am writing this in the hope we might be able to sort something out  
You have given your reasons for refusing my application now I give mine why I believe I should be considered  
I have worked hard to try and put all this behind me and move on with my life I have outlaid a lot of money over the last two years trying to clear this mess  
But to no avail it is hard to move on in life when things like this follow you around I do not claim to be the best person but for the first time in my life  
This was not my fault it is with the help of people like yourself that help us get ahead in life  
I have been in this industry for over twenty years and all ways have done my best I have help a poker machine licence in qld for quiet a long time  
I didn't think I was asking much since I had held the temporary nominee twice for the ██████ witch in your by laws should not have happened  
So as I have said before there are grey areas I would like not to just be judged on my past but my present I am hard working and honest employee

If this is not enough I refer to the act of 1974 for NSW and the Northern Territory that no person should be discriminated against for there past

Indiscretions I have never tried to hide anything I am an open book thank you for your time” (sic)

36. It is accepted this email from ██████, outside of the time provided for a response, is ██████ submission in relation to the issue.

## CONSIDERATION OF THE ISSUES

37. An approval of a change of the nominee is under the *Liquor Act 2019*, including all the relevant considerations that must be made whereas the granting of a gaming machine manager licence is through the provisions of the *Gaming Machine Act 1995*.
38. For completeness, these are separate legislative provisions however the interrelated nature of each licence necessitates any adverse findings for one must be considered and persuasive to those under the other.
39. The Director of Gaming Machines has found ██████ not to be a fit and proper person and refused ██████ a gaming machine manager licence.
40. The Act requires the Director of Liquor Licensing to consider whether ██████ is a fit and proper person before they approve an application under section 53(5)(b).
41. The question of fit and proper has been examined by the Liquor Commission in a number of matters, most recently in a disciplinary matter against a licensee where they made findings the licensee and nominee were not fit and proper<sup>1</sup>.
42. In making that determination the Commission examined the well-established precedents set out by the High Court and which may be summarised by the decision of Kelly J in *Qadir v Department of Transport* [2015] NTSC 86 at [52] where Her Honour held:

“A decision about whether an applicant is a ‘fit and proper person’ for a particular role or purpose requires a consideration of the qualities necessary to fulfil the role or purpose. It would also generally require some consideration of the person’s moral integrity and rectitude of character as well as the applicant’s knowledge, ability and honesty as it relates to the role in question.”

43. Of particular relevance to this matter is the criminal conviction in 2016, which ██████ has not hidden and been frank and entirely forthcoming about.
44. This disclosure notwithstanding, it does draw into question whether ██████ is a fit and proper person to be a nominee under the Act.
45. The Director of Gaming Machines has found ██████ not to be fit and proper and this must necessarily be persuasive in this matter.

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<sup>1</sup> Northern Territory Liquor Commission, *Disciplinary Action Against Wagait Beach Supermarket* [2024] NTLiqComm 10 (18 March 2024).

46. ██████ has submitted the conviction is historic and that he should be afforded the benefit of time, along with the apparent absence of any issues since.
47. For completeness, the Certificate is approximately 19 months old and therefore it has not been confirmed other than by statutory declaration that no subsequent matters exist.
48. The conviction is not spent, with reference to section 6 of the *Criminal Records (Spent Convictions) Act 1992* as it occurred within the last 10 years, also as the term of imprisonment was in excess of 6 months, it is not one which may by statute be considered spent automatically.
49. ██████ provided a submission to the Director of Gaming Machines prior to their determination along with similar ones for this matter.
50. ██████ has submitted there are extenuating circumstances relating to the conviction, none of which have been formally confirmed however, ██████ has provided to the Director of Gaming Machines written references and the like attesting to ██████ suitability which are not disputed.
51. Distinguishing this application from the gaming machine matter, the *Gaming Machine Act 1995* prescribes disqualifying convictions in terms of an application for a licence.
52. Those centre around matters of dishonesty and the conviction against ██████ was for obtaining financial advantage by deception.
53. Although no similar prescription is contained in the Act, the principles are similar and also well established.

### **Natural Justice and Procedural Fairness**

54. As written earlier, the procedures for an application to change a nominee have been approved by the Director and include a consideration of whether the applicant is a fit and proper person.
55. As with all matters, applicants are to be afforded natural justice and procedural fairness. Central to this is the hearing rule which holds a decision maker is required to inform a person of the case against them and be afforded an opportunity to respond in a way that is appropriate in the circumstances before the decision is made<sup>2</sup>.
56. It is on this basis ██████ was provided with an opportunity to respond to the issue and therefore the requirement has been satisfied.

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<sup>2</sup> *Pow Wow Training Pty Ltd v Australian Skills Quality Authority* [2012] FCA 1490 (20 November 2012) at [42].

## Facts and criminal history

57. In making the application ██████ provided the Certificate as ██████ did previously for the acting nominee matters which disclosed, of relevance to this matter, a conviction involving dishonesty.
58. There are no other adverse matters and ██████ application appears to be supported by ██████ employer.
59. Additional to the previous Commission decision discussed earlier the former licensee of Bojangles in Alice Springs was found to be not a fit and proper person. In that matter the Commission found Mr Habib to be not fit and proper on the basis of imprisonment for unlawful sales of liquor and a recent history of non-compliance of the provisions of the *Liquor Act 2019* at his licensed premises<sup>3</sup>.
60. Distinguishing this matter on 10 November 2021, an application was approved for a person for a gaming machine licence despite their criminal history, was then subsequently refused to be approved as nominee of the liquor licence under section 53(5)(b) of the Act and eventually approved by the Director on review.
61. In that matter the criminal history involved traffic offences, distinct from the matter of dishonesty for which ██████ was convicted.
62. As with this matter, at the time of those decisions the Director of Liquor Licensing and the Director of Gaming Machines was the same person.

## Submission by the applicant

### Discrimination

63. ██████ has asked the Director “...refer to the act of 1974 for NSW and the Northern Territory that no person should be discriminated against for there past Indiscretions” (sic).
64. No such legislation exists however, the Northern Territory has the *Anti-Discrimination Act 1992* (the ADA) which prohibits discrimination against another person on the ground of an irrelevant criminal record<sup>4</sup>.
65. The term ‘irrelevant criminal record’ is defined in section 4(1) of the ADA as including a record where the circumstances relating to the offence for which the person was found guilty are not directly relevant to the situation in which the discrimination arises.

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<sup>3</sup> Northern Territory Liquor Commission, *Decision Notice – Disciplinary Action Pursuant to Liquor Act and Transfer of Liquor Licence Application – Mr Anthony Zaki Habib LC2020/058 and LC2020/052*, (11 January 2021).

<sup>4</sup> *Anti-Discrimination Act 1992*, s19(1)(q).

66. As has been ventilated above, the circumstances of the offence are considered to be directly relevant to this situation and therefore it is the position of this decision maker no prohibited discrimination arises.

### Previous appointments as acting nominee

67. ██████ has also submitted ██████ has been previously appointed as an acting nominee without any issues, or the question of ██████ criminal history being drawn into consideration.
68. ██████ is correct however, as has been discussed earlier that process does not by statutory requirement involve a probity examination of the individual, notwithstanding ██████ provided ██████ Certificate for full disclosure.
69. It is also noted the 2024 appointment was erroneously on the basis it was not beyond the 90 day threshold and therefore not requiring approval by the Director.
70. The appointment of ██████ under section 53(5)(b) of the Act in distinction to the acting nominee under section 76 of the Act, does require the examination of the fit and proper question.

### Fit and proper

71. As has been written earlier, the Commission has previously considered the question of fit and proper and the Director may be persuaded by their position.
72. The Commission has noted the term is not defined in the Act, however relied upon *Australian Broadcasting Tribunal v Bond* [1990] HCA 33: (1990) 170 CLR 321 where Mason CJ stated, at 349:

“[A] licensee has a responsibility to exercise the power conferred by the licence with a due regards to proper standards of conduct and a responsibility not to abuse the privilege which it enjoys... A licensee which lacks a proper appreciation of those responsibilities or does not discharge them is not, or may be adjudged not to be, a fit and proper person.”

73. Gaudron and Toohey JJ held the expression fit and proper is not precise and takes its meaning from context, the activities the person will be engaged in and in certain contexts, character<sup>5</sup>.
74. Flowing from those aspects their Honours spoke of “...indications of likely future conduct”, which may “...be sufficient ground to finding that a person is not fit and proper to undertake the activities in question”.

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<sup>5</sup> *Australian Broadcasting Tribunal v Bond* [1990] HCA 33: (1990) 170 CLR 321, at [380].

75. There is therefore merit in the argument the conviction is historic and may not be indicative of current behaviours, character and capabilities.
76. For the avoidance of doubt, the matter for which ██████ was found guilty was serious and should not be minimised. It must however be considered in totality.
77. Further, it is accepted decisions of this nature are significant and serious, with the ability to greatly influence the employment of a person. It necessarily follows the *Briginshaw* principle is also live in this consideration<sup>6</sup>.
78. In simple terms that principle imposes a requirement on the decision maker to require a higher level of evidence in order to prove a more serious allegation on the balance of probabilities.
79. Although it may be accepted in the years since the conviction ██████ has made significant efforts to distance ██████ from that matter, central to this consideration is the decision of the Director of Gaming Machines on 18 May 2024 finding ██████ to be not a fit and proper person.
80. The interrelationship between the liquor licence and the gaming machine licence, under which ██████ application for a gaming machine manager licence was predicated is of significance to this matter.
81. The nominee of a liquor licence which holds a gaming machine licence is required to conduct the business of the licensee, which by necessity must also include the gaming machine licence.
82. Although there is no specific prescription that a nominee must also be a licensed gaming machine manager, it is considered contrary to the intention of the legislation that they would not be.
83. It necessarily follows the adverse determination of the Director of Gaming Machines must be afforded greater weight than the other extenuating or supporting matters which otherwise may assist ██████ in this application.
84. The principle of parity must also be applied in this matter which requires like matters to be determined in a like manner, in the absence of distinguishing circumstances.
85. It is on the above that it would be contrary to these established principles that a delegate of the Director of Liquor Licensing decides the applicant is a fit and proper person when the Director of Gaming Machines has found otherwise.
86. It is for these reasons the application must be refused.

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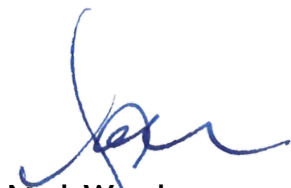
<sup>6</sup> *Briginshaw v Briginshaw* [1938] HCA 34, 60 CLR 336.

### Decision not to be published

87. Ordinarily decisions of this nature are considered public and required to be available through the Director's register for any person to see.
88. This decision is not made to embarrass [REDACTED] and the Director is cognisant of the adverse effect which may arise from a full publication of the details of this matter, notwithstanding the criminal conviction is a matter of public record.
89. In order to comply with the statutory requirements to publish the decision, two versions will be issued. One will be the complete and unedited version which will be provided to the licensee and [REDACTED], the other a redacted version removing identifying features which will be available to the public.
90. This is an unusual approach however, there appears no public interest in a complete and unredacted version being published.

### REVIEW OF DECISION

91. Section 27 of the Act provides any decision of a delegate of the Director may be reviewed by application from one of those persons prescribed in that section. This decision is made by a person so delegated and therefore is a reviewable decision.
92. An application for review must be lodged with the Director within 28 days after written notice of the decision is given to the person and must be in the approved form, stating the grounds for the review and the facts relied on to establish the grounds.
93. The persons who may seek a review of this decision are the licensee, the [REDACTED] [REDACTED] and [REDACTED].



**Mark Wood**  
Delegate of the Director of Liquor Licensing  
11 June 2025