

Decision and reasons for decision

In the matter of an application by Ms Sandra Scalzo under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse to grant an application for a temporary limited licence for an event at Billy Lids Playland, located at 86 Lynch Street, Hawthorn.

Commission: Ms Danielle Huntersmith, Chairperson
Mr John Larkins, Deputy Chair
Mr Steven Brnovic, Commissioner

Date of Decision: 19 September 2022

Date of Reasons: 19 September 2022

Decision: The Commission has determined to set aside the decision of the Delegate and grant the temporary limited licence subject to the conditions set out in Appendix A.

Signed:



Danielle Huntersmith

Chairperson

Background

The Original Application

1. On 27 August 2022, the Applicant, Ms Sandra Scalzo applied to the Victorian Liquor Commission (**Commission**) for a temporary limited licence under the *Liquor Control Reform Act 1998 (LCR Act)*¹ to supply liquor at a combined child's fifth birthday and AFL Grand Final party on 23 September 2022 between 4:30 and 7:00pm (**the Event**), at Billy Lids Playland located at 86 Lynch Street, Hawthorn (**the Premises**) for consumption on the premises (**Original Application**).
2. On 5 September 2022, a delegate of Liquor Control Victoria wrote to the Applicant and explained that the venue sought to be licenced is a children's play centre and, accordingly, section 22(1)(ca) of the LCR Act must be taken into consideration by the delegate. The delegate asked for a submission from the Applicant to address the section.
3. Section 22(1)(ca) of the LCR Act provides that:
 - (1) *The Commission must not grant a licence or BYO permit in respect of—*
 - (ca) *premises that, in the opinion of the Commission, are intended by the occupier of the premises to be primarily used by people under the age of 18 years, unless the Commission is satisfied that the grant of a licence or permit would not present a specific risk of supply of liquor to a person under the age of 18 years;*
4. The Applicant responded by email with a submission in support of the application, including:
 - a. No children will be unsupervised at the Event;
 - b. A staff member who has completed the Responsible Service of Alcohol Program has been secured for the Event;
 - c. All drinks will be served and consumed in a front kitchen / entertaining area that is separate from the children's play area; (and)
 - d. The Applicant has previously obtained a liquor licence for other venues, such as her local kindergarten, and appreciates the need for proper management and responsible actions.

¹ All references to legislation are references to the LCR Act unless stated otherwise.

5. On 6 September 2022, a delegate of the Commission (**the Delegate**) determined to refuse the Original Application (**Original Decision**) pursuant to section 44(2)(b)(v) of the Act. In particular, the Delegate noted that:
 - a. The submission provided failed to change the fact that the Premises primarily is children’s play centre and that its purpose is primarily used by people under the age of 18.
 - b. Given the above, the Delegate was of the view that the Original Application had not been made in accordance with the Act and refused the Original Application pursuant to section 44(2)(b)(v) of the LCR Act.

Application for Internal Review

6. On 6 September 2022, the Applicant applied to the Commission for review of the Original Decision (**Review Application**).
7. In the Review Application, the Applicant explained that she was not previously aware of exceptions to section 22(1)(ca) of the LCR Act and, having become aware, she submitted that the factors the Commission may consider under section 22(3A) of the LCR Act relevantly apply to the circumstances of her application.

Section 22(3A) of the LCR Act

8. Section 22(3A) of the LCR Act provides that:

(3A) For the purposes of section 22(1)(ca), factors that the Commission may consider include but are not limited to—

(a) whether the proposed licence or permit authorises supply of liquor at a time when the premises will not be used primarily by persons under the age of 18 years; and

(b) whether the proposed licence or permit provides that any person under the age of 18 years must be accompanied by a responsible adult at all times during which the proposed supply of liquor is to occur.

9. The Applicant further submitted:

- a. The Event is for 52 people, with 34 of the attendees being adults. Approximately one third of the attendees are under 18 years of age.
- b. At the Event, all children will be accompanied by a least one parent, and in many cases by both of their parents. Further, a condition of the venue is that children must be accompanied by a responsible parent at all times. The Applicant must comply with the venue's condition to have the Event in the venue.
- c. While the Premises is a children's play centre, the Applicant has hired the venue for the Event privately, after its normal operating hours.
- d. The Applicant submitted a copy of the booking confirmation which set out that the venue was booked from 4:30pm until 7:00pm.
- e. The Applicant further submitted that while the venue is booked for 2.5 hours, the Event will take place between 4:30 and 6:30pm to allow for 30 minutes of packing up and, therefore, the Applicant will only supply liquor for 2 hours in total.

Legislation and the Commission's task

The Commission's internal review power

10. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the Original Decision is a reviewable decision and the Applicant is an eligible person to apply for the review of that decision. The Review Application was made pursuant to section 153 of the LCR Act.
11. Pursuant to section 157(1) of the LCR Act, 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.*
12. Under the LCR Act, an application for a limited licence may be contested or uncontested. Pursuant to section 3(1), an uncontested application is defined as:

an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which no objection is received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174).

13. The Original Application is uncontested, as no objections were received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174).
14. 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.

Exercising the internal review power

15. Section 172U(3)(b) of the LCR Act 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.
16. 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.*

17. Section 4(2) of the LCR Act 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.²

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

- a. must consider all the information, material and evidence before the original decision maker³;
- b. may consider further information or evidence⁴; and
- c. may, in respect of uncontested applications on review, have regard to any matter the Commission considers relevant, make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.⁵

19. Under section 49 of the LCR Act, the Commission may impose any condition it thinks fit on the grant of an application.

20. The Commission considers that while the grounds of refusal outlined in section 44(2) of the LCR Act are relevant considerations, the determination of an uncontested application is ultimately to be made pursuant to section 44(1) and section 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.

21. Section 44(2)(b) of the LCR Act empowers the Commission to refuse to grant the Review Application on various grounds, including that:

- (a) *the granting of the application would detract from or be detrimental to the amenity of the area in which the Premises to which the application relates are situated; or*
- (b) *the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.*

² 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).

³ LCR Act, section 157(2).

⁴ LCR Act, section 157(3).

⁵ LCR Act, section 44(4).

22. A limited licence may be a temporary limited licence or a renewable limited licence⁶. Pursuant to section 14(1A) of the LCR Act, a temporary limited licence authorises the licensee to supply liquor at the times determined by the Commission and specified on the licence, and it may not be renewed in accordance with the LCR Act. A limited licence may further be subject to any conditions determined by the Commission and specified on the licence.
23. Section 26(1) of the LCR Act provides that the Commission may grant a limited licence only if it is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature (**Scale and Scope Requirement**).

Conduct of an Inquiry

24. Section 44(4) of the LCR Act 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) of the LCR Act 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

25. The Commission on review had before it and considered all the materials before the Delegate.
26. The Commission on review also received and considered the following additional materials:
- a. Decision and Reasons for Decision of the Delegate for the Original Application, dated 6 September 2022;
 - b. Review Application and accompanying submission (Reasons for review application), dated 6 September 2022; and
 - c. Certificate of Completion, certifying that Ms Linden Clarke had completed an RSA refresher course on 6 January 2022.

⁶ LCR Act, section 14(1).

27. On 14 September 2022, the Applicant, by email, provided further information to counsel assisting, Mr Paul Davies, being a letter from Billy Lids Playland confirming the Applicant's private booking at the venue, and confirming the following information:
- a. The entire venue has been booked for the Applicant's private event exclusively on Friday 23 September between 5pm and 7:30pm;
 - b. All spaces are exclusive to the event use only; and
 - c. No members of the public will be allowed on the premises with only invited guests getting admission to the centre

Preliminary meeting

28. On 15 September 2022, a preliminary meeting took place between the Applicant, Ms Sandra Scalzo, Ms Danielle Huntersmith, Chairperson of the Commission and counsel assisting, Mr Paul Davies (**Preliminary meeting**). At the Preliminary meeting, the Applicant provided detailed information, including much additional information that was not available to the Delegate. The Applicant detailed her plans for the Event as follows:

- a. The Event will be a combined child's 5th birthday and AFL Grand Final celebration for extended family;
- b. The booking is for hire of the venue only. The Applicant will be providing the food and drinks herself. Non-alcoholic drinks will include soft drink, juice and water. No food or drink is being provided or is available for purchase from the venue during the Event;
- c. The Applicant is not charging attendees for the liquor or for anything else;
- d. The supply of liquor will be restricted to beer, champagne, red wine and white wine
- e. No spirits or cocktails will be supplied at the Event;
- f. Liquor will be served and consumed only in the room which is allocated by the venue for food and drink and is the area outlined on the redline plan;
- g. Liquor will be served in clear plastic cups;
- h. She is only expecting approximately 40 people to attend the Event and one third of these attendees will be children. The majority of children attending are between 4 and 7 years

of age. The only teenager attending the even is her nephew, who is 15, the rest of the children are much younger and could not be mistaken for adults;

- i. The Applicant has hired Ms Linden Clarke for the Event, who will be the only person serving liquor at the Event and who:
 - i. holds a current RSA certificate; and
 - ii. has previously been employed by the Applicant to serve alcohol at other events without any compliance issues at all;
- b. Ms Linden Clarke, will be stationed at a table in the corner of the redline area (food and drink room). She will be the only person serving liquor at the Event. The liquor will be kept behind Ms Clarke in a bar area behind the table and not on the table;
- j. There will be no storage of liquor outside of the area behind the table;
- k. The venue does not allow any food or drink to be taken outside the allocated food and drink room. As part of the hire cost for the Event, the venue will provide two staff members to enforce that no food or drink of any kind leaves the food and drink room (redline area), as this is a usual strict rule of the venue;
- l. The Applicant will display signage, 'No food or beverages are to be taken into the play area' and 'All food and beverages to remain in this room'. The Applicant supplied sample signs with this wording immediately after the preliminary meeting, by email to counsel assisting;
- m. The Applicant will attend the Event and will also maintain her own oversight of the redline area;
- n. The Event will run from 5pm to 7.30pm on 23 September 2022, with the last half an hour allocated for cleaning up; and.
- o. The Applicant has run similar events at her local kindergarten over the past year and has not had any compliance issues.

29. The Applicant confirmed that she was comfortable with the Commission hearing the matter 'on the papers' (i.e. without a hearing in person).

Hearing

30. The Commission convened to consider the Review Application administratively 'on the papers', with written submissions only and no attendance by any party, on 16 September 2022.

Reasons for decision on review

Issues for determination on review

31. The Commission on review must make a fresh decision -

- c. that affirms or varies the Original Decision; or
- d. that sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.⁷

32. In this matter, the issues before the Commission include:

- a. whether the Commission is satisfied that the scale and scope of the supply of liquor proposed is limited in nature;⁸
- b. Section 22(1)(ca) considerations; and
- c. whether it is appropriate to set aside the Original Decision and grant the temporary limited licence having regard to the objects of the LCR Act and, in particular, harm minimisation, which is the primary object.⁹;

Limited scale and scope of liquor supply

33. Section 14 of the LCR Act provides that a temporary limited licence “*authorises the licensee to supply liquor at the times determined by the Commission and specified in the licence.*” However, unlike other categories of licence, limited licences are subject to the additional restriction found at section 26 of the LCR Act in that the Commission may only grant a limited licence if satisfied “*that the scale and scope of the supply of liquor the subject of the licence is limited in nature*”.

34. There are no statutory signposts which prescribe specific factors for the Commission to consider in determining whether the Scale and Scope Requirement is met. On previous occasions the

⁷ Section 157(1)

⁸ Section 26(1)

⁹ The Commission notes that in determining this matter, it has also considered each of the grounds set out in section 44(2).

Commission has considered “*the nature, location, duration or frequency of the hours of operation of a licence in question*” as relevant to the Scale and Scope Requirement¹⁰.

35. Section 26(1) of the LCR Act gives the Commission a wide discretion to determine, as a question of fact, whether the Scale and Scope Requirement is met. In the decision of Club 8, VCAT considered that there was no warrant for an interpretation that the limitation in question need to “contemplate a *substantial or significant* restriction”¹¹, however this does not mean that the Commission cannot consider whether a limitation is *substantial or significant* in the exercise of its discretion to determine whether the Scale and Scope Requirement is met.

36. The Commission notes that the Applicant has proffered the limitations referred to in paragraph 28 above. The Commission considers that the Review Application involves the supply of a limited range of liquor, to a limited number of attendees in the Applicant’s extended family and no members of the public, during hours which are significantly limited by the Event.

37. On the basis that the proposed limitations are imposed as conditions on the Licence, the Commission is satisfied that the Scale and Scope Requirement has been met.

Section 22(1)(ca) of the LCR Act

38. The Commission has considered section 22(1)(ca) of the LCR Act along with the factors that the Commission may consider under section 22(3A). The Commission is satisfied that the premises are intended to be primarily used by people under the age of 18 years. However, the Commission is also satisfied that the grant of the licence would not present a specific risk of supply of liquor to a person under the age of 18.

39. The Commission has taken into account all of the information before it, including:

- a. there are only approximately 40 people attending the Event, and only one third of these will be children;

¹⁰ See decision of Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-internal review) [2016] VCGLR 19 (25 July 2016) At [61].

¹¹ Club 8 Pty Limited v Director of Liquor Licensing (Occupational and Business Regulation [2009] VCAT 716 at para [24].

- b. the majority of children attending are between four and seven years of age, with only one above 12 years old, who is the 15 year old nephew of the licence holder, and therefore, all children attending are easily identifiable as children;
- c. All children attending will be accompanied by at least one parent at all times and no alcohol will be allowed to be taken outside the red line area, which is separated from the children's play area; and
- d. the Event, is of short duration and at a time when the venue is closed to the public.

Harm minimisation

40. The Commission is satisfied that there are no relevant grounds for refusal under section 44(2) of the LCR Act. Having regard to the objects of the LCR Act, particularly the harm minimisation object, the Commission is satisfied that there is little risk of harm given the nature of the event and that the restrictions referred to in paragraph 28 above are imposed as conditions on the Licence.

41. Upon consideration of the submissions in the Review Application and at the Preliminary meeting, the Commission is satisfied that the Applicant has demonstrated that she has given due consideration to the risk of supply to a person under 18 years at the Event and harm minimisation. The Commission notes that it had before it, and considered, additional materials that were not before the Delegate and the Commission considers the Applicant presented detailed information that demonstrated that she is well prepared and cognisant of her obligations as a licensee in relation to the Event. The Commission expects that the conditions of the Licence will be adhered to, including the requirement that no liquor shall be taken outside of the red line area.

Decision on review

42. Having regard to all the matters set out above, the Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application for a temporary limited licence subject to conditions set out in Appendix A.

The preceding 42 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith (Chairperson), Mr John Larkins (Deputy Chair) and Mr Steven Brnovic (Commissioner).

Appendix A

General Information

Nothing in this licence overrides:

- any Victorian Government directions and/or restrictions in relation to COVID-19
- local laws, planning schemes including conditions on planning permits, and/or local council requirements, including any limitations in relation to trading hours or maximum capacities as determined by local council.

Type of licence

This licence is a limited licence and authorises the licensee to supply liquor for consumption on the premises during the trading hours specified below, for purposes of a combined child's fifth birthday and AFL Grand Final party at Billy Lids Playland, located at 86 Lynch Street, Hawthorn ("Event").

Noise and Amenity

The licensee will not cause or permit undue detriment to the amenity of the area to arise out or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised by this licence.

Supply of liquor

The supply of liquor will be restricted to beer, champagne, red wine and white wine.

Liquor may be supplied for consumption at the Event in clear plastic cups.

No liquor shall be taken outside of the red line area.

The licensee must ensure no storage of liquor outside of the red line area.

The licensee shall display signs in the red line area, 'No food or beverages are to be taken into the play area' and 'All food and beverages to remain in this room'.

All copies of the RSA certificate for each member of staff must be at one central place within the licensed area for inspection if requested by a member of Victoria Police or a Liquor Control Victoria Inspector.

A copy of the limited licence, as well as "Intoxicated? Drunk? Disorderly?" and "Under 18? No Supply" liquor signage must be displayed.

The licensee must ensure that it sights an adequate proof of age document for any patron that appears to be 25 years or younger.

Trading hours

23/09/2022

Between 5.00pm and 7:30pm