



DECISION AND REASONS FOR DECISION

In the matter of an application by Gasworks Bar Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* for an internal review of the decision to refuse to grant an application for permanent underage approval for the premises trading as Gasworks Bar located at 9 Bank Street, Cobram.

Commission: Ms Helen Versey, Deputy Chair
Mr Des Powell, Commissioner
Mr Andrew Scott, Commissioner

Date of Decision: 3 August 2021

Date of Reasons: 3 August 2021

Decision: The Commission has determined to affirm the decision of the Delegate.

Signed:

A handwritten signature in black ink that reads "Helen Versey".

Helen Versey

Deputy Chair



REASONS FOR DECISION

BACKGROUND

The Original Application

1. Gasworks Bar Pty Ltd (the **Applicant**) occupies a venue which operates as a bar and nightclub under an On-premises late night licence and also functions as a café with takeaway food during the day.
2. On 27 November 2020, the Applicant applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for a variation to an existing licence, to increase the late night trading hours of its late night on-premises licence for the premises located at 9 Bank Street, Cobram (the **Premises**) (the **First Original Application**).
3. On 3 December 2020, the Applicant also applied to the Commission for a permanent approval to permit underage persons to be on the licensed premises under section 120(2)(e) of the *Liquor Control Reform Act 1998 (LCR Act)*¹ (the **Second Original Application**). The Applicant sought this approval to allow unaccompanied minors to be on the premises until 10pm on any day, for the purposes of purchasing items that are not considered partaking in a meal and for underage persons to attend underage events (**permanent underage approval**).
4. The First Original Application and the Second Original Application (collectively the **Original Applications**) were determined concurrently.
5. The Original Applications included:
 - (a) a Pre-lodgement checklist for Permanent approval to permit underage persons on licensed premises, dated 27 November 2020;
 - (b) a response on behalf of the Applicant to a request by an authorised delegate of the Commission (the **Delegate**) for additional information, dated 20 January 2021; (and)
 - (c) a response on behalf of the Applicant to a further request by the Delegate for additional information dated 18 February 2021;
6. On 20 January 2021, in accordance with section 33(3) of the LCR Act, Victoria Police advised the Commission that they objected to the grant of the First Original Application, on the grounds that the late night hours would detract from or be detrimental to the amenity of the area in which the premises are situated. Victoria Police did not object to the Second Original Application.

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



7. On 22 January 2021, the Commission wrote to the Applicant inviting the Applicant to respond to the objection and asking the Applicant how it proposed to proceed.
8. On 22 January 2021, the Applicant wrote to the Commission seeking to address the objection and seeking to amend the First Original Application by amending the trading hours as follows:
 - (i) Sunday between 10am and 11pm;
 - (ii) Monday to Thursday (other than ANZAC Day) between 10am and 1am;
 - (iii) Friday and Saturday (other than ANZAC Day and Good Friday) between 10am and 2am;
 - (iv) ANZAC Day (when it falls on either a Friday or Saturday) and Good Friday between 12 noon and 2am
 - (v) ANZAC Day (when it falls between Monday and Thursday) between 12 noon and 1am
 - (vi) ANZAC Day (when it falls on a Sunday) between 12 noon and 11pm
9. On 25 March 2021, the Delegate determined to grant the First Original Application as amended. However, the Delegate refused the Second Original Application (the **Original Decision**) for the following reasons:
 - (a) The Delegate considered that the grant of a permanent underage approval until 10pm on any day, in circumstances where the nature of the premises includes live music entertainment, would increase the risk of harm to minors;
 - (b) Further, while the Delegate acknowledged the Applicant's desire to utilise the premises as a café when entertainment is not being provided, the Delegate considered the Applicant had not made it clear as to how this will be controlled and differentiated from when it is operating as a bar or entertainment venue and how there will be sufficient processes in place to ensure risk of harm to underage patrons is minimised.

The Review Application

10. On 9 April 2021, the Applicant applied for an internal review of the Original Decision (the **Review Application**). An Internal Review Submission, dated 13 April 2021, was also provided to the Commission (the **Internal Review Submission**).
11. The Commission wrote to the Applicant to seek a copy of the Applicant's Venue or Patron Management plan and to confirm whether the Applicant remained of its earlier view that matter was one that the Commission could determine without the need for a public hearing.



12. On 30 June 2021, the Applicant responded to the Commission and submitted a copy of a Patron Management Plan.
13. On 12 July 2021, the Commission wrote to the Applicant seeking to be informed of the permitted use of the licensed premises on the Applicant's planning permit, under the *Planning and Environment Act 1987*, and requested a copy of the Applicant's planning permit.
14. On 12 July 2021, the Applicant responded to the Commission and submitted a copy of the planning permit as requested, which showed the Council-permitted use of the premises as "Late Night Liquor Licence".

Hearing

15. On 5 July 2021, the Applicant advised the Commission that it was agreeable to have the matter determined on-the-papers without the need to attend a hearing.

LEGISLATION AND THE TASK BEFORE THE COMMISSION

The Commission's internal review power

16. 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 eligible to apply for review of that decision. The Review Application was made under section 153 of the LCR Act.
17. Pursuant to section 157(1), 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 appropriate².
18. Section 120 of the LCR Act provides that:

If a person under the age of 18 years –

 - a. Is on licensed premises or any authorised premises; and
 - b. Is not –
 - i. in the company of a responsible adult; or

² Sections 157(2) to (5) of the LCR Act and section 25(3) of the VCGLR Act further prescribe how the Commission is to undertake internal reviews.



- ii. on the premises for the purpose of partaking of a meal; or
- iii. in the case of a licence under which accommodation is provided, a resident of those premises –

the licensee or permittee is guilty of an offence.

Relevantly to the Second Original Application subsection 120(2)(e) of the LCR Act provides that section 120(1) does not apply (i.e. it is not an offence under the LCR Act), where the presence on licensed premises or authorised premises of a person under the age of 18 years is in accordance with the approval of the Commission and any conditions to which that approval is subject.

Exercising the internal review power

19. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (the **VCGLR 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 issued by the Minister under section 5 of the VCGLR Act³.
20. The objects of the LCR Act are set out in section 4(1):

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.*

21. Section 4(2) of the LCR Act provides further that:

³ VCGLR Act, sections 9(3) and (4).



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 alcohol⁴.

22. In exercising the internal review power, the Commission:
 - (a) must consider all the information, material and evidence before the original decision maker⁵; and
 - (b) may consider further information or evidence⁶.
23. The Commission considers that the ultimate determination of an application for approval under section 120(2)(e) is to be made pursuant to section 157(1) of the LCR Act at the discretion of the Commission, and with reference to the objects of the LCR Act at section 4.

Conduct of an inquiry

24. Section 34 of the VCGLR Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct any inquiry in any manner it considers appropriate. During the conduct of an inquiry, section 25(3) of the VCGLR Act provides that the Commission is not bound by the rules of evidence, however must comply with the rules of natural justice.

MATERIAL BEFORE THE COMMISSION

25. The Commission on review had before it and considered all materials received by the Delegate as referred to in paragraphs 4 to 7 above.
26. The Commission also had before it and considered additional information and evidence including:
 - (a) the Original Decision, dated 25 March 2021;
 - (b) the Review Application received on 9 April 2021;
 - (c) the Internal Review Submission, dated 13 April 2021; and
 - (d) the submissions made by the Applicant, dated 30 June 2021 (Patron Management Plan) and 12 July 2021 (Planning Permit) as referred to in paragraphs 11 and 13 above.

DETERMINATION OF THE REVIEW APPLICATION

⁴ 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).

⁵ LCR Act, section 157(2).

⁶ LCR Act, section 157(3).



Issue for determination

27. In order for the Commission to make its decision on review, the central issue is whether the Commission is satisfied that it should exercise its discretion under section 120(2)(e) of the LCR Act to grant a permanent underage approval, having regard to the objects of the LCR Act, in particular harm minimisation, which is the primary object.
28. The Commission has considered those objects in determining the Review Application and whether to set aside the Original Decision and exercise its discretion to grant a permanent underage approval.
29. In the Internal Review Submission the Applicant set out that the purpose of the permanent underage approval is 'to allow those unaccompanied underage patrons who wished to attend an underage event or for when the premises operated as a café to enter and remain on the premises for purchasing snack items – that is items that would not constitute a meal'.
30. The Commission acknowledges the permanent underage approval sought by the Applicant relates to premises that operate as a hybrid business, comprising, at different times of the day and night, a café, a nightclub (encompassing live music), a bar and the conduct of underage youth events. For example, the Applicant desires to utilise the premises as a cafe when entertainment is not being provided.
31. The Commission has carefully considered the Review Application and finds that allowing unaccompanied minors on the premises until 10pm on any day presents a significant risk. The Commission notes that unaccompanied minors are only permitted on the Premises under the LCR Act provided they are partaking of a meal. Generally, the Commission will only grant an approval under subsection 120(2)(e) to allow unaccompanied minors on licensed premises in very specific circumstances and for particular events with clear plans and strict controls to ensure that minors cannot obtain or consume alcohol at the licensed premises.
32. The Review Application seeks a generic approval, rather than an approval for specific occasions and this is not consistent with the objects of the LCR Act. The Commission finds that the Review Application and the Patron Management Plan does not contain a sufficient detail for the management of the risks associated with allowing unaccompanied minors on the licensed premises and, accordingly, is not satisfied that the risks of harm to minors on the Premises, including the risk of supply and secondary supply of liquor to minors, have been appropriately mitigated. The Commission considers granting the Application would be conducive to or encourage the misuse or abuse of alcohol and would be contrary to the harm minimisation object of section 4(1) of the LCR Act.



DECISION

33. After considering all the material before it and taking into account all necessary considerations under the legislative framework, the Commission has determined to affirm the decision of the Delegate and the application for permanent underage approval under section 120 of the LCR Act is refused.

The preceding 33 paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, Mr Des Powell, Commissioner, and Mr Andrew Scott, Commissioner

