

Decisions and reasons for decision

In the matter of an application by LeMoo Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse to grant an application for a renewable limited licence for the business proposing to trade as LeMoo Pty Ltd online from a premises located at 25 Fabio Court, Campbellfield.

Commission: Ms Helen Versey, Deputy Chair
Mr Andrew Scott, Commissioner
Ms Danielle Huntersmith, Commissioner

Date of Decision: 3 August 2021

Date of Reasons: 3 August 2021

Decision: The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application for a renewable limited licence subject to the conditions at Appendix A

Signed:



Helen Versey
Deputy Chair

Background

1. On 15 March 2021, LeMoo Pty Ltd (the **Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for a renewable limited licence in respect of the premises located at 25 Fabio Court Campbellfield, (the **Premises**), trading as LeMoo Pty Ltd (the **Original Application**).
2. In the Original Application, the Applicant sought to supply liquor online through a mobile application (**App**) and a website www.lemoo.co. The Applicant proposed to deliver the liquor during ordinary trading hours for a packaged liquor licence.
3. The Applicant proposed to supply whisky, gin, vodka, scotch, brandy, rum, tequila and spirits from countries including Australia, PR China, Korea, Japan, Taiwan, Russia, France, Italy, Germany, totalling 234 different 'lines' of liquor.
4. The Applicant proposed the following limits on the supply of liquor per person per day: maximum 2 x slabs or beer, cider or pre-mixed spirits, 12 x bottles of wine, 2 x casks of wine, 2 x bottles of spirits.
5. The Original Application consisted of:
 - a. an application for a Renewable limited licence, dated 17 February 2021;
 - b. declaration of right to occupy 25 Fabio Court, Campbellfield, dated 15 March 2021, together with a lease agreement for the Premises;
 - c. Liquor Licensing Questionnaire completed by director of the Applicant Lu Xin, dated 17 February 2021;
 - d. Liquor Licensing Questionnaire completed by director of the Applicant Zheng Wu, dated 17 February 2021;
 - e. Liquor Licensing Questionnaire completed by director of the Applicant Yichuan Zhou, dated 17 February 2021;
 - f. declaration of associates, dated 17 February 2021;
 - g. submission by Applicant containing further information regarding scale and scope of the proposed licence, dated 24 March 2021;
 - h. certification of registration of a company by the Australian Securities Investments Commission (**ASIC**), dated 2 November 2020;
 - i. company constitution for LeMoo Pty Ltd;
 - j. Responsible Service of Alcohol (**RSA**) certificates:
 - i. New entrant training – Licensees' First Step course certificate for Director Zheng Wu, dated 20 February 2015; and
 - ii. RSA Program (online refresher course) valid 8 September 2020 – 8 September 2023; and
 - k. Red line plan for Premises.
6. On 15 March 2021, in accordance with section 33(3) of the *Liquor Reform Control Act 1998* (the **LCR Act**), a copy of the Original Application was served upon the Chief Commissioner of Victoria Police. On 30 March 2020, Victoria Police informed the Commission it did not object to the grant of the Original Application.
7. On 24 March 2021, the Applicant supplied further information to the Commission regarding the scale and scope of the proposed supply of liquor which included a list of 234 lines of liquor.
8. On 28 May 2021, a delegate of the Commission (the **Delegate**) refused to grant the Original Application. In the reasons for decision, the Delegate said they were not satisfied that the scale and scope of the supply of liquor is limited in nature and therefore found the Original Application was not made in accordance with the LCR Act (**Original Decision**). The Delegate did not consider the grant of a renewable limited licence for the scale of the proposed use to be a responsible development of the liquor industry and did not consider such a grant would reflect community expectations.

Application for Internal Review

9. On 28 May 2021, the Applicant applied to the Commission for review of the Original Decision, with a proposed reduction in the supply of liquor (the **Review Application**). The Applicant sought to limit the supply of liquor to spirits, wine and beer.
10. On 22 June 2021, the Commission sought further clarification from the Applicant as to the scale and scope of the proposed supply of liquor as well as the membership system, delivery hours and whether the Applicant wished for the matter to be heard by way of a public hearing.
11. In submissions dated 23 June 2021, 20 July 2021 and 21 July 2021, the Applicant provided further detail about the proposed scale and scope for the supply of liquor:
 - a. Lines of liquor
 - i. four (4) x lines of wine;
 - ii. seven (7) x lines of spirits
 - iii. six (6) x lines of pre-mixed drinks
 - iv. five (5) x lines of plum wine
 - v. five (5) x lines of beer
 - b. Supply limit per customer per day:
 - i. Wine x 12 bottles
 - ii. Beer x 24 bottles/cans (one (1) case)
 - iii. Spirits x two (2) bottles
 - iv. Pre-mix x 12 bottles
 - v. Plum wine x four (4) bottles
 - c. Supply would be limited to the total maximum limit in any two categories
 - d. Same day delivery when ordered before 6pm.

Legislation and the Commission's task

The Commission's internal review power

12. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the decision made by the Delegate in the Original Application 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.
13. 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 appropriate¹.
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. In this case, the Commission must decide whether to:
 - a. grant the renewable limited licence, and if so, whether to do so subject to conditions²; or
 - b. refuse to grant the application³.

¹ Section 157(2) to (5) of the LCR Act and section 25(3) of the VCGLR Act further prescribe the manner in which the Commission is to undertake internal reviews.

² LCR Act, sections 44, 49 and 157.

³ LCR Act, section 44 and 157.

Determination of an uncontested application

15. Under the LCR Act, an application for a renewable 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).

16. The Review 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 of the LCR Act).

Exercising the internal review power

17. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**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 Act⁴.

18. 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.

⁴ Section 9(3) and (4) VCGLR Act. The Commission considered and was satisfied as to the matters set out in the Decision-Making Guidelines relating to the assessment of the cumulative impact of licensed premises dated 7 June 2012, particularly as granting the Review Application with conditions would result in new licensed premises offering a limited supply of niche alcohol. The Commission was satisfied that the Minister's Decision-Making Guidelines, Grant of Licences for the Sale of Packaged Liquor, 7 June 2012 is not relevant to this Review Application.

19. 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 alcohol⁵.

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

- a. must consider all the information, material and evidence before the original decision maker⁶;
- b. may consider further information or evidence⁷; 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 application⁸.

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

22. 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.

23. 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.

24. A limited licence may be a temporary limited licence or a renewable limited licence. Pursuant to section 14(1B) of the LCR Act, a renewable limited licence authorises the licensee to supply liquor at the times determined by the Commission and specified on the licence, and it may 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.

25. 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.

Conduct of an inquiry

26. Section 34 of the VCGLR Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct an inquiry in any manner it considers appropriate.

27. 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.

⁵ 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).

⁶ LCR Act, section 157(2).

⁷ LCR Act, section 157(3).

⁸ LCR Act, section 44(4).

Material before the Commission

28. On review, the Commission had before it and considered all the materials received by the Delegate as referred to in paragraph 5 and 7 above.
29. The Commission also had before it and considered additional information and evidence including:
 - a. the refusal letter, dated 28 May 2021
 - b. the Original Decision, dated 1 June 2021;
 - c. the Review Application, received on 28 May 2021; and
 - d. emails from a director of the Applicant containing further submissions in support of the Review Application, dated 23 June 2021 and 20 July 2021 and 21 July 2021.

Hearing

30. The Applicant agreed for the Commission to determine the matter on the papers, therefore there was no public hearing held for this matter.

Reason for decision on review

Issues for determination on review

31. In making its decision on review, the key issue for determination is whether the nature of the supply of liquor as proposed by the Applicant is limited in scale and scope as required by section 26(1) of the LCR Act.
32. The Commission is also required to consider whether to exercise its discretion to the grant the renewable limited licence having regard to the objects of the LCR Act, with particular regard to the object of harm minimisation⁹.

Whether the proposed supply of liquor is limited in scale and scope

33. As referred to in paragraph 27 above, pursuant to section 26(1) of the LCR Act, the Commission may only grant a renewable limited licence if satisfied that the scale and scope of the supply of liquor is limited in nature.

The Applicant's submission

34. The Applicant submitted that the proposed business is an online Asian grocery store which will also supply limited quantities of Asian liquor (imported by Australian companies). The Applicant proposed same-day supply of liquor (for orders placed before 6 pm) for delivery during ordinary trading hours for a packaged liquor licence. The Applicant proposes to operate a membership system where customers register and create accounts.
35. After the Original Decision, the Applicant considerably reduced the lines of liquor proposed to be supplied – from 234 lines to 27 lines of liquor. The Review Application also proposed to limit the supply of liquor across certain categories as deemed appropriate by the Applicant for products of that nature. Relevantly, on 20 July 2021, the Applicant clarified that its intention to supply 12 bottles of spirits per person, per day, was on the assumption that pre-mixed drinks and plum wine products would be included in that quota. The Applicant confirmed that it would be happy to limit the supply of spirits to two (2) bottles per person per day, provided that up to twelve (12) bottles of pre-mixed drinks could be sold and four (4) bottles of plum wine.

⁹ See paragraphs 19 - 20. The Commission notes in determining this matter, it has also considered each of the other grounds set out in section 44(2) of the LCR Act.

36. The Applicant clarified its intention to further limit the scale and scope of the supply of liquor by restricting patrons to purchasing up to the maximum limit within two categories only, per person per day.

The Commission's view

37. The Commission finds that, since the Original Decision, the Applicant has reduced the scale and scope of the proposed supply of liquor to such an extent that it is now sufficiently limited to satisfy the scale and scope requirement in section 26(1) of the LCR Act.

38. In particular, the Commission finds that a reduction in lines of liquor from 234 to 27 has considerably limited the scope of the liquor available for supply. With respect to scale of supply, the Commission finds that the proposed limits on the number of bottles per person per category per day as set out in paragraph 11, and an additional limitation of up to a limit of only two categories, further limits the scale of the supply of liquor for the purpose of section 26(1).

39. The Commission is of the view that the membership system does not impose any limitations on the scale and scope of the supply of liquor, because any person who registers for an account would be considered a 'member'.

Objects of the LCR Act

40. The Commission is satisfied that the Applicant's process for checking the identity of customers on delivery of the liquor will ensure that liquor is not supplied to minors. The Applicant said that there would be an identity check on delivery and only official forms of identity such as a driver's licence, passport, Keypass or proof of age card would be accepted as evidence of age. The Commission finds that this process addresses harm minimisation concerns arising from the supply of packaged liquor online.

41. Based on the specific information provided to the Commission regarding the nature of the business including the process for ensuring liquor is not supplied to minors and the limitations on the volume of liquor that can be obtained per person per day, together with standard conditions that are imposed on licences on this type, the Commission is of the view that this particular Review Application meets the objects of the LCR Act and is not likely to contribute to any increase in harm.

Decision on review

42. The Commission refers to the factors in paragraphs 33 to 39 in relation to scale and scope. The Commission is satisfied that the Review Application meets the requirements of section 26(1) of the LCR Act and, in the circumstances, the Commission has determined to set aside the decision of the Delegate and grant the Application for a renewable limited licence the subject of the Review Application, subject to the conditions in Appendix A.

The preceding 42 paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey (Deputy Chair), Ms Danielle Huntersmith (Commissioner) and Mr Andrew Scott (Commissioner).

Appendix A

Type of licence

This licence is a renewable limited licence and authorises the licensee to supply packaged liquor from the licensed premises for consumption off the licensed premises only when such liquor is ordered by mail, telephone, facsimile transmission or Internet.

Restrictions on sales

The licensee must not use the above licensed premises to provide for:

- personal shopping for liquor
- browsing liquor stocks or stores
- the display of liquor for sale
- the collection of liquor by customers.

Supply of liquor

The licensee is authorised to make available for supply the following categories of liquor up to the maximum number of lines within the following categories. From this range the licensee may supply a maximum of two (2) categories of liquor per customer per day:

- wine four (4) x lines
- spirits seven (7) x lines
- pre-mixed drinks six (6) x lines
- plum wine five (5) x lines
- beer five (5) x lines.

In addition, the licensee will supply no more than the following limits, per customer, per day:

- wine x twelve (12) bottles
- beer x twenty-four (24) bottles/cans
- spirits x two (2) bottles
- pre-mix x twelve (12) bottles
- plum wine x four (4) bottles.

Delivery of liquor

- Liquor must be delivered to a person aged 18 or over. The licensee must ensure that delivery arrangements include requiring evidence of age where appropriate.
- Liquor must not be delivered and left at unoccupied premises on the same day the order is received.
- Liquor may only be delivered during the following hours:
 - between 9 a.m. and 11 p.m on any day other than Sunday, Good Friday, Anzac Day or Christmas Day.
 - between 10 a.m. and 11 p.m on Sunday.
 - between 12 noon and 11 p.m on Anzac Day.
 - No deliveries are permitted on Christmas Day or Good Friday.

Information to be displayed on website/s

The following notice must be prominently displayed on the licensee's smartphone application and Internet website:

“WARNING

Under the Liquor Control Reform Act 1998 it is an offence

- To supply alcohol to a person under the age of 18 years (Penalty exceeds \$17,000)
- For a person under the age of 18 years to purchase or receive liquor. (Penalty exceeds \$700)”

The licensee is required to prominently display the number of this licence on the licensee's mobile application and website

Orders for liquor

Orders for the supply of liquor may be taken at any time on any day

Internet orders may only be taken through the following mobile application or website(s):

- 'LeMoo' mobile application
- www.lemoo.co