

Decision and reasons for decision

In the matter of an application by Mr Cameron Leigh 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 events at Play Nook, located at 2 Arthurton Road, Northcote.

Commission: Mr John Larkins, Deputy Chair
Ms Susan Timbs, Commissioner
Mr Steven Brnovic, Commissioner

Date of Decision: 19 October 2022

Date of Reasons: 19 October 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:



John Larkins

Deputy Chairperson

Background

The Original Application

1. On 13 September 2022, the Applicant, Mr Cameron Leigh 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 three private events, being birthday parties, on 23 October 2022 between 10.00am and 8.45pm, on 26 November 2022 between 10.00am and 8.45pm and on 17 December 2022 between 10.00am and 8.45pm (**the Events**), at Play Nook located at 2 Arthurton Road, Northcote (**the Premises**) for consumption on the premises (**Original Application**).
2. On 10 October 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 delegate must take into account the requirements of section 113 of the Act in relation to certain premises must have a licence to allow liquor on the premises... Given the nature of the business, the venue would need to satisfy section 22(1)(ca) of the Act.’

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;

- b. Taking into account the requirements of section 22(1)(ca) the Premises primarily is children’s play centre and that its purpose is primarily used by people under the age of 18, 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, under section 22(3A) of the LCR Act.

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

Section 22(3A) of the LCR Act

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.

3. 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

4. On 10 October 2022, the Applicant applied to the Commission for review of the Original Decision (**Review Application**).
5. In the Review Application, the Applicant explained that he would like to apply for a review of the decision in light of the opinion that there is a specific risk of alcohol being supplied to a person under the age of 18. The Applicant submitted that he believed, ‘the fact that there are always more adults than under 18s and there is a clear line of sight at all times, we can eliminate all risk of supply to under 18s.’

Legislation and the Commission’s task

The Commission’s internal review power

6. 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.

7. 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.

8. 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).

9. 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).

10. 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

11. 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.

12. 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.*

13. 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

14. 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

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

16. 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

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).

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.

17. 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.*

18. 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.

19. 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

20. 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

21. The Commission on review had before it and considered all the materials before the Delegate.

22. The Commission on review also received and considered the following additional materials:

⁶ LCR Act, section 14(1).

- a. Decision of the Delegate for the Original Application, dated 11 October 2022; and
- b. Review Application, dated 10 October 2022.

Preliminary meeting

23. On 14 October 2022, a preliminary meeting took place between the Applicant, Mr Cameron Leigh, Mr John Larkins, Deputy 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 his plans for the Events as follows:

- a. The Events will be children's birthday parties. They are private events when the venue is not open to the public. There are only three Events ie: only one event/ birthday party will be held each day;
- b. The supply of liquor will be restricted to beer, champagne, red wine and white wine;
- c. No spirits or cocktails will be supplied at the Events;
- d. Liquor will be served and consumed only in the café area which is allocated by the venue for food and drink;
- e. Liquor will be served in clear plastic cups;
- f. Food will be available at all times during the Events;
- g. The Applicant is expecting less than 100 people to attend the Events and the ratio of attendees will be approximately 40 adults to 30 children, or 40 adults to 20 children. The majority of children who will attend are under 10 years of age. All children attending will be accompanied by at least one parent. There will be no unaccompanied children at the Events;
- h. The Applicant is only seeking to be licensed for the following reduced hours:
 1. on 23/10/22 between 12.30pm and 6.00pm;
 2. on 26/11/22 between 5.30pm and 9.00pm; and
 3. on 17/12/22 between 12.30pm and 6pm;
- i. The Applicant, his wife and two other senior employees will be the only people serving liquor at the Events and who:
 - i. all hold a current RSA certificate; and

- ii. all have previously served alcohol at other events without any compliance issues at all;
 - j. There will be no storage of liquor outside of the café area;
 - k. The venue does not allow any food or drink to be taken outside the allocated café area and into the play area, 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 café area';
 - m. The Applicant has run similar events at the Premises and has not had any compliance issues.
 - n. The Applicant is Sole Director of a company that has leased the Premises and the Applicant confirmed the company's consent to the Premises being made available exclusively for the Events. The venue will not be open to the public on these three occasions.
- 24. Following the Preliminary meeting, the Applicant emailed proposed conditions to the Commission on 16 October 2022.
- 25. The Applicant confirmed that he was comfortable with the Commission hearing the matter 'on the papers' (i.e. without a hearing in person).
- 26. Subsequent to the Preliminary Meeting, the Applicant informed the Commission in a telephone conversation with Counsel assisting, Mr Davies, that he would further amend the trading hours at each of the Events as follows:
 - a. On 23/10/22 between 3.00pm and 6.00pm;
 - b. on 26/11/22 between 6.00pm and 9.00pm; and
 - c. on 17/12/22 between 3.00pm and 6.00pm.

Hearing

- 27. The Commission convened to consider the Review Application administratively 'on the papers', with written submissions only and no attendance by any party, on 17 October 2022.

Reasons for decision on review

Issues for determination on review

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

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

29. 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

30. 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*”.

31. 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.

32. 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.

33. The Commission notes that the Applicant has proffered the limitations referred to in paragraph 23 above. The Commission considers that the Review Application involves the supply of a limited range of liquor, to a limited number of attendees, the family and friends of the child having the birthday party and no members of the public, during hours which are limited by the Events.

34. 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

35. 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, ‘Play Nook’ provides a play space for children. The Commission is satisfied that the premises are accordingly intended by the occupier 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.

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

- a. there are only approximately 100 people attending the Events, and more adults than 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 under 10 years of age and, therefore 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 café area, which is separated from the children's play area; and
- d. the Events are of short duration and at a time when the venue is closed to the public.

Harm minimisation

37. 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 events and that the restrictions referred to in paragraph 28 above are imposed as conditions on the Licence to further minimise that risk.

38. Upon consideration of the submissions in the Review Application and at the Preliminary meeting, the Commission is satisfied that the Applicant has demonstrated that he has given due consideration to the risk of supply to a person under 18 years at the Events and harm minimisation. The Commission notes that it had before it, and considered, additional information that was not before the Delegate and the Commission considers the Applicant presented detailed information that demonstrated that he is well prepared and cognisant of his obligations as a licensee in relation to the Events. 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 café area.

Decision on review

39. 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 39 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chairperson), Ms Susan Timbs (Commissioner) 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 three birthday parties at Play Nook, located at 2 Arthurton Road, Northcote. ("Events").

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.

Maximum Capacity (Licensed Premises)

100 patrons

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 Events in clear plastic cups.

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

No unaccompanied minors will be allowed on the premises.

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 the café area'.

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.

Victorian Liquor Commission

Trading hours

23/10/2022

Between 3:00pm and 6:00pm

26/11/2022

Between 6:00pm and 9:00pm

17/12/2022

Between 3:00pm and 6:00pm