

Decision and reasons for decision

In the matter of an application by The Prosecco Van Pty Ltd made on 27 October 2022 under section 153(1) of the *Liquor Control Reform Act 1998* (**the LCR Act**) for an internal review of a decision by a delegate to refuse to grant a temporary limited licence for the premises known as the Meat Market located at 1-7 Black Street, North Melbourne (**the Review Application**).

Commission: Mr John Larkins, Deputy Chairperson
Mr James O'Halloran, Commissioner
Mr Steven Brnovic, Commissioner

Date of Decision: 17 November 2022

Date of Reasons: 6 January 2023

Decision:

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 the conditions set out in Appendix A



Signed:

John Larkins
Deputy Chairperson

Background

The Original Application

1. On 12 October 2022, The Prosecco Van Pty Ltd (**the Applicant**) applied to the Victorian Liquor Commission (**the Commission**) for a temporary limited licence (**TLL**) under the *Liquor Control Reform Act 1998* (**the LCR Act**)¹ to supply liquor at an event known as the Candlelight Concert (**the Event**) at the Meat Market located at 1-7 Black Street, North Melbourne (**the Premises**), between Thursday 24 November 2022 and Saturday 26 November 2022 (**the Original Application**).
2. The organiser of the Event was an international live entertainment technology company known as Fever, who received permission from the City of Melbourne (**the Council**) to host the Event at the Premises.
3. The proposed trading hours for each day of the Event were between 4:30pm and 9pm, in which two separate sessions of live music and dance performances were scheduled, being of 65 minutes duration each.
4. The Applicant sought a TLL to supply liquor on the Premises for consumption on the Premises 45 minutes before the scheduled start of each live performance session until 30 minutes after each session started.
5. Included in the Original Application was information regarding the proposed licensed area of the Premises, which contained a Flat Floor Pavilion area. The Applicant submitted that a maximum of 250 people would attend the Event, which was pre-ticketed. The Applicant further submitted that liquor would only be served in open plastic glasses.
6. On 26 October 2022, a delegate of the Commission (**the Delegate**) refused the Original Application pursuant to section 44(2)(b)(v) (**the Original Decision**). In summary, she was of the view that the scale and scope of the supply of liquor was not limited in nature to satisfy essential requirements under section 26 given that the Applicant had been granted TLLs for more than six events in the past 12 months.

Application for Internal Review

7. On 27 October 2022, the Applicant applied to the Commission for review of the Original Decision and requested to supply liquor on the Premises for consumption on the Premises 60 minutes before the scheduled start of a live performance and for the proposed licensed

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

area to be extended to include both the Flat Floor Pavilion area as well as the Premises' foyer (**the Review Application**).²

8. The Applicant submitted, as part of the Review Application, that the organiser of the Event, Fever, would be employing crowd controllers to be present on the Premises during the Event, and that their role would include ensuring (together with the Applicant) that liquor was not removed from the Premises.³
9. The Applicant further submitted that the proposed liquor to be supplied was on tap chilled prosecco, beer and orange spritz, and that snacks as well non-alcoholic drinks would be always available.⁴

Legislation and the Commission's task

The Commission's internal review power

10. Division 2 of Part 9 governs internal review applications. Under section 152, the Original Decision was a reviewable decision, and the Applicant was 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), the specific task for the Commission with respect to the Review Application was 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 was 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).

² By way of the Review Application, the Applicant amended the Original Application to be considered on review. The Applicant confirmed the amended trading hours and the extended licenced area for the proposed supply of liquor in an email communication dated 8 November 2022.

³ The Applicant confirmed Fever's employment of crowd controllers in an email communication dated 8 November 2022.

⁴ Applicant's email communication of 7 November 2022.

14. In effect, the Commission on review stood in the shoes of the original decision maker and made a fresh decision with respect to the Original Application. In this case, the Commission either had to:

*grant the application, and if so, determine whether to do so subject to conditions⁵; or
refuse to grant the application⁶.*

Exercising the internal review power

15. Section 172U(3)(b) required 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) 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.⁷

⁵ LCR Act, sections 44, 49 and 157.

⁶ LCR Act, section 44 and 157.

⁷ 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).

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

*must consider all the information, material and evidence before the original decision maker⁸;
may consider further information or evidence⁹; and
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.¹⁰*

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

20. The Commission considered that while the grounds of refusal outlined in section 44(2) were relevant considerations, the determination of an uncontested application was 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) empowered the Commission to refuse to grant the Review Application on various grounds, including that:

*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
the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.*

22. A limited licence may be a TLL or a renewable limited licence¹¹. Pursuant to section 14(1A) of the LCR Act, a TLL 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 (**the Scale and Scope Requirement**).

Conduct of an Inquiry

24. Section 44(4) 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) provides that the Commission is not bound by the rules of

⁸ LCR Act, section 157(2).

⁹ LCR Act, section 157(3).

¹⁰ LCR Act, section 44(4).

¹¹ LCR Act, section 14(1).

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

- (a) the Delegate's email communication to the Applicant confirming the Original Decision, dated 26 October 2022;
- (b) the Review Application, dated 27 October 2022; and
- (c) the Applicant's email communications, dated 7 and 8 November 2022.

On-the-Papers determination of the Review Application

26. On 8 November 2022, the Commission informed the Applicant that it proposed to determine the Review Application 'on the papers' (i.e. without a hearing in person), and then did so with the Applicant's consent.

Issues for determination on review

27. In deciding whether to affirm, vary or set aside the Original Decision and in turn grant or refuse the TLL that was the subject of the Review Application, the Commission had to consider:

- (a) whether the Commission was satisfied that the scale and scope of the supply of liquor the subject of the proposed licence was limited in nature;¹² and
- (b) whether the Review Application should be granted or refused, having regard to the objects of the LCR Act and, in particular, harm minimisation, which is the primary object.¹³

¹² LCR Act, section 26(1).

¹³ The Commission notes that in determining this matter, it has also considered each of the grounds set out in section 44(2).

28. Each of these issues is discussed in turn.

Limited in scale and scope

29. Section 14 provides that a TLL “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 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”.¹⁴

30. 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 Commission considered “the nature, location, duration or frequency of the hours of operation of a licence in question” as relevant to the Scale and Scope Requirement.¹⁵

31. In the Review Application, the proposed supply of liquor for which the proposed licence was sought differed in some respects from that which was before the Delegate. In particular:

- a) the supply of liquor would be limited to 60 minutes before the scheduled start of a live performance (in the Original Application, the Applicant had requested the supply of liquor 45 minutes before the scheduled start of a live performance until 30 minutes after each session of live music and dance performances were scheduled to start);
- b) the scope of the licensed area would include both the Flat Floor Pavilion area as well as the Premises’ foyer (in the Original Application, the scope of the licensed area was the Flat Floor Pavilion, only); and
- c) crowd controllers would be present (in the Original Application, there was no information on this aspect).

32. The Commission noted that Ms Trish Tassoni, the Applicant’s director, confirmed that the Event would be pre-ticketed. She also submitted that crowd controllers would be present for the Event as per arrangements made by the Event’s organiser, Fever.

33. Overall, the Commission accepted that the supply of liquor would be sufficiently restricted given the limitations proposed in the Review Application, including the Event being a ticketed event with a limited number of attendees during hours which were significantly limited by the Event.

¹⁴ This is also discussed in paragraph 23 above.

¹⁵ See decision of Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-internal review) [2016] VCGLR 19 (25 July 2016) At [61].

34. Accordingly, the Commission was satisfied that the Scale and Scope Requirement was met.

Discretion to grant or refuse the Review Application

35. The Commission has a discretion under section 44(1) to grant or refuse the Review Application. In exercising this discretion, the Commission must have regard to the objects of the LCR Act, particularly harm minimisation, which is the primary object.

36. The Commission could also refuse to grant the Review Application on the basis of any of the matters listed in section 44(2)(a) and (b), which relevantly include that the granting of the application would be conducive to or encourage the misuse and abuse of alcohol.¹⁶

Misuse and abuse of alcohol

37. The Commission considered that in all circumstances, given the limited trading hours, capacity, and the nature of the Event, that the risk of misuse and abuse of alcohol would be minimal.

38. The Commission further considered that the Applicant's submissions as to crowd controllers being present at the Premises as well as liquor only being served in open plastic glasses, showed that the Applicant had already given due consideration of ways to assist in minimising of the risk of harm.

39. The Commission considered that Ms Tassoni provided detailed information as part of the Review Application¹⁷ and demonstrated that the Applicant was well prepared and cognisant of its obligations as a licensee in relation to the Event.

40. The Commission was satisfied that there were no relevant grounds for refusal under section 44(2) of the LCR Act.

41. Having regard to the objects of the LCR Act, particularly the harm minimisation object, the Commission was satisfied that there was little risk of harm given the nature of the Event.

42. For a combination of the above reasons, the Commission did not consider the potential for the misuse and abuse of alcohol as a ground to refuse to grant the Review Application.

Whether to exercise discretion to grant or refuse the Review Application having regard to the objects of the LCR Act

43. The Commission was satisfied that the Review Application met the Scale and Scope Requirement, and the Commission was satisfied that there were no grounds for refusal under section 44(2), having regard to the objects of the LCR Act.

¹⁶ LCR Act, section 44(2)(b)(ii).

¹⁷ Ms Tassoni provided a number of attachments to her email communications of 7 and 8 November 2022.

44. Importantly, with the imposition of the conditions in Appendix A, the Commission was satisfied that adequate controls existed over the supply and consumption of liquor at the Premises and that any risk of harm would be minimised.

Decision on review

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

The preceding 45 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chairperson), Mr James O'Halloran (Commissioner) and Mr Steven Brnovic (Commissioner).

Appendix A

Type of licence

This licence is a limited licence and authorises the licensee to supply liquor for consumption on the licensed premises during the trading hours specified below for the purposes of the event known as the Candlelight Concert located at Meat Market, 1-7 Black Street, North Melbourne ("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

This licence authorises the licensee to supply liquor one hour before the scheduled start of a performing arts performance as part of the Event.

The licensed area is the area marked on the plan as approved by Liquor Control Victoria.

All persons engaged in the supply and service of alcohol will have undertaken an approved Responsible Service of Alcohol course in the preceding three years. Copies of certificates of completion for such courses for each person must be at one central place within the licensed area for inspection if requested by a member of Victoria Police or a Victorian Liquor Commission Inspector.

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

Patron capacity

250 patrons.

Period of licence

The licence is valid during the days and times listed below.

Trading hours

24/11/2022	Between 4:30pm and 9pm
25/11/2022	Between 4:30pm and 9pm
26/11/2022	Between 4:30pm and 9pm