

Decision and reasons for decision

In the matter of an application by The Royal Gin Company Pty Ltd made under section 153(1) of the *Liquor Control Reform Act 1998* for an internal review of a decision to refuse to grant a temporary limited licence for the premises known as The Timber Yard located at 351 Plummer Street, Port Melbourne

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

Appearances: Mr Martin Towey, LGS Legal, for The Royal Gin Company Pty Ltd with Ms Caroline Ashford, Director, The Royal Gin Company Pty Ltd
Ms Caitlin McAlister, Counsel Assisting the Commission

Date of Hearing: 17 October 2022

Date of Decision: 20 October 2022

Date of Reasons: 12 April 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 to The Royal Gin Company Pty Ltd subject to the conditions set out in Appendix A; and
- consents at the request of Arc Events Pty Ltd for The Royal Gin Company Pty Ltd to supply liquor for consumption on and off the Premises as set out in Appendix B.

Signed:



John Larkins
Deputy Chairperson

Background

The Original Application

1. On 19 September 2022, The Royal Gin Company Pty Ltd (**Applicant**) applied to the Victorian Liquor Commission (**Commission**) for a temporary limited licence (**TLL**) under the *Liquor Control Reform Act 1998 (LCR Act)*¹ to supply liquor at a festival known as Junipalooza (**Festival**) commencing on 21 October 2022 and concluding on 23 October 2022 at the premises trading as The Timber Yard (**Premises**), located at 351 Plummer Street, Port Melbourne (**Original Application**).
2. A separate entity by the registered name of Arc Events Pty Ltd is the holder of the following two licenses in relation to the Premises:
 - i. on-premises licence (#32345723) for on-premises consumption (**On-Premises Licence**); and
 - ii. renewable limited licence (#36165418) for off-premises consumption (**RLL**).
3. The maximum capacity for the overall licensed area under the On-Premises Licence is 1,500 patrons.
4. The Applicant's supply of liquor at the Festival was proposed to be tastings of various types of gin on the Premises as well as the sale of packaged bottles of gin for off-premises consumption.
5. Producers of gin that intended to participate with the Applicant in the Festival at different stalls on the Premises came from across Australia and from overseas.
6. The proposed trading hours under the TLL were between 5pm and 9pm on 21 October 2022, between 11am and 8pm on 22 October 2022, and between 11am and 4pm on 23 October 2022, with a maximum patronage of 1,500 at any time.
7. Included in the Original Application was undated correspondence from the director of Arc Events Pty Ltd, Mr Gideon Luber, in which he confirmed his awareness of the Original Application as well as confirmation of his intention not to supply liquor on the Premises under the On-Premises Licence during the period of the Festival.
8. On 28 September 2022, a delegate of the Commission (**Delegate**) refused the Original Application under section 44(2)(b)(v) on the basis that it had not been made in accordance with the LCR Act (**Original Decision**). Specifically, the Delegate stated:

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

The Applicant is seeking to licence a venue that holds a permanent liquor licence under a different entity's name. The issuing of a temporary limited licence to a third party would not be considered responsible or appropriate.

Application for Internal Review

9. On 29 September 2022, the Applicant applied to the Commission for review of the Original Decision (**Review Application**).
10. In the Review Application, the Applicant stated that, as a third party, it had been granted TLLs in the past for similar types of events carried out at the Melbourne Convention and Exhibition Centre which is an otherwise permanently licensed premises.
11. The Applicant further submitted that those previous events under TLLs had taken place without incident.

Amendments made to the Original Application to be considered on review

12. On 6 October 2022, the Commission received an application form by Arc Events Pty Ltd for approvals/consent under section 105 and section 106 to temporarily assign its right as a licensee to supply liquor for consumption on and off the Premises to multiple third-party producers as well as to the Applicant.

Legislation and the Commission's task

The Commission's internal review power

13. Division 2 of Part 9 governs internal review applications. Under section 152, the decision made by the Delegate in the Original Decision is a reviewable decision and the Applicant is an eligible person to apply for a review of that decision. The Review Application was made pursuant to section 153.
14. 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 appropriate.²

² Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

15. 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 Original Application, and if so, whether to do so subject to conditions;³
or
- (b) refuse to grant the Original Application.⁴

Determination of an uncontested application

16. Under the LCR Act, an application for the grant of a 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).

17. 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).

18. Section 44(2) 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.⁵*

Exercising the internal review power

19. Section 172U(3)(b) 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. The objects of the LCR Act are set out at section 4(1) and provide that:

The objects of this Act are—

³ LCR Act, sections 44, 49 and 157.

⁴ LCR Act, sections 44 and 157.

⁵ LCR Act, section 44(2)(b).

(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;

(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.

20. 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.⁶

21. The Commission considers that while the grounds of refusal outlined in section 44(2) 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.

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

Conduct of an inquiry

23. 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.

⁶ See further *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 323, 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).

24. Section 172W(3) 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.

Limited licences

25. A limited licence may be a TLL or a renewable limited licence.⁷ 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.

26. 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**).

27. 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 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 Requirement.⁸

Sub-letting of licensed premises and control of business of supply of liquor

28. Section 105 prohibits a licensee from letting or sub-letting any part of the licensed premises or assigning the right to supply liquor without the consent of the Commission.

29. Similarly, section 106 prohibits a licensee from permitting any other person to carry on a business of supplying liquor on the licensed premises or permitting any person who is not employed by the licensee to be engaged in the carrying on of such a business, without the consent of the Commission.

30. Upon receiving a request for consent, the Commission may refuse consent, or it may consent to the request. The Commission may also impose any conditions it thinks fit on that consent, including a condition that it is not effective until any requirements specified in the consent have been met.⁹

31. In considering whether to consent, the Commission must further consider any objections made to the Commission against the giving of consent.¹⁰

⁷ LCR Act, section 14(1).

⁸ See decision of Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-internal review) [2016] VCGLR 19 (25 July 2016) At [61].

⁹ LCR Act, sections 105(3) and 106(3).

¹⁰ LCR Act, sections 105(4) and 106(4).

32. Finally, a person who lets, sub-lets or is assigned the right to supply liquor or who carries on the business of supplying liquor on any licensed premises in accordance with a consent given under sections 105 or 106 is liable for his, her or its act or omission as if they were the licensee while operating under the consent.¹¹

Material before the Commission

33. 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 TLL Decision Record, dated 28 September 2022;
- (b) the Delegate's decision letter to the Applicant, dated 28 September 2022;
- (c) the Review Application, dated 29 September 2022;
- (d) the Red Line Plan for the On-Premises Licence;
- (e) the Applicant's list of producers that were intended to participate with the Applicant in the Festival;
- (f) the Applicant's management plan for the Festival at the Premises;
- (g) the statement of Ms Caroline Ashford, Applicant's director, dated 5 October 2022;
- (h) the application form by Arc Events Pty Ltd, dated 6 October 2022, for approvals/consent under section 105 and section 106 to temporarily assign its right as a licensee to supply liquor for consumption on and off the Premises to multiple third party producers as well as to the Applicant; and
- (i) the Applicant's further written submissions in support of the Review Application, dated 6 October 2022, 18 October 2022 and 20 October 2022.

Hearing

34. A hearing was held in relation to the Review Application on 17 October 2022 (**Hearing**).

35. At the commencement of the Hearing, Mr Towey confirmed that he acted for both the Applicant and for Arc Events Pty Ltd in respect of the Premises.

¹¹ LCR Act, section 106A.

36. Ms Caroline Ashford, sole director of the Applicant, gave oral evidence in support of the Review Application to the effect that:

- (a) The Festival would be pre-ticketed and attendees would be given a wristband before each session commenced. There would be a different colour wristband for each session. Attendees could not exit and re-enter a session. If they wished to exit and re-enter, they would need to wait for another session.¹²
- (b) Any person serving or selling liquor at the Festival would hold an RSA certificate.¹³
- (c) Tasting glasses would be no more than 10 milligrams.¹⁴
- (d) Attendees would be encouraged to drink water and free food trucks would also be available.¹⁵
- (e) Security would be present to escort any intoxicated attendee outside.¹⁶
- (f) Only sealed bottles of gin could be removed from the Premises for off-premises consumption.¹⁷
- (g) The Applicant did not intend to sell more than 1,200 tickets per session.¹⁸
- (h) The session times would be between 5pm and 9pm on 21 October 2022, between 11am and 3pm on 22 October 2022, before an hour of break, and then between 4pm and 8pm on the same day, and finally between 11am and 4pm on 23 October 2022.¹⁹

Further amendments made to the Original Application to be considered on review

37. Mr Towey had lodged an application form on behalf of Arc Events Pty Ltd, dated 6 October 2022, for approvals/consent under section 105 and section 106 to temporarily assign its right as a licensee to supply liquor for consumption on and off the Premises to multiple third-party producers as well as to the Applicant. However, he subsequently informed the Commission in submissions, dated 18 October 2022, that Arc Events Pty Ltd now sought the grant of an approval/consent to temporarily assign its right to supply liquor under both

¹² Line 40, page 8, and lines 10 to 15, page 10 of the Hearing transcript.

¹³ Line 25, page 9 of the Hearing transcript.

¹⁴ Line 10, page 9 of the Hearing transcript.

¹⁵ Line 20, page 9 of the Hearing transcript.

¹⁶ Line 25, page 9 of the Hearing transcript.

¹⁷ Line 10, page 7, and line 30, page 9 of the Hearing transcript.

¹⁸ Line 25, page 10 of the Hearing transcript.

¹⁹ Line 20, page 11 of the Hearing transcript.

On-Premises Licence No. 32345723 and Renewable Limited Licence No. 36165418 to one party only, being the Applicant.

38. Mr Towey also confirmed that the Applicant fully understood all its obligations if it were granted a TLL for the whole of the Premises. Additionally, he indicated that if assigned a right to supply liquor or if carrying on the business of supplying liquor on the Premises in accordance with a consent given under sections 105 and 106 of the LCR Act, the Applicant would also be liable for compliance with the conditions of these permanent licences as if it were the permanent licensee while operating at the Festival.

39. On 18 October 2022, Mr Towey proposed a number of licence conditions including that:

Crowd controllers, licensed under the Private Security Act 2004 (Vic) are to be present and on duty at a ratio of 2 crowd controllers for between 0 and 100 patrons and 1 crowd controller for each 100 patrons or part thereof. One such crowd controller is to be present at the entrance of the premises to monitor the behaviour of patrons arriving at or departing from the premises at all times when the venue is open to the public and until 30 minutes after closure.

40. On 20 October 2022, Mr Towey also confirmed that the Applicant would be satisfied for the Commission to impose a licence condition to the effect that a maximum of no more than eight sealed bottles of gin could be sold per patron, per session, for off-premises consumption, having particular regard to the crowd controller condition as specified above in paragraph 39.

Reasons for decision on review

Issues for determination on review

41. In detailing the reasons for its determination of this Review Application, the Commission addressed the issues before it by reference to two general questions:

- (a) first, whether the Commission was satisfied that the Scale and Scope Requirement was met; and
- (b) secondly, whether the Commission considered it should grant or refuse the Review Application given the grounds for refusal set out in the LCR Act, and the objects of the LCR Act.

Limited in scale and scope

42. 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 four separate sessions as follows:

21/10/2022	(Session 1)	Between 5pm and 9pm
22/10/2022	(Session 2)	Between 11am and 3pm
22/10/2022	(Session 3)	Between 4pm and 8pm
23/10/2022	(Session 4)	Between 11am and 4pm

(in the Original Application, the Applicant had requested the supply of liquor on three separate days, between 5pm and 9pm on 21 October 2022, between 11am and 8pm on 22 October 2022, and between 11am and 4pm on 23 October 2022);

b) the maximum patron capacity for each session would be no more than 1,200 (in the Original Application, the Applicant proposed a maximum patron capacity of 1,500 for any session); and

c) the Applicant would be content for the Commission to impose a condition to the effect that no more than eight sealed bottles of gin could be sold per patron, per session, for off-premises consumption (the Original Application made no reference to such a proposed limitation).

43. The Commission also noted that Ms Ashford also confirmed in the Hearing that the Festival would be pre-ticketed.

44. Overall, the Commission accepted that the supply of liquor would be sufficiently restricted given the limitations proposed in the Review Application, including the Festival being a ticketed event with a cap on the maximum number of attendees during hours which were significantly limited by each session timeframe.

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

Discretion to grant or refuse the Review Application

46. 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.

47. 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.²⁰

Misuse and abuse of alcohol

48. The Commission considered that Ms Ashford provided detailed information in the Hearing and overall as part of the Review Application, and demonstrated that the Applicant was well prepared and cognisant of its obligations as a licensee in relation to the Festival at the Premises. The Commission also noted that Ms Ashford provided a number of attachments to the Review Application including the Applicant's management for the Festival at the Premises which included strategies on dealing with patrons and amenity of the neighbourhood.

49. The Commission also had regard to the Applicant's prior experience (particularly in respect to hosting similar type of events under TLLs). Additionally, there was no adverse compliance history against the Applicant in relation to the supply of liquor.

50. The Commission noted from Ms Ashford's evidence in the Hearing that free food would be offered during each session. Furthermore, patrons would be encouraged to drink complimentary water which the Commission considered was indicative of the Applicant giving consideration to ways to assist in minimising the risk of harm.

51. The Commission also had regard to the written submissions made by Mr Towey on behalf of the Applicant on 18 October 2022, in which he proposed a number of licence conditions, including the Applicant employing a minimum of two crowd controllers for the first 100 patrons and one crowd controller for each additional 100 patrons or part thereof.

52. For a combination of the above reasons, the Commission did not consider that there was potential for the misuse and abuse of alcohol so as to constitute a ground for refusal of the amended Original Application the subject of the Review Application, particularly with the imposition of the conditions as set out in Appendix A.

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

²⁰ LCR Act, section 44(2)(b)(ii).

Objects of the LCR Act

54. Having regard to the objects of the LCR Act, particularly the harm minimisation object, 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 with the imposition of the conditions as set out in Appendix A.

Decision on review

55. 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 temporary limited licence to The Royal Gin Company Pty Ltd subject to the conditions set out in Appendix A; and
- consents at the request of Arc Events Pty Ltd for The Royal Gin Company Pty Ltd to supply liquor for consumption on and off the Premises as set out in Appendix B.

The preceding 55 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

Type of licence

This licence is a limited licence and authorises the licensee to supply liquor for consumption on and off the licensed premises during the trading hours specified below for the purposes of the festival known as Junipalooza located at The Timber Yard, 351 Plummer Street, Port 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

The supply of liquor will be restricted to gin.

Liquor for consumption on the licensed premises may only be served in the form of samples filled to no more than a 10ml capacity.

All packaged liquor sales for consumption off the licensed premises must be unchilled and in sealed containers.

The supply of packaged liquor must not exceed more than eight (8) bottles of gin per person, per session.

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 Liquor Control Victoria Inspector.

Food must be made available at the licensed premises at all times.

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

The licensed premises is the area depicted on the approved plan for On-Premises Licence No. 32345723.

Free drinking water must be provided at the Event. The free drinking water facilities must be in a prominent position within the licensed area with appropriate A3 signs advertising free drinking water is available.

Special conditions

Crowd controllers licensed under the Private Security Act 2004 are to be employed at the ratio of 2 crowd controllers for the first 100 patrons and 1 crowd controller for each additional 100 patrons or part thereof. One crowd controller is to be present outside the premises to monitor patrons arriving at and departing from the premises. Crowd controllers are to be present from 30 minutes before the start of the entertainment being provided until 30 minutes after closure.

All patrons of or over the age of 18 years are to be provided with a suitable wristband before entry to the licensed area and liquor may only be supplied to persons wearing such a wristband.

The licensee must, in addition, comply with all conditions contained in On-Premises Licence No. 32345723 and all conditions of Renewable Limited Licence No. 36165418 as licensee under those licences and to the extent of any inconsistency with conditions endorsed on those licences, the conditions of this licence have effect and take precedence during the trading hours specified below.

Trading hours

21/10/2022	(Session 1)	Between 5pm and 9pm
22/10/2022	(Session 2)	Between 11am and 3pm
22/10/2022	(Session 3)	Between 4pm and 8pm
23/10/2022	(Session 4)	Between 11am and 4pm

Maximum capacities

1,200 per session.

Appendix B

SECTION 105/106 CONSENTS

To be imposed on the following licences:

- On-Premises Licence No. 32345723 operated by Arc Events Pty Ltd; and
- Renewable Limited Licence No. 36165418 Arc Events Pty Ltd.

APPROVALS/ CONSENTS

On-Premises Licence No. 32345723

Section 105/106 consent to permit another person to carry on a business of supplying liquor on the licensed premises. The terms and conditions of the consent given to the licensee are incorporated as terms and conditions of the licence as if set out here in full. This approval is for The Royal Gin Company Pty Ltd to carry on a business of supplying liquor on the licensed premises between 21 October 2022 and 23 October 2022 pursuant to On-Premises Licence No. 32345723 between the following hours:

21/10/2022	(Session 1)	Between 5pm and 9pm
22/10/2022	(Session 2)	Between 11am and 3pm
22/10/2022	(Session 3)	Between 4pm and 8pm
23/10/2022	(Session 4)	Between 11am and 4pm

Renewable Limited Licence No. 36165418

Section 105/106 consent to permit another person to carry on a business of supplying liquor for consumption off the licensed premises. The terms and conditions of the consent given to the licensee are incorporated as terms and conditions of the licence as if set out here in full. This approval is for The Royal Gin Company Pty Ltd to carry on a business of supplying liquor for consumption off the licensed premises between 21 October 2022 and 23 October 2022 pursuant to Renewable Limited Licence No. 36165418 between the following hours:

21/10/2022	(Session 1)	Between 5pm and 9pm
22/10/2022	(Session 2)	Between 11am and 3pm
22/10/2022	(Session 3)	Between 4pm and 8pm
23/10/2022	(Session 4)	Between 11am and 4pm