


Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by UPK Pty Ltd for an internal review of a decision by a delegate to refuse an application for the approval of a person as a nominee, namely HTU, for the premises trading as IPLC, located in Melbourne's south east.

Commission:	Mr James O'Halloran, Deputy Chair Ms Susan Timbs, Commissioner Mr Steven Brnovic, Commissioner
Appearances:	GTU, on behalf of UPK Pty Ltd Sgt Andrew Dobson, on behalf of Victoria Police Mr Michael Majewski, Counsel Assisting the Commission
Date of Hearing:	8 April 2024
Date of Decision:	30 July 2024
Date of Reasons:	30 July 2024
Decision:	The Commission has determined to affirm the decision of the Delegate and refuse the application.
Signed:	 James O'Halloran Deputy Chairperson

Background

Original Application

1. On 28 June 2023, UPK Pty Ltd (**Applicant**) applied to the Victorian Liquor Commission (**Commission**) for the approval of HTU as a nominee, within the meaning of the *Liquor Control Reform Act 1998* (**LCR Act**)¹, for the licensed premises trading as IPLC, located in Melbourne's south east (**Premises**), under section 54(1) (**Original Application**).
2. The owner of the Premises is GTU. She is the sole director of the Applicant company which acquired the Premises in November 2021.²
3. HTU is GTU's husband. He has worked at the Premises ever since the Applicant commenced the business.³
4. Besides HTU, three other staff members work at the Premises. These staff members assist with the selling and stocking of liquor on the Premises, and with the handling of deliveries.⁴
5. The Applicant advised that the purpose of applying to the Commission to approve HTU as the nominee for the Premises was so that he could run the business due to GTU's other competing priorities, including childcare responsibilities.⁵
6. On 23 August 2023, a copy of the Original Application was served on the Chief Commissioner of Police (**Victoria Police**) in accordance with section 54(3).
7. On 23 September 2023, Victoria Police informed a delegate of the Commission (**Delegate**) that it objected to the Original Application under section 54(4), on the ground that HTU is not a suitable person to be the nominee due to his criminal history (**Objection**).
8. On 8 December 2023, the Delegate refused the Original Application on the basis that the Delegate was not satisfied that HTU was a suitable person to be a nominee of the Applicant (**Original Decision**).

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

² Transcript, p9.

³ Transcript, p25.

⁴ Transcript, p16.

⁵ Transcript, p13.

Application for Internal Review

9. On 4 January 2024, the Applicant made an application for internal review of the Original Decision (**Review Application**).
10. On 12 January 2024, the Applicant provided additional information about HTU's criminal history.
11. On 2 February 2024, Victoria Police confirmed that it maintained its objection.
12. On 13 March 2024, a directions hearing was held in relation to the Review Application, with GTU appearing as sole director of the Applicant, and with Sgt Andrew Dobson appearing for Victoria Police (**Directions Hearing**).
13. At the Directions Hearing, the Commission invited:
 - (a) the Applicant to provide any supporting material for the Review Application; and
 - (b) Victoria Police to provide any supporting material for maintaining its objection.

Legislation and the Commission's task

The Commission's internal review power

14. 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.
15. Pursuant to section 157(1), the specific task of the Commission regarding the Review Application is to make a fresh decision that:
 - (a) affirms or varies the Original Decision; or
 - (b) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.⁶
16. In effect, the Commission, on internal review, stands in the shoes of the original decision maker and, subject to Division 6 of Part 2 of the LCR Act, must either:
 - (a) grant the application;⁷ or
 - (b) refuse to grant the application.⁸

⁶ Section 157(2) to (5) further prescribe the manner in which the Commission is to undertake internal reviews.

⁷ Sections 54 and 157.

⁸ Sections 54 and 157.

Determination of application for a nominee of licensee

17. Pursuant to section 54(4), the Chief Commissioner of Victoria Police may object to the application for a nominee of a licensee on the ground that the person is not a suitable person to be the nominee of the licensee.
18. Section 54(5) states that:

An objection must –

 - (a) *be made to the Commission in writing within 21 days after the day on which a copy of the application was given to the Chief Commissioner; and*
 - (b) *state the reasons for the objection.*
19. Where an application is a contested application, pursuant to section 54(6):

After the end of the period specified in subsection (5)(a) (or that period as extended under section 174), the Commission must grant the application if satisfied that the person is a suitable person to be the nominee of the licensee or permittee.
20. Section 54(7) provides that the Commission must consider any objection made under section 54(4).
21. Section 54(8) provides that section 44(3) applies to the determination of an application under this section.
22. Section 44(3) states that:

Without limiting the reasons why a person is not a suitable person to hold, or carry on business under, a licence [...] a person is not a suitable person to hold, or carry on business under, a licence [...] if the person or, if the person is a body corporate, any director of the person has, within the preceding 3 years—

 - (a) *been convicted, whether in Victoria or elsewhere, of an offence of supplying liquor without a licence or of supplying adulterated liquor or of an offence against any law relating to customs or excise; or*
 - (b) *engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of this Act.*

Exercising the internal review power

23. Sections 172D(3) and 172U(3)(b) require 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 are set out at section 4(1) as follows:

The objects of this Act are—

- (a) *to contribute to minimising harm 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.*

24. 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.

25. Section 3(1) defines “harm” as follows:

harm means harm arising from the misuse and abuse of alcohol, including—

- (a) *harm to minors, vulnerable persons or communities, including groups within communities; and*
- (b) *family violence; and*
- (c) *anti-social behaviour, including behaviour that causes personal injury or property damage.*

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

- (a) must consider all the information, material and evidence before the original decision maker;⁹ and
- (b) may consider further information, material or evidence.¹⁰

⁹ Section 157(2).

¹⁰ Section 157(3).

Conduct of an inquiry

27. Section 172W(3) provides that the Commission is not bound by the rules of evidence but may inform itself in any way it thinks fit, and is bound by the rules of natural justice.

Other sections of the LCR Act relevant to this matter

Obligations of a general licensee

28. Pursuant to section 8(1), a general licence authorises the Applicant to supply liquor for consumption on and off the licensed premises, and to supply liquor to a person who makes an off-premises request.
29. The LCR Act outlines specific obligations for licensees, including the Applicant, regarding the supply and consumption of liquor. For example, pursuant to section 108, the Applicant must ensure that:
- (a) liquor is supplied or consumed only in accordance with the Licence and the LCR Act;
 - (b) liquor is not supplied to intoxicated persons; and
 - (c) drunken and disorderly persons are prevented from being on the Premises.¹¹
30. Penalties for non-compliance with these obligations are clearly defined, with contraventions leading to substantial penalty units.¹²
31. These obligations are some examples demonstrating how the LCR Act prescribes rules aimed at ensuring harm minimisation and proper controls over the consumption and selling of alcohol. In addition, they demonstrate how a licensee needs to ensure that necessary controls are in place such that the supply of liquor at a licensed premises will minimise harm, including by ensuring that the supply would contribute to, and not detract from the amenity of community life.

¹¹ See section 108.

¹² For example, breaches related to improper supply and consumption of liquor attract a penalty of 60 units, while allowing intoxicated or disorderly conduct results in a penalty of 120 units.

Obligations of a nominee

32. Section 54 provides the following:

[...]

(9) *A person approved as nominee under this section is liable as if he or she were the licensee or permittee.*

[...]

(10) *A person ceases to be a nominee on ceasing to manage or control the licensed premises in circumstances in which that cessation is, or is likely to be, permanent.*

33. Pursuant to section 54(9), were the Commission to determine HTU is suitable to be a nominee of the Applicant, who holds a general licence, he would be liable as if he were a licensee.

Assessing suitability

34. With some exceptions, the LCR Act does not provide guidance as to what constitutes a suitable person to hold a liquor licence (see above paragraph 22).

35. The Commission must assess suitability against the objects of the LCR Act,¹³ noting that harm minimisation is the primary regulatory object and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).¹⁴

36. In assessing suitability, the Commission can also be guided by principles applied in previous decisions. These include ensuring that the public have confidence in the liquor industry,¹⁵ and the effluxion of time of actions that impact on a person's suitability.¹⁶

37. The Commission must be satisfied that HTU has the ability to manage a licensed premises in a manner that promotes harm minimisation and complies with a nominee's obligations under the LCR Act.

¹³ See section 4.

¹⁴ See further *Kordister Pty Ltd v Director of Liquor Licensing* (2012) 39 VR 92; [2012] VSCA 325.

¹⁵ See *Danz Management v Director of Liquor Licensing (Occupational and Business Regulation)* [2010] VCAT 536.

¹⁶ See *Patrick Rahme at OMG Bar and Function Premises (Liquor-contested application)* [2013] VCGLR 39.

Material before the Commission

38. The Commission on review had before it, and considered, all the information, material and evidence before the Delegate at first instance, which included the following:
- (a) Original Application attaching the following –
 - i. Certificate of completion of RSA Program for HTU, dated 23 August 2021.
 - ii. Certificate of completion for New Entrant Training for HTU, dated 30 May 2023.
 - iii. General licence no. XPTAY (**Licence**).
 - (b) Questionnaire for HTU, dated 28 June 2023.
 - (c) Objection report from Victoria Police, dated 20 September 2023.
 - (d) Email submission of the Applicant in reply to the Victoria Police objection, dated 20 November 2023.
 - (e) Email correspondence from Compliance Division with details of the Applicant's compliance history, dated 5 December 2023.
39. The Commission on review also considered the following materials:
- (a) Original Decision and Reasons of Delegate, dated 8 December 2023.
 - (b) Review Application received by the Commission on 4 January 2024.
 - (c) Email submission of the Applicant, dated 12 January 2024.
 - (d) Letter from Victoria Police, dated 2 February 2024.
 - (e) Pre-hearing material lodged by Victoria Police on 4 April 2024 relating to HTU, including the following –
 - i. Summary of Charges for offences in Melbourne's south east in November 2016 from the Police Brief (undated).
 - ii. Reasons for Sentence in the 2019 County Court matter.
 - iii. Letter of immediate suspension and disciplinary inquiry into the private security individual operator licence then held by HTU, dated 7 February 2017.
 - iv. Prosecution Brief of Evidence for the offence in Melbourne's south east in January 2022 (variously dated).
 - v. Criminal Record of HTU, dated 4 April 2024.
 - vi. Witness Statement of OL, dated 28 March 2024.
 - vii. Witness Statement of NC, dated 29 March 2024.
 - (f) Pre-hearing material lodged by the Applicant on 4 April 2024 relating to HTU, including the following –

- i. Submissions on the circumstances of the offences at Melbourne's south east in November 2016.
- ii. Psychological report of SL, Consultant Psychologist, dated 20 March 2019.
- iii. Character reference of WL, dated 20 March 2019.
- iv. Character reference of CTL, dated 19 March 2019.
- v. Character reference of QH, dated 20 March 2019.
- vi. Character reference of EQT, dated 19 March 2019.
- vii. Cover sheet of Corrections Victoria Case Management Workbook 1 (undated).
- viii. Cover sheet of LINC'S Course (undated).
- ix. Submissions on the circumstances of the offence in Melbourne's south east in January 2022.
- x. Statement of LR about the circumstances of the 2022 Offence (undated).
- xi. Referral letter to BN, dated 4 April 2022.
- xii. Intervention Order against NC, dated 17 October 2022.
- xiii. Video of CCTV footage (undated).

Public Hearing

40. On 8 April 2024, a public hearing was held in relation to the Review Application (**Hearing**).
41. GTU appeared in her capacity as sole director of the Applicant and gave oral evidence at the Hearing. HTU attended the Hearing and gave oral evidence for the Applicant.
42. Sgt Dobson appeared on behalf of Victoria Police. OL and NC attended the Hearing and gave oral evidence as witnesses for Victoria Police (NC's attendance was via audio-visual link).

Issues for determination on review

43. For the purposes of the Review Application, in assessing whether HTU is suitable to be a nominee of the Applicant, it is necessary to consider HTU's suitability, taking into account his character, the passage of time (including HTU's conduct insofar as it is relevant to the obligations and responsibilities of a nominee and his character), and whether or not HTU being approved as a nominee would affect the public confidence in the licensing framework, having regard in particular, to the harm minimisation objectives of the LCR Act.

Whether HTU is suitable to be the nominee of the Applicant

Section 44(3)

44. By reference to section 44(3) (see above paragraph 22), there is no indication that HTU has been convicted of liquor related offences within the last three years.
45. In addition, based on all the material before it, the Commission is not satisfied that HTU has engaged in activities involving the trading or marketing of liquor contrary to the LCR Act within the last three years.
46. On that basis, the Commission cannot say that HTU is automatically unsuitable to be a nominee of the Applicant.

HTU's character

Criminal history

47. Having regard to HTU's criminal history, Victoria Police submitted that he is unsuitable to be the nominee of the Applicant, and that the Commission should refuse the Review Application. Victoria Police also submitted that HTU "does not possess the character traits required of a person that is fit and proper and suitable to be a nominee."
48. As part of materials lodged by Victoria Police, the Commission had before it the prosecution brief relating to an incident involving HTU and NC, who owned a business next to the Premises. The brief included the statement of alleged facts as follows (in summary):
 - (a) In January 2022, NC left work in his car and experienced trouble whilst driving in Melbourne's south east, discovering a deflated tyre.
 - (b) NC returned to work to check the CCTV, which showed HTU approaching his car, parked at the rear of the Premises, kneeling by the front passenger side tyre for about 20 seconds before returning to his store.
49. In January 2023, the Dandenong Magistrates' Court found HTU guilty of tampering with a motor vehicle (**the 2022 Offence**). HTU was not convicted and sentenced to a six-month adjournment. HTU was represented at that plea hearing. At the Hearing of the

Review Application, HTU gave evidence denying having tampered with NC's car. He said that he only pleaded guilty on the advice of his lawyer.¹⁷

50. Given there was an informed plea and a finding of guilt, the Commission accepts that HTU committed the 2022 Offence.
51. The Reasons for Sentence in the 2019 County Court matter described the circumstances of the offending as follows:
 - (a) In November 2016, HTU along with five other men travelled to the victims' house in Melbourne's south east.
 - (b) As the victims noticed HTU and his accomplices outside, HTU, alongside his accomplices, verbally abused the occupants. Following the verbal exchange, HTU struck one of the victims with a cricket bat, first to the back of the head and then again to the side of the head as he tried to get up.
 - (c) HTU and his accomplices forcibly entered the house and proceeded to assault its various occupants.
 - (d) After the incident, upon police arrival, HTU denied any involvement in the offenses. He claimed to have been at a party, then out buying alcohol, and joined the group unwittingly. He said he was merely having fun at the park at the time of his arrest.
52. The case against HTU and his accomplices was argued on the basis of joint liability, with each member holding responsible for the collective actions agreed upon for engaging in criminal activities.
53. At the Hearing, HTU gave evidence about the circumstances leading up to his offending in November 2016. He said that his friends experienced harassment from three young men at a restaurant, and that this included sexist and abusive remarks at the female staff. HTU said that these men became confrontational when asked to stop, and that they escalated their actions by vandalising his friend's car. According to HTU, Victoria Police was notified of the incident but no action was taken against the men.

¹⁷ GTU gave evidence at the Hearing to the effect that, instead of tampering with NC's car, HTU was only bending down to collect coins. She said that, by the time Victoria Police arrived to investigate the incident several months later, the Applicant's CCTV storage had reached its capacity. This was the reason the Applicant provided as to why it could not provide footage showing that HTU did not tamper with NC's car.

Subsequently, HTU confronted the men at their home, and the incident culminated in a physical altercation.¹⁸

54. In March 2019, HTU pleaded guilty to three charges of causing injury recklessly, one charge of aggravated burglary, three charges of common assault, and four charges of damaging property intentionally (**the 2016 Offences**). As part of his sentence, HTU completed a Community Corrections Order (**CCO**), which included 300 hours of unpaid community work and 150 hours treatment and rehabilitation.
55. The Commission finds that Victoria Police's concerns regarding HTU's criminal history are justifiable. The nature of the offending is very serious, and this is reflected in maximum penalties of actual terms of imprisonment for the offences that he committed. HTU either deliberately inflicted harm (i.e., the 2016 Offences), or placed others in harm's way (i.e., the 2022 Offence). Such actions demonstrate HTU's poor judgment and lack of self-control, which are inconsistent with the behaviours expected of a licensee (and nominee) whose focus ought to be on harm minimisation.
56. The Commission notes that a person's criminal history alone does not, and ought not, of itself, disqualify someone from ever being suitable for the purposes of the LCR Act. On that basis, the Commission must consider HTU's suitability having regard to all the circumstances and material before it.

Whether HTU has reformed or rehabilitated

57. In relation to the 2016 Offences, the Applicant provided various supporting documents that HTU relied on when he was sentenced by the County Court in 2019. This included a report of SL, a consultant psychologist, dated 20 March 2019.
58. According to SL's report, HTU "described genuine remorse for his actions".¹⁹ In addition, based on HTU's reporting of the incident, SL stated that he was there "to support his friend", that "he had no intention of harming anyone, committing any violence or being involved in any criminal behaviour", and that he "was attempting to de-escalate the situation".²⁰

¹⁸ Transcript, pp81-82. See also the Applicant's pre-hearing submissions on the circumstances of the 2016 Offences.

¹⁹ Psychological report of SL, dated 20 March 2019, p5.

²⁰ Ibid, p9.

59. In terms of his prospects of reoffending, SL reported that “HTU is considered a low risk”.²¹ She also reported that “he does not exhibit an antisocial attitude nor have other risk factors associated with general offending, such as an antisocial peer group”.²²
60. In terms of HTU’s mental state, SL reported the following:
- “He exhibits moderate depressive symptoms, as well as some anxiety, both of which appear to be worsening as noted by neurovegetative disturbances resulting in recent accidents, anhedonia even on his wedding day last week, and general withdrawal from normal social activities and friendships. This requires intervention to prevent any worsening of his mental state, which is already compromised.”*²³
61. SL concluded that that HTU had been involved in what appeared to be “isolated, uncharacteristic behaviour”, and that his rehabilitation prospects would be much greater if here were to engage a psychologist to address some of his personal issues.²⁴
62. Besides SL’s report, the Applicant’s documents included several character reference letters in support for HTU from 2019. In summary, the letters described HTU as remorseful, indicated that his actions were out of character, and highlighted his dedication to his faith.
63. The Commission recognises the Applicant’s efforts in providing SL’s report and the character references for HTU. Besides the supporting materials, HTU and GTU gave evidence at the Hearing about how he has improved since the 2016 Offences. HTU said that the CCO “changed his life”. He said that the community work involved picking rubbish off the streets and removing graffiti. As for the treatment and rehabilitation that was part of his sentence, he said that this involved classes/sessions/lessons on “controlling your anger”.
64. GTU described HTU as being “very responsible now”, and that “he thinks more before reacting now”.²⁵ HTU discussed strategies, such as religious meditation, which he found helpful to this day.²⁶ He said that he is “not short-tempered” any longer, and that – if he were confronted with the same circumstances leading up to the 2016 Offences – he would focus on his family instead.²⁷

²¹ Ibid, p10.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Transcript, p30.

²⁶ Transcript, pp79-80.

²⁷ Transcript, pp82-83.

65. The Commission notes that SL's report and the character references are around five years old. The Commission would have been assisted with more up-to-date evidence as to HTU's character and progress regarding his psychological treatment and rehabilitation.
66. The evidence at the Hearing was that HTU did not engage a psychologist in accordance with SL's recommendations.²⁸ HTU said that "nobody told [him] that [he] needed to go back to a psychologist". The Commission considers that HTU's failure to follow up with treatment demonstrates a lack of insight into his past actions, and that he is yet to fully take responsibility for wrongdoing and its consequences.
67. While HTU gave evidence that he had engaged in counselling with BN in 2022, and that this was in relation to management of stress and anxiety arising from conflict with NC after the 2022 Offence, he did not provide any reports from BN. There was some inconsistency in the evidence of HTU and GTU regarding whether HTU attended counselling.
68. On balance, the Commission is of the view that the Applicant has not provided sufficient evidence to demonstrate his rehabilitation and reform such that he would be able to comply with his responsibilities as a nominee in accordance with the LCR Act.

Effluxion of Time

69. The Commission notes that there has been approximately eight years since the most serious offending committed by HTU (i.e., the 2016 Offences). It acknowledges the 'cycle of suitability' concept adopted by the Commission in *An Application by PJ Rahme*, in which the Victorian Commission for Gambling and Liquor Regulation stated that suitability is a "temporal concept and the effluxion of time can reduce the effect of actions that impact suitability".²⁹
70. At the Hearing, OL and NC gave evidence about HTU's conduct between 2022 and 2023, when he was purportedly in charge of the Premises.³⁰
71. OL owns and operates a business located next to the Premises. In her evidence, she said that, on one occasion, a young male was sitting at a table in front of the Premises

²⁸ Transcript, p91.

²⁹ *Patrick Rahme at OMG Bar and Function Premises (Liquor-contested application)* [2013] VCGLR 39.

³⁰ Transcript, p114-122.

and caused a disturbance outside of her business.³¹ She said that she complained to the Applicant's staff,³² who told her that the customer had been supplied with "one can of alcohol".³³ According to OL, the staff member said that the customer "had been drinking somewhere else" and that this is "why he was drunk".³⁴

72. In her evidence, OL also described an incident where a number of people purportedly caused a disturbance outside of her business. She described approximately 20 people entering the Premises and consuming alcohol both inside and out in the front.³⁵ OL described this group's behaviour as very disruptive as they were loud, stood outside the front of her business, revved their car engines, and honked their car horns. She stated that one of the intoxicated individuals from the group confronted her aggressively, yelling at her and intimidating her to the extent that she felt threatened. OL said that she retreated to her business, locked herself inside and called the police.³⁹
73. The Commission notes that the Applicant was issued with an infringement notice under section 108(1)(a)(i) for allegedly permitting undue detriment to the amenity of the area, including unwarranted noise and disturbance on 19 March 2022.
74. At the Hearing, NC provided additional evidence about the incident of 19 March 2022. According to NC, the Applicant held an inauguration event for the Premises that day, with over 40 people attending. NC said that they were all drinking alcohol at the front of the Premises from morning until the late afternoon, and that they were "abusing and swearing at people walking past as well as offering alcohol to pedestrians passing in the street". NC believed that most of the people were friends and relatives of HTU.
75. Besides the above incidents, OL gave evidence that, in late 2022 or early 2023, the Premises had loud music that disrupted her business, leading her to call the police when requests for reducing the volume were initially heeded but then ignored.³⁶ She said that

³¹ HTU said that the male customer "seemed to be alright" when he stepped into the Premises. The customer's behaviour then became "inappropriate", including taking off his t-shirt. He then sat in front of the store.

³² HTU said that OL came out of her business and had "a bit of [an] argument" with the customer.

³³ HTU said that the customer was served "a can of bourbon and coke".

³⁴ HTU disagreed that he had told OL at the time that the customer was intoxicated because "he had been drinking somewhere else". HTU also said that, prior to supplying him with the can of bourbon and coke, he did not query with the customer if he had been drinking.

³⁵ GTU said that she and HTU were shooting an advertisement for the Premises, and that this included people "coming in and drinking and eating food". HTU said that they were not drinking outside of the Premises.

³⁹ HTU said that, while police had been called due to a complaint that the group of people outside of the Premises were intoxicated, he disagreed that they were intoxicated.

³⁶ HTU said that, while music was being played, it was not loud. He added that the loud music that OL complained of had likely come from the business next door, which is a gymnasium.

the noise escalated to physical banging noises against the wall, which frightened her staff and customers, leading to further police calls.³⁷ She said that it sounded like a person hitting the wall out of anger.³⁸ OL gave evidence that police had applied for an intervention order in relation to the banging noise, which had been going on for about a month.³⁹ She said that, after police attended, she has not since heard any banging against the wall.⁴⁰

76. In his evidence, NC described several violent incidents concerning HTU when he was purportedly in charge of the Premises. He said that, on 22 July 2022, HTU purportedly assaulted him at the rear of his shop and stole half of his gold chain.^{41,42} NC also described having witnessed HTU purportedly engaging in physical altercations outside the Premises on two occasions, including “hitting someone with a metal rod”.⁴³

77. NC gave the following evidence to describe his interactions with HTU:

“[HTU was] provoking us all the time. Even after, you know, intervention order being placed. So, what he was doing whenever he saw me going towards [bin area at the back of the shops], he was standing inside his shop. And he was provoking me and my wife like, so that he can attract my attention, and you know I kept to walk, because of this and I can go, and you know attack him.”⁴⁴

“[...] I protect myself not to go with the fight, and he provoked me six, seven times, and it was almost like eight month [...] from last eight month, and it was just everywhere, at that time.”⁴⁵

“I was always scaring, not to go any fight with him at all [...]. Because the people he was surrounding all the time, 10, 12 people all the time, drinking in his shop. Sometime he's vomiting outside [...]. So it was - for me, it's not to go fight with him. But when he keep harassing me for eight months, even that's why I sold my shop.”⁴⁶

³⁷ HTU said that he and other staff members were hanging up metal signage on the wall of the Premises, suggesting that this was the cause of the ‘banging noise’.

³⁸ Transcript, p117-121.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ GTU explained that the Premises’ CCTV depicts NC as being the responsible person and that, conversely, NC has had a grudge against HTU and his running of the Premises.

⁴² HTU said that NC “was assassinating [his] character in a really bad manner”, and purportedly telling “his part of the story”, rather than “the actual truth”. He also said that NC was purportedly “attacking [him] in a religious manner”, and he can’t sell liquor”. HTU added that NC purportedly “was saying other bad words, and that customers would inform him that NC was purportedly threatening to “bash him”. He said that this made him feel depressed and anxious, and that purportedly this was why he had been referred to BN for management of anxiety and stress under a mental health care plan.

⁴³ HTU and GTU denied these allegations.

⁴⁴ Transcript, p139.

⁴⁵ Ibid.

⁴⁶ Transcript, p134.

78. In his evidence, NC stated that he had sold his business in December 2022 and relocated from his home for his safety. He stated that the stress and fear from his experiences with HTU purportedly left him unable to work for over a year.
79. While there were competing claims made at the Hearing, the evidence of OL and NC was consistent in describing a relatively recent pattern of issues involving HTU, which contributed to unsafe and disruptive conditions around the Premises, affecting neighbouring businesses and their owners' sense of safety and well-being. In circumstances where HTU was purportedly operating the Premises when these issues arose, the Commission is not satisfied that HTU would currently be able to ensure that necessary controls are in place to supply liquor under a general licence within the prescribed rules of the LCR Act.

Public confidence

80. It is important that the public have confidence in the liquor industry and confidence in the administration of the liquor industry.⁴⁷ Criminal offending cannot be condoned, and both the public and the Commission expect licensees (or their nominees), to be fully aware of this and to actively take measures to reduce the risk of harm associated with the supply of alcohol.
81. HTU's criminal history is relevant to his understanding of the need to comply with laws designed to protect the public and is therefore relevant to the question of his suitability for the purposes of the Review Application.
82. In addition, the incidents between early 2022 and 2023 suggest that HTU had continued to demonstrate poor judgment and a lack of self-control. This is inconsistent with the behaviours expected of a licensee (and nominee), whose focus ought to be on harm minimisation.
83. The Commission acknowledges HTU's submissions at the Hearing, where he expressed confidence that, should the Review Application be granted, he would not repeat his past conduct or engage in conflict with neighbouring businesses.⁴⁸ Nevertheless, the Commission is of the view that the incidents described by OL and NC, together with HTU's lack of sufficient insight into his criminal offending and little evidence of reform or rehabilitation since his conviction in 2019, do not weigh in favour of the community having confidence in HTU being able to fulfill the obligations of a nominee. The

⁴⁷ See *Galafaro v Director of Liquor Licensing* [2009] VCAT 919 and *Buzzo Holdings Pty Ltd & Anor v Loison* [2007] VSC 31.

⁴⁸ Transcript, p95.

Commission does not consider that approving HTU as the nominee in this case would promote the objects of the LCR Act.

Decision on review

84. For the reasons set out above, the Commission is not satisfied that HTU is currently suitable to be a nominee under the LCR Act. While there may come a time when he could potentially be found suitable, the Commission does not believe, on the scope of evidence before it, that time has yet come.⁴⁹
85. Having regard to the matters outlined above, the Commission has determined to affirm the Original Decision.

The preceding 85 paragraphs are a true copy of the Reasons for Decision of Mr James O'Halloran (Deputy Chair), Ms Sue Timbs (Commissioner) and Mr Steven Brnovic (Commissioner)

⁴⁹ See also *Patrick Rahme at OMG Bar and Function Premises (Liquor-contested application)* [2013] VCGLR 39 and *Danz Management v Director of Liquor Licensing (Occupational and Business Regulation)* [2010] VCAT 536.