



DECISION AND REASONS FOR DECISION

In the matter of an application by The Wine Group Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a decision to refuse to vary a renewable limited licence for the premises located at Suite 2, 357-361 Camberwell Road, Camberwell.

Commission:

Ms Helen Versey, Deputy Chair

Ms Deirdre O'Donnell, Deputy Chair

Mr Andrew Scott, Commissioner

Date of Decision:

2 July 2020

Date of Reasons:

2 July 2020

Decision:

The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the variation to the renewable limited licence subject to the conditions set out in Appendix A.

Signed:

A handwritten signature in black ink that reads "Helen Versey".

Helen Versey

Deputy Chair



REASONS FOR DECISION

BACKGROUND

The Original Application

1. On 23 January 2020, The Wine Group Pty Ltd (**Licensee**) applied to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) to vary its renewable limited licence no. 36134679 (**Licence**) under section 29 of the *Liquor Control Reform Act 1998 (LCR Act)*¹ in relation to the premises located at Suite 2, 357-361 Camberwell Road, Camberwell (**Premises**).
2. The Licensee operates an online liquor business under the Licence, which permits the Licensee to supply wine on a limited number of websites. The application to vary the Licence (**Original Application**) sought to:
 - (a) add the following websites to the Licence: www.amazon.com.au; www.kogan.com.au; www.luxeveryday.com; www.catchoftheday.com.au; www.mydeal.com.au; and
 - (b) remove the following website from the Licence: www.damselfly.com.au
3. The Original Application did not include any additional proposals or submissions as to how the scale and scope of the supply of liquor would be limited, as required under section 26 of the LCR Act.
4. On 23 January 2020, a copy of the Original Application was served on Victoria Police in accordance with section 33(3) of the LCR Act. On 20 February 2020, Victoria Police advised the Commission that it did not object to the grant of the Original Application.
5. On 25 February 2020, the Delegate determined to refuse the Original Application on the basis that he was not satisfied that the scale and scope of the supply of liquor under the Licence as sought to be varied was limited in nature (**Original Decision**).

The Review Application

6. On 27 February 2020, the Licensee applied for an internal review of the Original Decision (**Review Application**). As part of the Review Application, the Licensee proposed that the scale and scope of the supply of liquor would be limited by imposing the following restrictions on supply:
 - In relation to supply from all listed websites:
 - The Licensee would supply wine only (i.e. no beer, spirits).

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



- The Licensee would only supply direct to consumers only (i.e. no supply to restaurants, cafes or businesses).
 - In relation to supply of liquor from the new websites:
 - There would be a maximum order of 5 cases per transaction.
 - The Licensee would only supply wine produced and manufactured by the Licensee.
7. While considering the Review Application, the Commission became aware that the Licensee was offering liquor for sale from websites that were not on its Licence. This matter was referred to the Commission's Compliance Division, and an investigation was conducted. On the completion of that investigation, the Compliance Division found that there had been a breach of the Licensee's Licence, and determined to issue a Non-Compliance Notification letter to the Licensee.
8. With the agreement of the Licensee, the Commission determined to hear the matter on the papers without the need for a public hearing.

LEGISLATION AND THE TASK BEFORE THE COMMISSION

The Commission's internal review power

9. 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 Licensee is eligible to apply for review of that decision. The Review Application was made under section 153 of the LCR Act.
10. 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
11. Under the LCR Act, an application to vary a renewable limited licence may be contested or uncontested. Pursuant to section 3(1), an uncontested application is:

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).³

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

³ Conversely, a "contested application" is defined in section 3(1) as being "an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which any objections are received under Division 5 of Part 2 within the period set out in that Division for those objections (or that period as extended under section 174)".



12. The Review Application is uncontested, as was the Original Application, as no objections were received. The Commission on review stands in the shoes of the original decision maker and, in respect of an uncontested application, must either:
- (a) grant the application (and may do so subject to conditions);⁴ or
 - (b) refuse to grant the application⁵.

Exercising the internal review power

13. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* requires the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.⁶
14. The objects of the LCR Act are set out in section 4(1):

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.*

15. Section 4(2) of the LCR Act provides further 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

⁴ LCR Act, sections 44, 49 and 157.

⁵ LCR Act, sections 44 and 157.

⁶ VCGLR Act, sections 9(3) and (4).

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).



16. The Minister's Decision-Making Guidelines, Grant of Licences for the Sale of Packaged Liquor (**Guidelines**)⁸ are made under section 5 of the VCGLR Act and apply to "*the grant of liquor licences that may allow the sale of packaged liquor*". The Commission does not consider that the Guidelines are relevant in this matter, as the Licensee is not seeking to supply packaged liquor outside the ordinary trading hours permitted for such supply.
17. In exercising the internal review power, the Commission:
 - (a) must consider all the information, material and evidence before the original decision maker;⁹
 - (b) may consider further information or evidence;¹⁰ 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.¹¹
18. The Commission considers that while the grounds of refusal outlined in section 44(2) of the LCR Act are relevant considerations, the ultimate determination of an uncontested application is to be made pursuant to section 44(1) and 157(1) of the LCR Act at the discretion of the Commission, and with reference to the objects of the LCR Act at section 4.
19. Under section 49 of the LCR Act, the Commission may impose any condition it thinks fit on the grant of an application.
20. Section 44(1) of the LCR Act states that the Commission must grant or refuse to grant an uncontested application at any time after the expiry of the period for objection under Division 5 (or that period as extended under section 174 of the LCR Act).
21. Section 44(2)(b) of the LCR Act empowers the Commission to refuse to grant the Review Application on various grounds, including that:
 - i. 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
 - ii. the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.

⁸ Minister's Decision-Making Guidelines, Grant of Licences for the Sale of Packaged Liquor, 7 June 2012.

⁹ LCR Act, section 157(2).

¹⁰ LCR Act, section 157(3).

¹¹ LCR Act, section 44(4).



22. In relation to limited licences, section 26(1) of the LCR Act states the Commission may grant a limited licence only if satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature.

Conduct of an inquiry

23. Section 34 of the VCGLR Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct any inquiry in any manner it considers appropriate. Relevant provisions governing the conduct of an inquiry by the Commission in this matter include:

- (a) section 33 of the VCGLR Act, which provides, inter alia:

“(1) The Commission may conduct an inquiry for the purposes of performing its functions or duties, or exercising its powers under this Act, gambling legislation or liquor legislation.

...

(3) When conducting an inquiry for the purposes of performing its functions under section 9(1)(a), (b), (c) or (d) the Commission is taken to be a board appointed by the Governor in Council and Division 5 of Part I (including section 21A) of the Evidence (Miscellaneous Provisions) Act 1958, as in force immediately before the repeal of that Division, applies accordingly.”

- (b) section 25(3) of the VCGLR Act, which provides:

“In performing a function or duty the Commission—

(a) except when exercising a power under Division 5 of Part I of the Evidence (Miscellaneous Provisions) Act 1958, is not bound by the rules of evidence but may inform itself in any way it thinks fit;

(b) is bound by the rules of natural justice.”

MATERIAL BEFORE THE COMMISSION

24. The Commission on review had before it and considered all material before the Delegate, which included the Original Application consisting of a completed application form for variation to an existing licence or permit, dated 22 January 2020, together with a copy of the Licence.
25. The Commission also had before it and considered additional information and evidence including:
- (a) the Review Application with attached submission, dated 27 February 2020;
- (b) the reasons for decision of the Delegate, dated 25 February 2020; and



- (c) correspondence between Commission and the Licensee regarding limiting the scale and scope of the Original Application.

ISSUES FOR DETERMINATION

Limited in scale and scope

26. The central issue for the Commission is whether it is satisfied that the scale and scope of the supply of liquor the subject of the Review Application is limited in nature in accordance with section 26 of the LCR Act. This includes a consideration of the combined effect on scale and scope of the supply originally permitted under the Licence prior to the Original Application, together with that now proposed by the addition of the new websites (outlined in paragraph 2(a) above) and subject to the proposed restrictions on the supply of liquor, being:
- In relation to supply from all listed websites:
 - The Licensee would supply wine only (i.e. no beer, spirits).
 - The Licensee would only supply direct to consumers only (i.e. no supply to restaurants, cafes or businesses).
 - In relation to supply of liquor from the new websites:
 - There would be a maximum order of 5 cases per transaction.
 - The Licensee would only supply wine produced and manufactured by the Licensee.
27. The Licensee confirmed that the third party websites included functionality for the Licensee to stipulate the maximum transaction quantities for each of its products listed on those websites. The Licensee also submitted that all its orders are stored, picked and despatched from a third party logistic company, and the Licensee would introduce additional procedures in place to reject any order received from one of the new websites that either:
- (a) exceeded the transaction limit; or
 - (b) included a business name in the address field for the order.
28. While the limitation to only supply its own product was proposed to apply in relation to the new websites only, the Licensee estimated that approximately 95% of the product sold on the original websites were the Licensee's own product. However, the Licensee submitted that it wished to maintain the ability to supplement its own product with product from external sources if so requested by its customers.



The Commission's view

29. While acknowledging that adding the new websites will broaden the Licensee's presence on the internet, the Commission considers that the combined effect of the proposed limitations that would apply to the supply of liquor on those websites does sufficiently limit the scale and scope of supply for the purposes of section 26 of the LCR Act. The Commission finds that adding the new websites to the Licence, together with the proposed restrictions as to liquor type, customer type and transaction limit, does not constitute such a broad expansion to the scale and scope of supply of liquor to the point that it is no longer sufficiently limited.
30. In this regard, the Commission refers to the decision of *Club 8 Pty Limited v Director of Liquor Licensing* [2009] VCAT 716 (**Club 8**). In that matter, the Victorian Civil and Administrative Tribunal considered the question of what amounts to a sufficient limitation on the scale and scope of the supply of liquor. While the circumstances of Club 8 are very different from those in this matter, in that instance the Tribunal found that the operations at the premises must only be subjected to a limitation, but that the limitation does not need to be a substantial/significant restriction.
31. The Commission notes that the existing nature of the Licence is relevant to its consideration of whether the supply of liquor proposed as part of the Review Application is limited in scale and scope. The Licence currently permits the supply of liquor on the original websites without restriction. As part of the Review Application, the Licensee has agreed to limit this aspect of supply to be wine only (thereby restricting any ability to supply other types of liquor on those websites) and also to supply direct to consumers only. The Commission finds this to be a relevant limitation in scope, particularly when compared to the existing ability to supply liquor under the Licence.
32. On the basis that the proposed limitations are imposed as conditions on the Licence, the Commission is satisfied that the scale and scope of the supply of liquor the subject of the Licence will be limited in nature. Accordingly, the Commission finds that the Review Application meets the 'scale and scope' requirement of section 26 of the LCR Act.

Discretion to grant or refuse the licence

33. 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.
34. The Commission may also refuse to grant the Review Application on the basis of any of the matters listed in section 44(2)(a) and (b) of the LCR Act, which relevantly include:



- (a) that the granting of the application would be conducive to or encourage the misuse and abuse of alcohol;¹² and
- (b) that the applicant does not have adequate knowledge of the LCR Act.¹³

Misuse or abuse of alcohol

- 35. The Commission notes that the supply of the liquor from the new websites could be associated with misuse and abuse of alcohol insofar as it provides the Licensee with a broader internet presence from which to supply liquor to the public. However, the Commission considers that limitations imposed in relation to the authorised customers and the quantity of wine available per transaction will assist in reducing the risk associated with this.
- 36. In addition, the Commission notes that the Licensee's trading hours are consistent with the ordinary trading hours for a packaged liquor licence, and the Licence includes the standard conditions relating to the delivery of packaged liquor.
- 37. The Commission is satisfied that there is no evidence to indicate that the inclusion of the new websites on the Licence (together with the proposed restrictions on the supply of liquor as discussed above) will unduly increase the risk of misuse and abuse of alcohol.
- 38. Accordingly, the Commission does not consider that there is a ground to refuse the Review Application under section 44(2)(b)(ii) of the LCR Act.

Adequate knowledge of the LCR Act

- 39. The Commission refers to the non-compliance event as discussed in paragraph 7, and considers whether this incident evidences that the Licensee does not have an adequate knowledge of the LCR Act.
- 40. In response to a query from the Commission regarding this non-compliance event, the General Manager of the Licensee submitted that:
 - (a) he first became aware of the non-compliance after speaking with an inspector from the Compliance Division on 25 May 2020;
 - (b) immediately after that conversation, he instructed his team to make all products on those sites not available for sale;
 - (c) he did not understand that listing every website was mandatory, and took full responsibility personally for the non-compliance;

¹² Section 44(2)(b)(ii).

¹³ Section 44 (2)(b)(iii).



- (d) the Licensee has subsequently:
- i. spent more time understanding its licence and understanding what it is authorised to do under the Licence; and
 - ii. drafted a liquor licence policy to be added to the Licensee's policies that will clearly outline its licence type and each condition and how the Licensee will ensure compliance in the future.

41. The Commission finds that the above submission indicates a satisfactory response to the non-compliance event, including the actions taken once the non-compliance was brought to its attention, as well as a reasonable level of contrition on behalf of the Licensee. The Commission has also taken into account the level of enforcement action taken by the Compliance Division, which suggests that it regarded the non-compliance as being at the lower end of the scale.
42. Consequently, the Commission finds that, despite the non-compliance event, the Licensee does have adequate knowledge of the LCR Act for the purposes of ensuring compliance with its proposed licence conditions.

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

43. The Commission is satisfied that the Review Application meets the requirements of section 26 of the LCR Act, and the Commission is satisfied that there are no grounds for refusal under section 44(2) of the LCR Act. After having regard to the objects of the LCR Act, particularly the harm minimisation object, the Commission determines to grant the Review Application subject to appropriate conditions.

DECISION

44. The Commission has determined to grant the variation to the Licence subject to the conditions set out in Appendix A.

The preceding paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, Ms Deirdre O'Donnell, Deputy Chair and Mr Andrew Scott, Commissioner.

Appendix A

Renewable Limited Licence

TYPE OF LICENCE

This licence is a renewable limited licence and authorises the licensee to supply packaged liquor only when such liquor is ordered by mail, telephone, facsimile transmission or internet.

RESTRICTIONS ON SALES

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

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

DELIVERY OF LIQUOR

Liquor must be delivered to a person aged 18 or over. The licensee must ensure that delivery arrangements include requiring evidence of age where appropriate.

Liquor must not be delivered and left at unoccupied premises on the same day the order is received.

Liquor may only be delivered during the following hours:

- between 9 a.m. and 11 p.m. on any day other than Sunday, Good Friday, Anzac Day or Christmas Day.
- between 10 a.m. and 11 p.m. on Sunday.
- between 12 noon and 11 p.m. on Anzac Day.
- No deliveries are permitted on Christmas Day or Good Friday.

INFORMATION REQUIRED TO BE DISPLAYED ON WEBSITE/S

The following notice must be prominently displayed on the licensee's website/s:

WARNING

Under the Liquor Control Reform Act 1998 it is an offence;

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

The licensee is required to prominently display the number of this licence on the website(s).

ORDERS FOR LIQUOR

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

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

www.oakroadestate.com.au, www.topdrop.com.au, www.wines.com.au, www.greatwines.com.au,
www.wineexpert.com.au, www.premiumwines.com.au, www.sauvignonblanc.com.au,
www.amazon.com.au; www.kogan.com.au; www.luxeveryday.com; www.catchoftheday.com.au;
www.mydeal.com.au

SUPPLY OF LIQUOR

In relation to the supply of liquor from all websites listed above:

- Supply is limited to wine only.
- Supply is permitted to consumers only.



Victorian Commission for
Gambling and Liquor Regulation

In relation to the supply of liquor from www.amazon.com.au; www.kogan.com.au;
www.luxeveryday.com; www.catchoftheday.com.au; www.mydeal.com.au:

- Supply is limited to a maximum order of 5 cases per transaction.
- Supply is limited to liquor produced and manufactured by the Licensee.

TRADING HOURS FOR ORDERS

At any time