



CASE NOTE A (Liquor – Internal Review) [2020] VCGLR 33 (1 May 2020)

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse an application for a producer's licence.

Commission: Mr Ross Kennedy, Chair
Ms Deirdre O'Donnell, Deputy Chair
Dr Dina McMillan, Commissioner

Date of Hearing: 5 March 2019

Date of Decision: 14 August 2019

Date of Reasons: 14 August 2019

Date of Publication: 1 May 2020

Decision: The Commission determined to set aside the decision of the Delegate and grant the producer's licence.



CASE NOTE

1. In May 2018, a delegate of the Victorian Commission for Gambling and Liquor Regulation (**Commission**) refused to grant a producer's licence on the basis that the Applicant was not a suitable person to hold a liquor licence, given her association with her spouse who has a criminal record (**the Original Decision**).
2. In June 2018, the Applicant made an application for an internal review of the Original Decision (**the Review Application**) under section 153 of the *Liquor Control Reform Act 1998* (**the LCR Act**).
3. After lodgement of the Review Application, the Applicant was charged by Victoria Police for offering liquor for sale when not the holder of a licence, contrary to section 107(1) of the LCR Act. The Applicant was later found guilty of this charge.
4. In accordance with section 154 of the LCR Act, the Commission notified Victoria Police of the Review Application. Victoria Police confirmed that they maintained their objection on the ground that the Applicant was not a suitable person to hold the licence.
5. In August 2019, the Commission handed down its decision regarding the Review Application.
6. In relation to the question as to whether the Applicant is, or is not, a suitable person to hold the producer's licence, the Commission considered two main issues (amongst other factors):
 - the Applicant's association with her spouse (due to the spouse's criminal record); and
 - the Court's finding of guilt against the Applicant for offering liquor for sale when not the holder of a licence, contrary to section 107(1) of the LCR Act.
7. The Commission considered in detail the circumstances regarding the criminal record of the Applicant's spouse. The Commission concluded that the two convictions relating to the Applicant's spouse appeared to have involved isolated incidents and were between four and 15 years ago. The Commission also noted the remorse and acceptance of responsibility demonstrated by the Applicant's spouse.
8. The Commission also carefully considered the Applicant's own contravention of section 107 of the LCR Act. The Commission considered that although it occurred within the preceding three years, this did not itself mean that the Commission was bound to conclude that the Applicant was not a suitable person to hold a licence and to refuse a licence on that basis. The Commission took into account Victoria Police's acknowledgement at the hearing that the Commission holds a residual discretion to decide whether or not to refuse to grant an application for a licence under section 44(2) and 47(2) of the LCR Act, and had regard to the use of the word 'may' in both of those sections.
9. The Commission said that, in light of the *Interpretation of Legislation Act 1984* and previous Commission decisions where an applicant had contravened a provision of the LCR Act in the preceding three years, the Commission did not consider that it was obliged by section 44(3)(b) of the LCR Act to conclude that the Applicant is necessarily and automatically, regardless of the circumstances, not a suitable person to hold a licence.
10. The Commission considered the circumstances of this offence, including:
 - the Applicant's level of culpability in the commission of the offence;



- the fact that the purchasing option on the liquor website had not been activated;
 - that the Applicant had at all times been cooperative and honest with Victoria Police;
 - that it was accepted by the magistrate in the plea hearing that the Applicant had never intended to sell liquor without a licence and that the penalty imposed against her was at the lower end of the range for this offence.
11. Given all the circumstances, and having regard to the LCR Act's objects, the Commission was not satisfied that it was appropriate to exercise its discretion to refuse to grant the Applicant the producer's licence.
 12. The Commission decided not to publish its reasons for decision in this instance due to privacy considerations relating to the Applicant and her spouse, but publishes this case note in the interests of transparency.