



Information Sheet – Liquor Control Reform Act Disciplinary Action Inquiries

Background

This Information Sheet explains how the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) usually deals with inquiries under the *Liquor Control Reform Act 1998 (the Act)*¹ about: taking disciplinary action against the holder of a liquor licence;² (**a disciplinary inquiry**).

How are Disciplinary Actions started?

1. Pre-inquiry steps

Inquiries are commenced by the Commission itself (generally based on a recommendation from our staff) or following a request made to us by the Chief Commissioner of Police or a Victoria Police licensing inspector (together, **the Police**). A request may also be made by the relevant Local Council.

There need to be grounds for an inquiry to be commenced. If the Police or Local Council request an inquiry, they must:

- make the request in writing;
- specify the reasons for making the request, including the alleged grounds of disciplinary action and the alleged incidents and facts that will be relied on;
- outline the potential types of action which the requestor wishes the Commission to take at the conclusion of an inquiry;
- specify the details of any related persons whom the requestor wishes the Commission to disqualify and the incidents/facts that relate to those related persons, as well as specify what action the requestor wishes the Commission to take in relation to those related persons; and
- specify the details of any person who may have an interest in the inquiry (e.g. the owner or mortgagee of the licensed premises), if known to the requestor.

The Commission has prepared a form to assist the Police and Local Councils in making a request for a disciplinary inquiry, which is available on our website.

2. Pre-inquiry submission

Generally, we will write to the licensee with a summary of the request and allow the licensee **14 days** to make a submission on whether or not an inquiry should be held. If no response is received, the commissioner will decide whether to initiate an inquiry in the absence of any feedback or response from the licensee.

If a submission opposing an inquiry is received, we will provide it to the requestor, and allow the requestor **14 days** to provide any submission or further material in response. While the requestor's submission and further material will be provided to the licensee, we will not, unless we consider the

¹ Section 91 of the Act provides for disciplinary inquiries.

² In this Information Sheet, references to 'licence' and 'licensee' include BYO permits and permittees respectively.

further material raises new grounds for an inquiry different from those in the original request, invite a further submission from the licensee.

3. Deciding whether to conduct an inquiry

A single commissioner will consider a request (or internal recommendation) and decide whether the information justifies holding an inquiry.

The commissioner will review the submissions and materials provided by both the requestor and licensee. If the commissioner considers the information before them justifies holding an inquiry, they will refer the request or recommendation to the Commission to hold an inquiry.

In deciding whether or not to commence an inquiry, the commissioner will generally consider:

- whether the request discloses that a ground for disciplinary action may exist; and if so
- whether the matters or grounds of disciplinary action alleged warrant an inquiry being undertaken, including all relevant factors, including (but not limited to):
 - the number and alleged circumstances of grounds/incidents giving rise to the request;
 - the individual circumstances of the licensee; and
 - the objects of the Act and the need to protect the public, uphold industry standards and maintain public confidence in the liquor industry.

The decision on whether to hold an inquiry will usually be made **within 45 days** of a request being received.

4. Notice of determination

If the commissioner decides to conduct an inquiry, the requestor and the licensee (and other interested parties) will be notified. The commissioner will also identify any related persons who may be the subject of a subsequent disqualification order as well as any other persons who may have an interest in the inquiry.

If the commissioner decides not to conduct an inquiry, the requestor and licensee will be informed.

Even if the commissioner decides not to conduct an inquiry, it is possible for a requestor to make a further request based on additional or different materials.

How will the Commission conduct the inquiry?

Notification

The licensee and the requestor are parties to the inquiry and will be notified once an inquiry is commenced and provided with a notice setting out the grounds and matters the Commission proposes to consider at the inquiry. Any possible related persons will also be notified.

The Commission may also identify other potential interested persons; for instance, if the requestor was the Police, we may make inquiries with the relevant local council as well as the owner or mortgagee of the premises.

The Act also requires that we publish a notice of the inquiry in a newspaper and on our website.

We will hold a hearing in respect of the inquiry.

Inquiry hearing

We will notify the parties of the time and place for the inquiry hearing.

1. Preliminary meetings

Unless an inquiry is very straightforward and is not opposed by the licensee and related parties, we will arrange a preliminary meeting with the parties. At this meeting, a single commissioner will work with the parties to:

- identify key issues relevant to the inquiry;
- set an agreed timetable for the exchange of documents and submissions by parties;
- identify relevant witnesses (if any) and estimate the likely duration of the inquiry hearing; and
- set an agreed time and date for the hearing.

The outcome of this meeting will be summarised in writing in an agreed timetable document. This will be provided to all parties and is expected to be adhered to.

Preliminary meetings can be in person or by telephone. Parties and related persons will be advised of the time and date of a preliminary meeting.

2. Preliminary assessment concerning related persons (if required)

Where one or more related persons are identified (either by the requestor or the Commission), the Commission will determine whether or not those persons are related persons for the purpose of the inquiry.

Generally, the Commission will consider whether their involvement in either the business of the licensee or the alleged facts/circumstances giving rise to the inquiry justify their inclusion as part of the inquiry.

Related persons will be given an opportunity to explain their level of involvement in the facts/circumstances leading to the inquiry to the Commission. The Commission will then determine whether or not the related persons are related persons for the purpose of the inquiry (i.e. that their involvement is such that they should be part of the inquiry in light of a possible outcome regarding disqualification).

If the Commission considers that the relevant individuals are related persons for the purpose of the inquiry, they will be parties to the inquiry and can choose to participate in the inquiry. If the Commission determines that some individuals are **not** related persons for the purpose of the inquiry, the Commission will release them from further involvement in the inquiry (except if they are required as a witness) and they will not be subject to disqualification under section 93D of the Act.

A related person is not required to be involved in the inquiry but, if they choose not to, the Commission may subsequently decide to disqualify them in their absence.

3. What happens at the Inquiry hearing?

The inquiry will be presided over by either the Chairperson or a Deputy Chairperson of the Commission. If any party requires an interpreter, please let us know as soon as possible so that we can arrange for one to be present.

An inquiry will be heard in public unless we consider that the circumstances require a private hearing. A party can also request a private hearing - see Practice Note G-02 for further information about private hearings.

If we have any other information which may affect the outcome of the inquiry, we will provide that to all parties and related persons and give everyone an opportunity to respond or provide further information (which needs to be provided within the time frame specified). However, if a party does not respond in time, we may make our decision on the information already available to us.

Where facts are not in dispute

Where the parties and related persons all agree about the facts or circumstances of alleged incidents, the Commission will consider the agreement in determining whether or not it has found the grounds of disciplinary action are made out.

Where facts are in dispute

In circumstances where there is disagreement about the facts or circumstances that are alleged to have occurred, the Commission will hear and determine those matters. Generally, the requestor will put forward its view and call any relevant witnesses. The licensee, any related persons and the Commission will have an opportunity to ask questions. The licensee (and related persons) will generally follow, calling their relevant witnesses who may be asked questions by the requestor and the Commission. The requestor and the licensee/parties will then provide closing statements.

Agreements between requestors and licensees/related persons

Parties may choose to enter into discussions and agree on various aspects to the inquiry – such as the appropriate related persons, agreed statements of facts or agreed suggested disciplinary action outcomes. Parties can choose to enter into discussions at any point in the inquiry and the Commission encourages this approach to ensure the matter is dealt with efficiently and at minimal cost to all parties.

The Commission will carefully consider any agreement reached by the parties and will have regard to it. However, we must make our own decision and may not always agree with the resolution proposed by parties.

Decision – disciplinary action inquiry

Finding on whether a ground of disciplinary action is established

Following a hearing, the Commission will make a determination on whether or not a ground of disciplinary action is established. We will not usually make an immediate decision, but will consider all the information we have received and make our decision at a later time.

If we determine that a ground of disciplinary action is not established, the inquiry will conclude. Parties and related persons will be given written notice of the determination and a statement of reasons for this determination.

Taking disciplinary action

If the Commission determines that a ground of disciplinary action is established, it may take disciplinary action against the licensee and/or consider whether to disqualify any related persons.

If we decide that grounds for disciplinary action is established, we will notify all parties of that decision and generally hold another hearing concerning the appropriate disciplinary action to take. This process allows all parties to put forward their views regarding what disciplinary action they think the Commission should take.

Under the Act, the Commission can take a variety of disciplinary action including cancelling, suspending or varying a licence, fining a licensee, issuing a letter of censure (including a direction to rectify non-compliance) and/or disqualifying related persons from holding a licence or being employed in licensed premises for a period of time.

Once a hearing has occurred, we will consider all the information and submissions received (including any submissions made at any hearing) and make our decision on what disciplinary action to take.

Parties and related persons will be notified of our decision in writing and receive a written statement of the reasons for our decision.

What happens if I don't attend a hearing?

If you don't attend a scheduled hearing, we will make a decision on the basis of all of the information already before us. If any party cannot attend scheduled hearing, they should contact the Commission as soon as possible and ask for the hearing to take place on another day.

Do I need a lawyer? Can I bring a support person?

Disciplinary action can result in significant consequences, such as fines, cancellation of licences or disqualification of individuals from involvement in the liquor industry. Accordingly, parties may wish to consider whether to seek their own independent legal advice. The Law Institute of Victoria operates a free referral service to connect individuals with legal representation. Details can be found at www.liv.asn.au/referral.

The Commission aims to conduct hearings with as little formality and technicality as possible and you are not required to have a lawyer represent you, but may do so if you wish. You can also bring along a support person.

There is usually a lawyer present who helps the Commission conduct the hearing. See Practice Note G-01 for more information about this person's role.

Effective Date: This practice note was approved by the Commission on **26 April 2018** and applies to all requests for disciplinary inquiries made to the Commission after this date.

The Commission has approved this Information Sheet to explain how it generally handles disciplinary action inquiries, but may vary the way it handles an inquiry at its discretion.