



DECISION AND REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for the internal review of a decision to refuse to transfer General Licence no. 33120922 to JPJ Crossley Operations Pty Ltd in respect of the premises known as the Crossley Hotel, located at 47-55 Little Bourke Street, Melbourne.

Commission:

Mr Ross Kennedy, Chair

Ms Deirdre O'Donnell, Deputy Chair

Mr Andrew Scott, Commissioner

Date of Hearing

26 February 2020

Date of Decision:

27 February 2020

Date of Reasons:

1 May 2020

Decision:

The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application to transfer the licence.

Signed:

A handwritten signature in black ink, appearing to read 'Ross Kennedy'.

Ross Kennedy

Chair



BACKGROUND

The Original Application

1. On 2 July 2019, the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) received an application under the *Liquor Control Reform Act 1998* (**the LCR Act**)¹ to transfer General Licence no 33120922 (**the Licence**) for the premises known as The Crossley, located at 47-55 Little Bourke Street, Melbourne (**the Premises**) from Hotel Cossley Pty Ltd to Niel Mason.
2. On 17 July 2019, Niel Mason contacted the Commission to amend the application. The effect of the amendment was to change the proposed transferee of the Licence from Niel Mason to a company named JPJ Crossley Operations Pty Ltd (**the Applicant**), of which Niel Mason was neither a registered director nor shareholder (**the Original Application**).
3. On 29 September 2019, the Group Director of Finance of the Applicant contacted the Commission to inform it that Niel Mason was no longer involved with the Applicant and that it would be the Commission's point of contact for future correspondence concerning the Original Application.
4. The Original Application included:
 - (a) a completed application form submitted on 2 July 2019;
 - (b) current and historical Australian Securities and Investment Commission company extracts of the Applicant;
 - (c) a completed Declaration of Right to Occupy the Premises;
 - (d) a completed liquor licensing questionnaire for each director of the Applicant;
 - (e) certificate of completion of an approved responsible service of alcohol (**RSA**) program by Niel Mason;
 - (f) certificate of completion of an approved responsible service of alcohol program by Natalie McNamara;
 - (g) certificate of completion of 'New Entrant Training' by Niel Mason, issued on 26 February 2019;
 - (h) a 'red line' plan of the Premises; and
 - (i) a copy of general licence no. 33120922.

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



5. In accordance with section 33(1) of the LCR Act, a copy of the Original Application was served on a Victoria Police licensing inspector (**Victoria Police**) on 17 July 2019. On 17 September 2019, Victoria Police informed the Commission that it did not wish to object to the Original Application
6. On 5 December 2019, a delegate of the Commission (**the Delegate**) determined to refuse the Amended Original application pursuant to sections 44(2)(b)(iv) and 44(2)(b)(v) (**the Original Decision**) on grounds that:
 - (a) evidence was not provided by the Applicant to indicate that it had adequate knowledge of the LCR Act;
 - (b) the Applicant had not provided satisfactory evidence of its right to occupy the Premises;
 - (c) the Applicant had not provided information regarding the person responsible for the management of, and in control of the Premises; and
 - (d) the Original Application had not been made in accordance with the LCR Act.

The Review Application

7. On 30 December 2019, the Applicant applied for internal review of the Original Decision (**the Review Application**). The Applicant wrote on the application form that the outstanding information referred to in paragraph 6 would be provided in due course, and this information was later received by the Commission.

LEGISLATIVE FRAMEWORK AND THE TASK BEFORE THE COMMISSION

The Commission's internal review power

8. Under the LCR Act, an application to transfer a licence may be contested or uncontested. Pursuant to section 3(1) of the LCR Act, an uncontested application relevantly includes "*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)*".²
9. The Review Application is made pursuant to section 153 of the LCR Act. The Original Decision is a reviewable decision and the Applicant is an eligible person under Division 2 of Part 9 of the LCR Act.

² Conversely, a "contested application" in the context of a transfer 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)*".



10. Pursuant to section 157(1) of the LCR Act, 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.
11. In effect, the Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision with respect to the Review Application. The Commission must either:
- (a) grant the application (and may do so subject to conditions)³; or
 - (b) refuse to grant the application⁴.

In doing so, it must consider all the information, material and evidence before the original decision maker⁵. It may also consider further information, material or evidence as part of making its decision⁶.

Conduct of an inquiry

12. Section 34 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**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:
- i. 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 1 (including section 21A) of the Evidence (Miscellaneous Provisions) Act 1958, as in force immediately before the repeal of that Division, applies accordingly.”

³ Section 44, 49 and 157 of the LCR Act

⁴ Section 44 and 157 of the LCR Act

⁵ Section 157(2) of the LCR Act.

⁶ See section 157(3) of the LCR Act.



(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 1 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.”

Determination of an uncontested application

13. Where an application is an uncontested application, pursuant to section 44(1) of the LCR Act:

“Subject to Division 3, the Commission must grant or refuse 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).”

14. Section 44(2) of the LCR Act provides that the Commission may refuse to grant an uncontested application on any of the following grounds –

“(a) in the case of a grant or transfer of a licence or BYO permit, that the applicant or proposed transferee is not a suitable person to hold or carry on business under the licence or BYO permit”

...

(b)(iv) if the applicant or proposed transferee is a body corporate—that no director of the applicant or proposed transferee has an adequate knowledge of this Act”

15. Section 44(3) of the LCR Act provides

“Without limiting the reasons why a person is not a suitable person to hold, or carry on business under, a licence or BYO permit, a person is not a suitable person to hold, or carry on business under, a licence or BYO permit 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.”



16. Section 44(4) of the LCR Act provides that before granting or refusing an uncontested application under subsection (1), the Commission may:

- “(a) have regard to any matter the Commission considers relevant; and
- (b) make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.”

17. Section 9(3) of the VCGLR Act provides that:

“The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003, the Liquor Control Reform Act 1998, the Casino Control Act 1991, the Racing Act 1958 or any other Act, have regard to the objects of the Act conferring functions on the Commission.”⁷

18. Accordingly, in exercising its discretion to either grant or refuse an uncontested application under section 44(1) of the LCR Act, the Commission must have regard to the objects of the LCR Act.

19. The objects of the LCR Act are set out in section 4(1), which provides:

- “(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.”

⁷ There are no objects specified in the VCGLR Act itself.



20. 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.”

21. The Court of Appeal of the Victorian Supreme Court has made it clear in *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325 (**Kordister**) that harm minimisation is a fundamental principle of the LCR Act, and can properly be regarded as “the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions”⁸. However, as was also noted by the Court of Appeal, “this is not to say ... that it [harm minimisation] is to be taken into account, or given such weight, to the exclusion of the other objects”⁹.

22. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the ultimate determination of an uncontested application is to be made pursuant to sections 44(1) and 157(1) at the discretion of the Commission with reference to the objects of the LCR Act.

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

MATERIAL BEFORE THE COMMISSION

24. The Commission on review had before it, and considered, all the materials received by the Delegate. The Commission also received and considered the following materials:

- (a) the Original Decision and reasons of the Delegate for the decision, dated 5 December 2019;
- (b) the Review Application received by the Commission on 31 December 2019;
- (c) certificates of completion certifying that a director of the Applicant completed the ‘Responsible Service of Alcohol’ program and ‘New Entrant Training’, dated 31 July 2019;
- (d) certificates of completion certifying that a second director of the Applicant fulfilled the ‘Licensees’ First Step’ program, dated 25 February 2010;
- (e) a declaration of the Applicant’s right to occupy the Premises, dated 16 December 2019; and
- (f) correspondence between the Applicant and the Delegate following the Original Decision.

⁸ See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

⁹ See *Kordister* [2012] VSCA 325, at [188] per Tate JA.



ON-THE-PAPERS DETERMINATION

25. On 5 February 2020, the Commission invited the Applicant to provide its view on whether the Review Application was suitable for the Commission's determination 'on the papers', without a public hearing or an appearance at the Commission by the Applicant. In response, the Applicant advised the Commission that it would prefer for the matter to be determined on the papers.
26. The Applicant informed the Commission that there was some urgency with respect to the determination of the Review Application. Accordingly, the Commission convened to determine the Review Application on the papers on 25 February 2020.

REASONS FOR DECISION ON REVIEW

Issues for determination on review

27. The Commission may refuse to grant an uncontested application on any of the grounds in section 44(2) of the LCR Act when making its decision in relation to the Review Application.

Suitability

28. Section 44(2)(a) of the LCR Act sets out that the Commission may refuse to grant an uncontested application on the ground that the proposed transferee is not a suitable person to hold or carry on business under the licence. When the Original Application and Review Application were served on Victoria Police, no objection was made to either on grounds that the Applicant was not a suitable person to hold or carry on business under the Licence. Further to this, the information before the Commission discloses no matters relevant to the suitability of the Applicant or any director thereof.
29. Noting the lack of objection by Victoria Police and the absence of material suggesting that the Applicant is not a suitable person to hold the Licence, the Commission does not consider that there is any basis to refuse the Review Application pursuant to section 44(2)(a) of the LCR Act.

Amenity

30. The Commission may refuse to grant an uncontested application on the ground that it would detract from or be detrimental to the amenity of the area in which the premises to which an application relates are situated.
31. The Commission notes the Review Application seeks the transfer of the Licence from one entity to another and there is no suggestion that the operation of the business under the Licence will change in any other way. There is no information before the Commission that the existing



business conducted under the Licence created any concern with respect to amenity and there is nothing to suggest that this would change were the Licence transferred to the Applicant.

32. Furthermore, there are no circumstances before the Commission to indicate that the Applicant has a history of conducting licensed premises in a manner which detracts from the amenity of areas in which those premises are situated. Therefore, the Commission does not consider this to be a ground to refuse the Review Application.

Other factors

33. The Commission has also considered whether granting the Review Application would be conducive to, or encourage, the misuse or abuse of alcohol. Noting that the Applicant proposes to operate an established business and that no director of the Applicant has been found to be unsuitable to be involved in the operation of the Premises, there is nothing before the Commission to raise concerns that granting the Review Application would lead to the potential misuse and abuse of alcohol.
34. The Commission may also consider whether to refuse the Review Application on grounds that no director of the Applicant has adequate knowledge of the LCR Act. Noting that the certificates referred to in paragraphs 24(c) and 24(d) were provided in support of the Review Application, the Commission does not consider this to be a ground upon which to refuse the Review Application.

DECISION

35. The Commission is satisfied that the Review Application meets all legislative requirements set out above concerning the transfer of the Licence. Accordingly, based on the reasons set out above, the Commission is satisfied that granting the Review Application is appropriate in the circumstances.
36. The Commission has therefore determined to set aside the Original Decision and grant the Review Application.

The preceding 36 paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Chair, Ms Deirdre O'Donnell, Deputy Chair and Mr Andrew Scott, Commissioner.