



DECISION AND REASONS FOR DECISION

In the matter of an application by Little Italy Imports Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to grant an application for a renewable limited licence subject to conditions in respect of premises trading as Stefano's Restaurant, located at the Basement, Corner Seventh Street and Langtree Avenue, Mildura.

Commission:

Mr Ross Kennedy, Chair

Ms Deirdre O'Donnell, Deputy Chair

Dr Dina McMillan, Commissioner

Date of Decision:

17 October 2018

Date of Reasons:

17 October 2018

Decision:

The Commission has determined to vary the Delegate's decision to grant a renewable limited licence subject to the conditions set out in Appendix A.

Signed:

Ross Kennedy

Chair

REASONS FOR DECISION

BACKGROUND

1. On 9 February 2018, Little Italy Imports Pty Ltd (**Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for a renewable limited licence (**the Licence**) under the *Liquor Control Reform Act 1998* (**the LCR Act**)¹ to sell wine off the wine list of its licensed premises, Stefano's Restaurant, located at Basement, Corner of Seventh Street and Langtree Avenue, Mildura (**Licensed Premises**) and trading under Restaurant and Café Licence No. 32283395 (**Original Application**).
2. On 12 February 2018, a copy of the Original Application was forwarded to Victoria Police and the Mildura Rural City Council (**the Council**) in accordance with section 33(3). Victoria Police, on 8 March 2018, and the Council, on 13 March 2018, advised the Commission that they did not object to the Original Application.
3. The Applicant submitted the following limitations with the Original Application:
 - (a) Can only be used while the Applicant is the holder of the Restaurant and Café Licence;
 - (b) Limited to the trading hours of the Restaurant and Café Licence;
 - (c) Supply only to diners who have dined at the Licensed Premises on that day; and
 - (d) Only for Stefano-branded wines listed on the wine list.
4. On 4 April 2018, a delegate of the Commission (**the Delegate**) wrote to the Applicant, noting that the trading hours sought exceeded ordinary trading hours for a packaged liquor licence and invited the Applicant to detail the exceptional circumstances that applied (as required by decision-making guidelines with respect to the "Grant of Licences for the Sale of Packaged Liquor" (**the Guidelines**) issued under section 5 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**VCGLR Act**)). In response, the Applicant amended the Original Application on 10 April 2018 to only seek trading hours consistent with ordinary trading hours for packaged liquor.
5. On 13 April 2018, the Delegate determined to grant the Original Application (**Original Decision**), including the following standard condition:

SUPPLY OF LIQUOR

The supply of liquor is restricted to a maximum of 2 bottles of wine from the wine list. Liquor may only be supplied to patrons on the same day they have dined at the premises.

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

APPLICATION FOR INTERNAL REVIEW

6. On 4 May 2018, the Commission received an application from the Applicant for an internal review of the Delegate's decision (**Review Application**).
7. The Applicant submitted that:
 - (a) the limit of 2 bottles of wine from an already limited wine list was too restrictive;
 - (b) Stefano's Restaurant is a fine dining restaurant offering a multi-course degustation menu;
 - (c) the wines are high quality premium wines, traditionally ordered by the half-dozen or dozen wines;
 - (d) patrons, who consume two or three different wines with a meal, will often want to order up to a case of each wine varietal; and
 - (e) a significant proportion of the restaurant's patronage are tourists from Melbourne or Adelaide who holiday in Mildura and wish to take a number of bottles home as a memento of their trip.
8. The Applicant suggested that the condition under SUPPLY OF LIQUOR should read "The supply of liquor is restricted to patrons who dine at the restaurant".
9. The Commission contacted the Applicant on 28 August 2018 to seek further information regarding the nature of the Applicant's business. The Applicant noted that the restaurant had a limited capacity of 123 patrons, predominantly offered a five-course degustation menu at a cost of approximately \$100 per person, and often required bookings to be made well in advance during peak periods.

LEGISLATION AND THE COMMISSION'S TASK

The Commission's internal review power

10. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the Delegate's decision in respect of the Original Application is a reviewable decision, and the Applicant is eligible to apply for review of that decision. The Review Application was made under section 153.
11. 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
12. Under the LCR Act, an application for 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).”*
13. The Original Application is an uncontested application as no objections were received.
14. 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);³ or
- (b) refuse to grant the application.⁴
15. 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.
16. Further, given that the Applicant has applied for a renewable limited licence, in accordance with section 26(1) the Commission may grant a limited licence only if it is satisfied that the scale and scope of the supply of liquor that is the subject of the licence is sufficiently limited in nature.

Exercising the internal review power

17. Section 9 of the 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.⁵
18. The objects of the LCR Act are set out in section 4(1), which provides:
- “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*

² Sections 4(2) and 157(2) to (5) of the LCR Act and section 25(3) of the VCGLR Act further prescribe the manner in which the Commission is to undertake internal reviews.

³ Sections 44, 49 and 158

⁴ See section 44

⁵ VCGLR Act, section 9(3),(4)



- (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.”*
19. Section 4(2) 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.”⁶*
20. On 7 June 2012, decision-making guidelines with respect to the “Grant of Licences for the Sale of Packaged Liquor” (**the Guidelines**) were issued under section 5 of the VCGLR Act.⁷ Paragraph 3 of the Guidelines relevantly states:
- “... the grant of a licence that allows for the provision of packaged liquor from licensed premises during hours that are outside ordinary trading hours as defined in section 3 of the Act should only be granted by the Victorian Commission for Gambling and Liquor Regulation if exceptional circumstances can be demonstrated by an applicant.”*
21. In exercising the internal review power, the Commission:
- (a) must consider all the information, material and evidence before the original decision maker;⁸ and
 - (b) may also consider further information, material or evidence;⁹ and
 - (c) in respect of uncontested applications on review, may have regard to any matter the Commission considers relevant¹⁰ and make any enquiries the Commission considers appropriate.¹¹

⁶ 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).

⁷ *Victorian Government Gazette*, G 23, 7 June 2012, 1176-1177

⁸ Section 157(2)

⁹ Section 157(3)

¹⁰ Section 44(4)(a)

¹¹ Section 44(4)(b)



Conduct of an inquiry

22. 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.

23. Relevant provisions governing the conduct of an inquiry by the Commission in this matter are:

(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. (Note omitted)”

MATERIAL BEFORE THE COMMISSION

24. The Commission on review had before it and considered all of the material before the Delegate, which included:

(a) the Original Application, consisting of:

- i. an application for a renewable limited licence, received 12 February 2018;
- ii. liquor licensing questionnaire in the name of Mr Stefano De Pieri, dated 30 January 2018;
- iii. current and historical company extract for “Little Italy Imports Pty Ltd”, dated 5 January 2018;
- iv. declaration in relation to the Right to Occupy the Premises, dated 31 January 2018;
- v. statement of display, dated 20 March 2018;



- vi. a “Responsible Service of Alcohol” and “Licensees’ First Steps” certificate for Mr Stefano De Pieri, dated 13 June 2006;
 - vii. the most recent Responsible Service of Alcohol – Refresher certificate for Mr Stefano De Pieri, dated 16 February 2018;
- (b) notification from Victoria Police, dated 8 March 2018,¹² advising that it has no objection to the Original Application;
 - (c) notification from the Council, received 13 March 2018, advising that it had no amenity based objection to the granting of the Original Application; and
 - (d) additional information supplied by the Applicant, dated 10 April 2018.
25. The Commission also had before it and considered additional information and evidence including:
- (a) the Original Decision, dated 13 April 2018, and reasons for decision, dated 11 May 2018; and
 - (b) the Review Application, received 4 May 2018 (including a written submission in support).
26. The Council, on 5 June 2018, confirmed it maintained its position of ‘no objection’ to the Review Application. Victoria Police, who did not object to the Original Application, indicated its position was on the basis that the Commission’s standard condition of a maximum of 2 bottles of wine from the wine list would be applied, as this satisfied the requirements of section 26(1) of the LCR Act.
27. On 28 August 2018, the Applicant’s solicitor provided further information to the Commission regarding the existing business at the Licensed Premises and the nature of the supply sought under the renewable limited licence.

DETERMINATION ON THE PAPERS

28. The Applicant requested that the Review Application be determined ‘on the papers’ without a hearing.
29. On 26 September 2018, the Commission on review met to determine the Review Application on the papers.

¹² See paragraph 2 above.

REASONS FOR DECISION ON REVIEW

Issues for determination on review

30. To make a decision on review, the Commission must consider several matters, namely:
- (a) the application of the Guidelines to the supply of packaged liquor under a renewable limited licence;
 - (b) whether the Commission is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature;¹³ and
 - (c) whether the Original Application should be granted or refused, having regard to the objects of the LCR Act and, in particular, harm minimisation, which is the primary object.¹⁴

Each of these issues is discussed in turn.

Application of the Guidelines

31. The Guidelines apply to “the grant of liquor licences that may allow the sale of packaged liquor”. The Licence fits this description as it is to enable the sale of packaged liquor to diners at the Licensed Premises.
32. The Commission considers that the provision of packaged liquor under a renewable limited licence should only occur during ‘ordinary trading hours’ as specified for a packaged liquor licence (section 3(1) of the LCR Act) unless there are exceptional circumstances.¹⁵
33. Section 3(1) defines ordinary trading hours in relation to a packaged liquor licence as:
- (i) the hours between 9 a.m. and 11 p.m. on each day, other than Sunday, Good Friday, ANZAC Day or Christmas Day;
 - (ii) the hours between 10 a.m. and 11 p.m. on Sunday; and
 - (iii) the hours between 12 noon and 11 p.m. on ANZAC Day.
34. The Commission finds that the Guidelines do not apply in these particular circumstances as packaged liquor is not being supplied outside of the defined ‘ordinary trading hours’ for a packaged liquor licence.

¹³ Section 26(1)

¹⁴ The Commission notes that in determining this matter, it has also considered each of the grounds set out in section 44(2).

¹⁵ See paragraph 3 of the Guidelines.

Limited scale and scope of liquor supply

35. In an application for a renewable limited licence, section 26 of the LCR Act requires that the Commission be satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature.¹⁶
36. In the Original Application, the Delegate referred to and relied on the limitations that supply could only be to patrons on the same day they have dined at the premises, and that supply is restricted to a maximum of 2 bottles of wine from the wine list.
37. As part of the Review Application, the Applicant submitted that the quantity restriction was too restrictive: see paragraphs 7 to 9 above. The Applicant submitted that section 26(1) of the LCR Act was satisfied in light of:
 - (a) the nature of the Applicant's restaurant business at the Licensed Premises (high-end dining with a focus on multi-course degustation meals at a cost of approximately \$100 per person);
 - (b) the targeting of a mainly tourist market, rather than locals within the Mildura area;
 - (c) limiting supply to patrons on the same day they have dined at the premises; and
 - (d) the limited nature of the wine list (focusing primarily on Stefano-branded wines).
38. The Commission finds that the above circumstances distinguish the Applicant's business from many other licensees under a restaurant and café licence seeking to supply packaged liquor to its patrons. In particular, the Commission accepts the Applicant's submissions in relation to the high-quality nature of the Applicant's restaurant business, relatively small size of the restaurant, and the promotion of personally-branded wines.
39. The Commission notes the position of Victoria Police that the imposition of a condition relating to the quantity permitted to be supplied was required to satisfy section 26(1) of the LCR Act. While the Commission agrees that a restriction on quantity to be supplied is necessary, it accepts the submissions of the Applicant that, in all the circumstances, the Commission's standard condition of 2 bottles per patron should not be imposed. Based on the evidence provided by the Applicant, the Commission considers it appropriate to amend the condition to permit the supply of up to 24 bottles of wine from the wine list per patron.
40. In light of the proposed conditions of the licence, and pursuant to section 26(1), the Commission is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature.

¹⁶ Section 26(1).

Whether to grant or refuse the licence having regard to the objects of the LCR Act

41. Although now satisfied as to the requirements of section 26(1), the Commission is still required to exercise its discretion to determine whether to grant or refuse the licence that is the subject of this Review Application. In doing so, the Commission is required to have regard to the objects of the LCR Act.
42. The Commission considers that enabling a restaurant business to supply limited quantities of wine from its wine list is consistent with the objects under section 4(1) of the LCR Act.
43. The Commission is mindful of the need to ensure that appropriate regard be given to the harm minimisation object,¹⁷ recognising that it is the primary object of the LCR Act. The Commission notes that the Licensed Premises is a high-end boutique restaurant targeting the tourist market within Mildura, the licence only permits supply to patrons on the day they dined at the restaurant, and can only be used by the holder of the substantive licence at the Licensed Premises. The Commission finds that it more likely that the wine supplied under the licence will be consumed over an extended period of time, rather than immediately after purchase or other higher-risk situation.
44. Having regard to the objects of the LCR Act, the Commission considers it appropriate to amend the conditions on the licence as set out in full in **Appendix A** to these reasons.

DECISION ON REVIEW

45. For these reasons, the Commission has decided to vary the Delegate's decision to grant the application for a renewable limited licence subject to the conditions set out in Appendix A.

The preceding 45 paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Chair, Ms Deirdre O'Donnell, Deputy Chair and Dr Dina McMillan, Commissioner.

¹⁷ Sections 4(1)(a) and 4(2)



Appendix A

TYPE OF LICENCE

This licence is a renewable limited licence and authorises the licensee to supply liquor on the licensed premises for consumption off the licensed premises during trading hours specified below.

SUPPLY OF LIQUOR

The supply of liquor is restricted to a maximum of 24 bottles of wine from the wine list per patron. Liquor may only be supplied to patrons on the same day they have dined at the premises.

TRANSFER OF LICENCE

This licence is only transferable to the holder of the on-premises licence/restaurant and café licence in respect of these premises.

TRADING HOURS

Good Friday and Christmas Day	No trade
ANZAC Day	Between 12 noon and 11pm
Sunday	Between 10am and 11pm
On any other day	Between 9am and 11pm