



REASONS FOR DECISION

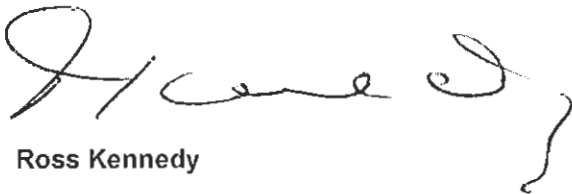
In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for review of a decision made by the Victorian Commission for Gambling and Liquor Regulation on 23 December 2013 to refuse an application for a renewable limited licence to Liquorun Pty Ltd.

Commission: Mr Ross Kennedy, Deputy Chairman
Mr Des Powell, Commissioner
Ms Kate Hamond, Commissioner

Date of hearing: 25 February 2014
Date of decision: 11 March 2014
Date of reasons: 11 March 2014

Appearances: Ms Natalie Wellard as Counsel Assisting the Commission
Mr Raymond Purcell, KPA Lawyers, appeared for the Applicant
Mr Rowan Mifsud, appeared on behalf of Victoria Police

Decision: The Commission has determined to set aside the decision of the Delegate, and grant the licence in accordance with the conditions outlined in paragraph 33.

Signed: 
Ross Kennedy
Deputy Chairman



REASONS FOR DECISION

BACKGROUND

1. On 17 October 2013, Liquorun Pty Ltd (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for a Renewable Limited Licence. The Applicant sought a licence to cover the business activity of selling and delivering alcohol through a mobile internet application ("**the App**").
2. The Applicant sought to deliver alcohol between the hours of 11am and 11pm, Monday to Sunday.
3. The Commission requested clarification of the operation of the Applicant's business by letter on 24 October 2014. The Applicant responded on 7 November 2013, detailing that:
 - 3.1. the delivery of alcohol will be limited to within a 20 km radius of the CBD;
 - 3.2. the quantity of alcohol to be sold will be limited to 10 slabs of beer, 5 cartons of wine, 12 bottles of spirits and 5 cartons of pre-mixed drinks; and
 - 3.3. there is no physical premises for the business as all transactions will occur via the App.
4. Pursuant to section 33(1) of the *Liquor Control Reform Act 1998* (**the Act**), a copy of the application was given to the Chief Commissioner of Police. On 25 November 2013, Victoria Police objected to the grant of the application.
5. On 23 December 2013, a delegate of the Commission (**the Delegate**) determined to refuse the application. The Delegate was not satisfied that the application had been made in accordance with the Act as the Applicant had failed to provide the Commission with a premises to be licensed in accordance with regulation 9(1)(c) and no evidence was provided that a Director had completed the Licensees First Step training. Further, the Delegate was not satisfied that the proposed business model was limited in scale and scope and had concerns that it may be breach of section 110 of the Act.
6. On 20 January 2014 the Commission received an application for internal review of the decision by the Applicant.



Legislative Framework

7. Section 157 of the Act sets out the powers and obligations of the Commission in relation to decisions on internal review.
8. The Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision. This matter is a contested application for the granting of a Renewable Limited Licence, and must be determined in accordance with section 47 of the Act.
9. The Act does not specify the particular factors that the decision maker must take into account or be satisfied of in determining a liquor licence application. The Commission may have regard to any matter it considers relevant.

Material before the Commission

10. The Commission on review had before it, and considered, all of the information, material and evidence before the Delegate including:
 - the application for a Renewable Limited Licence dated 17 October 2013, including supporting materials detailing the activity to be licensed;
 - the Applicant's submissions dated 7 November 2013 and 9 December 2013; and
 - Victoria Police's objection dated 25 November 2013.
11. Additionally, the Commission had before it the Statement of Reasons of the Delegate, dated 23 December 2013.
12. On 17 February 2014, the Applicant provided the Commission with the address of a commercial office to be used as the licensed premises, along with a statement of attainment for the Licensees' First Step from Rowan Bail, a Director of the Applicant. The Applicant proposed to limit the scale and scope of the application to the ordinary hours of a packaged liquor licence, and noted that a similar licence (licence number 36130382) had been granted by the Commission in August 2013.
13. On 18 February 2014, the Commission received submissions on behalf of Victoria Police, raising the following three objections:
 - 13.1. Objection one: the scale and scope of the supply of liquor is not limited in nature. The Applicant is seeking a licence to deliver alcohol within a 20km radius of the CBD. This area covers 18 different police areas and municipalities.



- 13.2. Objection two: the Applicant is currently carrying on a business that is in breach of section 110 of the Act. Victoria Police provided information that the Applicant is currently carrying on a business as delivery agent for the Railway Hotel (a holder of a general license). In this current model, customers place orders for alcohol through the Applicant's App. The App makes it clear that the alcohol will be coming from the Railway Hotel. Once the App receives the order, it is then sent electronically to the Railway Hotel where Railway Hotel staff collects the liquor to satisfy the order. The Applicant's drivers are then notified to deliver the liquor. The Railway Hotel receives the customer's payment through the App and the Applicant receives from the Railway Hotel a delivery fee and percentage of the price of the liquor purchased. Victoria Police submits that the Applicant is engaging in activities that are contrary to the Act, and as a result, is not a suitable person to hold a liquor licence under section 44(3)(b) of the Act;
- 13.3. Objection three: the supply of liquor would be conducive to and encourage the misuse and abuse of alcohol. Victoria Police submitted there are insufficient controls over the delivery and supply of alcohol due to the difficulty of policing such a licence.
14. On 21 February 2014, the Commission received a supplementary submission from Victoria Police. The supplementary submission listed a fourth objection, being that the Applicant's Director, Mr Joel MacDonald was unsuitable to hold a liquor licence. Mr MacDonald had not disclosed on his application that he had been found guilty of two offences, one in 2002 and the other in 2008. In both instances, Mr MacDonald was fined without conviction. Victoria Police submitted that Mr MacDonald's actions in not disclosing this information constitutes an offence under section 118 of the Act.
15. During the hearing on 25 February 2014, the Commission heard oral submissions from Victoria Police and the Applicant.
16. In summary, the Applicant made the following submissions:
- 16.1. a premises has now been supplied, being 4 Yarra Street, South Melbourne;
- 16.2. the application is limited in scale and scope in the following ways:
- 16.2.1. the application only requests authority to deliver liquor during certain hours;
- 16.2.2. the proposed licence only allows the taking of orders for alcohol via the internet;
- 16.2.3. the amount of liquor to be supplied under the proposed licence is limited; and
- 16.2.4. liquor may only be supplied within a 20km radius of the licensed premises.



- 16.3. the App has the appropriate checks and balances in place to ensure adequate controls over the delivery of alcohol. These controls include a restriction that liquor may only be delivered to residential or office addresses, limited delivery hours and technology to check the validity of photo IDs and proof of age, and ensuring that liquor will not be supplied to minors. In addition, all drivers are required to have completed the RSA course and will not supply liquor to intoxicated customers.
- 16.4. the Commission has previously granted a licence with a similar business model (licence number 36130382);
- 16.5. the Applicant will not be in breach of section 110 of the Act as the customer's order is placed with the Applicant, and the Applicant will supply liquor in accordance with that order. As a Licensee, the Applicant is entitled to obtain its liquor from a wide range of sources, including wholesalers and retailers. The business model proposed in the licence application is different from the existing arrangement where the Applicant is acting as a delivery agent for licensee;
- 16.6. In respect of Mr MacDonald incorrectly filling out his questionnaire, the Applicant submitted that it was due to a misunderstanding of the question. Mr MacDonald believed that "being found guilty" was equivocal to "conviction". As neither of his court appearances resulted in a conviction, Mr MacDonald believed that he had correctly filled out his questionnaire. The Applicant submitted that the offences that Mr MacDonald was fined for were minor, and had they been disclosed properly, they would not have precluded him from becoming a Licensee.
17. Mr MacDonald, the current CEO and Director of the Applicant provided evidence at the hearing. Mr MacDonald provided a demonstration of the App and highlighted the following:
- 17.1. the Customer must register with the App prior to ordering alcohol and registration requires the Customer's date of birth and photo ID number;
- 17.2. the only photo ID that can be used is a drivers licence or passport;
- 17.3. the driver then cross checks the photo ID number prior to delivering the order. The driver must record the photo ID number into the App for the order to be completed;
- 17.4. where the driver cannot complete the delivery, the reason must be recorded in the App. There are four reasons the driver can choose to explain why the delivery was not completed: photo ID was not able to be produced or verified, there was no-one home, the customer was intoxicated or "other" (which requires further detail to be provided);



- 17.5. it is a requirement that all drivers have completed an RSA course; and
- 17.6. all data obtained by the App will be retained. This data includes – the number of deliveries, the items being delivered, the customer's details, the number of deliveries that are not completed and the reasons for those incomplete deliveries.
18. Mr MacDonald confirmed that the Applicant is currently operating as a delivery agent for the Railway Hotel (as explained in the police submission). During this time, there have been approximately 600-700 deliveries. Mr MacDonald stated that the average cost of an order is \$83.70 and usually includes a slab of beer and a bottle of wine. Mr MacDonald also stated that approximately 80% of orders are received and delivered between 6.00pm and 10.30pm.
19. Mr MacDonald gave evidence that out of the 700 deliveries that have been completed, the App has received two orders for supply of alcohol by a minor. The minor (responsible for both orders) could not produce photo ID upon delivery, and the liquor was not supplied. The minor's registration has been removed from the App.
20. Mr MacDonald informed the Commission that the Applicant was currently in negotiation with two wholesalers to supply liquor.
21. Mr Mifsud made oral submissions to the Commission on behalf of Victoria Police. Mr Mifsud explained that Victoria Police's objections were as follows:
- 21.1. the application is not limited in scale or scope as it includes a delivery radius of 20km which includes 18 police service areas. The area also includes 18 different municipalities, and as a result of the application being for a renewable limited licence, no Council input is required to be sought or obtained, therefore local Councils are unaware of the App and have had no opportunity to raise an objection;
- 21.2. the proposed business model in the application is in breach of section 110 of the Act. The foundation of the application is that the Applicant will purchase packaged liquor on behalf of its customers;
- 21.3. the supply of liquor under this licence would be conducive to the misuse and abuse of alcohol, contrary to the objectives of the Act. Although data would be retained by the App, this data would only be relevant after the harm had occurred. Victoria Police is concerned that the increased accessibility to alcohol in such a large geographical area would increase community harms suffered by alcohol abuse, including domestic violence; and



21.4. Mr MacDonald is not a suitable person to hold a licence. Although the offences that Mr MacDonald failed to disclose are minor, Mr MacDonald stated that he didn't read the question properly as he filled out the form very quickly. It is this lack of attention to detail that Mr MacDonald exhibited in completing his questionnaire that makes him unsuitable.

22. In addition Victoria Police submitted that the business of delivery agent that the Applicant is currently engaging in is in breach of section 110 of the Act. Accordingly, the Applicant is engaging in marketing or trading in liquor contrary to the provisions of the Act, and is therefore not a suitable person to hold a liquor licence under section 44(3)(b).

FINDINGS ON MATERIAL FACTS

23. The Commission considered all of the material before it and all of the issues raised by the Applicant and Victoria Police.
24. Mr MacDonald explained the Applicant's proposed business model, relevant to this licence application, comprehensively to the Commission, and the Commission found Mr MacDonald to be a reliable witness who understands the responsibilities of a licence holder.
25. The Commission is encouraged by the explanation of the multiple checks on photo ID required by the App prior to ordering and delivery of alcohol. In addition, the data retained by the App is detailed and provides an auditable paper trail. This information is particularly useful in the respect of how many deliveries are unable to be delivered and why, as well as how much alcohol is being delivered when and where.
26. Although Victoria Police allege that the Applicant's current business as delivery agent for the Railway Hotel is in breach of section 110 of the Act, it was not made clear to the Commission how in fact this is the case.
27. Section 110 of the Act provides that *a person must not, in the course of carrying on a business, hold themselves out as being prepared to order or purchase packaged liquor from a Licensee on behalf of another person.*
28. In considering the allegations made by Victoria Police, the Commission notes that the Applicant has not been charged with any offence in breach of the Act, or been found guilty of any such offence. Accordingly, the Commission cannot be satisfied that there is enough evidence before it to make a finding that the Applicant is an unsuitable person to hold a liquor licence under section 43(3)(b) of the Act.



29. Victoria Police further submitted that the Applicant's proposed business model will be in breach of section 110 of the Act. Whilst Victoria Police made this submission, it was not clear as to how section 110 of the Act applies to a Licensee.
30. It is generally accepted that the term 'holding out' refers to a circumstance where a person is representing themselves (or another) as having a legal status or authority that they do not have. Accepting this definition, the Commission does not consider that this section necessarily applies to persons who are also licensees. Where a person has a licence to supply liquor, that person is entitled to obtain and supply liquor in a manner that falls within the conditions of the licence. Most liquor licences do not have conditions requiring liquor to be stored for future use, or to be obtained in a particular way or from a particular wholesaler or retailer.
31. On the basis of this interpretation, the Commission is satisfied that if the Applicant is a licensee, the proposed business model will not be in breach of section 110 of the Act.
32. The Commission is satisfied that the application is limited in scale and scope. A limited licence is appropriate in the circumstances where the supply of liquor is limited in a particular way, which includes a specialised means of delivery, limited trading hours or limited or specialised products. The Applicant's business model only allows the ordering and purchase of liquor through a website, the supply of liquor is by delivery only, and the delivery hours are limited to the ordinary trading hours for a packaged liquor licence. In addition, the application is limited to a 20 km radius of the licensed premises.

DECISION AND REASONS FOR DECISION

33. The Commission has determined to set aside the decision of the Delegate and grant the Renewable Limited Licence subject to the below conditions.

Given the new industry segment the App is serving, the Commission believes it would be beneficial for the Applicant to meet with the Commission in 9-12 months to share its experiences and the data obtained by the application. This would be of value in understanding the regulatory impacts on an emerging market segment.

Licence conditions

Restrictions on sale

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

Orders for liquor

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

Orders for the supply of liquor may only be taken through the following website and the associated internet Application:

www.liquorun.com

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.

Liquor must not be delivered and left at unoccupied premises.

Liquor must not be delivered to a place that is outside a 20 km radius of the licensed premises

Liquor may only be delivered during the following hours:

- between 9am and 11pm on any day other than Sunday, Good Friday, Anzac Day or Christmas Day
- between 10am and 11pm on Sunday
- between 12 noon and 11pm on ANZAC day

no deliveries are permitted on Christmas Day or Good Friday

Information required to be displayed on website

The following notice must be prominently displayed on the Licensee's website

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 \$8,000)
- 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 its website



Management Plan

Within three (3) months of the grant of this license, the Licensee will provide a Management Plan to the Commission. A copy of the Management Plan is to be kept at the premises for inspection by Victoria Police or a person authorised in writing by the Victorian Commission for Gambling and Liquor Regulation on request.

The preceding document is a true copy of the Reasons for Decision of Mr Ross Kennedy (Deputy Chairman), Mr Des Powell (Commissioner) and Ms Kate Hamond (Commissioner)