



# Victorian Commission for Gambling and Liquor Regulation

## DECISION AND REASONS FOR DECISION

In the matter of an application by The Social Larder Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse to grant an application for a renewable limited licence

**Commission:** Mr Ross Kennedy, Deputy Chair  
Mr Des Powell, Commissioner  
Ms Deirdre O'Donnell, Commissioner

**Date of Hearing:** 14 June 2016

**Date of Decision:** 2 September 2016

**Date of Reasons:** 2 September 2016

**Appearances:** Mr Paul Kaan, assisted by Mr Sam Boehm, for the Applicant  
Mrs Naomi Martin Edwards as Counsel Assisting the Commission

**Decision:** The Commission has determined to set aside the reviewable decision and, in substitution, grant the application for a renewable limited licence subject to the conditions set out in Appendix B

**Signed:**

**Ross Kennedy**  
Deputy Chair



## REASONS FOR DECISION

### BACKGROUND

1. On 30 December 2015, The Social Larder Pty Ltd (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for a renewable limited licence under the *Liquor Control Reform Act 1998 (LCR Act)*<sup>1</sup> to sell wine online from the website [www.winedecoded.com.au](http://www.winedecoded.com.au) (**Original Application**). The directors of the Applicant are Paul Kaan and Maree Kaan, whose residence is to be the licensed premises (**Proposed Licensed Premises**).
2. A copy of the application was forwarded to Victoria Police and Whitehorse City Council (**the Council**) in accordance with s 33(3).
3. By letter dated 12 January 2016, the Council advised that it had no objection to the grant of the licence, provided that the matters set out in its letter were adequately addressed. This constitutes a conditional objection.
4. By notification dated 27 January 2016, Licensing Inspector May made no objection, while the Chief Commissioner of Police (**Chief Commissioner**) objected to the grant of the licence on the basis that:

The scale and scope of supply of liquor proposed under the licence is not limited in nature.
5. The Applicant filed written submissions and supporting documents in response to both objections on 3 and 16 February 2016, respectively.
6. The Commission asked the Applicant to display a public notice in respect of the Original Application. The Applicant confirmed that between 6 January 2016 and 3 February 2016, the notice was displayed at the Proposed Licensed Premises. No objections were received from local residents.
7. On 16 February 2016, the Council advised that, based on the Applicant's submissions, it was satisfied as to the proposed use and made no further objection.

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<sup>1</sup> All references to legislation are references to the LCR Act unless stated otherwise.



8. By letter dated 4 March 2016, Victoria Police advised that the Chief Commissioner maintained his objection and filed written submissions in support of the objection and supporting documents.
9. On 21 March 2016, the Applicant filed written submissions in response to the Chief Commissioner's objection and submissions.
10. Having considered the material submitted by the parties, a delegate of the Commission (**the Delegate**) refused to grant the application on 8 April 2016 and provided reasons for that decision.
11. On 19 April 2016, the Applicant made an application for internal review of the Delegate's decision (**Review Application**).
12. By letter dated 9 June 2016, Victoria Police advised that the Chief Commissioner wished to withdraw his objection. This made the application the subject of the Review Application an uncontested application.

## LEGISLATION AND THE COMMISSION'S TASK

### The Commission's internal review power

13. 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.
14. 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.<sup>2</sup>

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<sup>2</sup> 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.



15. 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) ...

16. 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);<sup>3</sup> or
- (b) refuse to grant the application.<sup>4</sup>

17. 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.

### Exercising the internal review power

18. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (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.<sup>5</sup>

19. 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
  - (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

<sup>3</sup> Sections 44, 49 and 158.

<sup>4</sup> See section 44.

<sup>5</sup> VCGLR Act, section 9(3), (4).



- (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.

20. 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.<sup>6</sup>

21. 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.<sup>7</sup>

22. 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.

23. In exercising the internal review power, the Commission:

- (a) must consider all the information, material and evidence before the original decision maker;<sup>8</sup> and
- (b) may also consider further information or evidence<sup>9</sup> and, in respect of uncontested applications on review, have regard to any matter the Commission considers relevant<sup>10</sup> and make any enquiries the Commission considers appropriate.<sup>11</sup>

### Conduct of an inquiry

24. 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.

<sup>6</sup> See further *Kordister Pty Ltd v Direction of Liquor Licensing* [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCRA and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

<sup>7</sup> *Victorian Government Gazette*, G 23, 7 June 2012, 1176-1177.

<sup>8</sup> Section 157(2).

<sup>9</sup> Section 157(3).

<sup>10</sup> Section 44(4)(a).

<sup>11</sup> Section 44(4)(b).



25. 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**

26. The Commission on review had before it and considered all of the material received by the Delegate, including:

(a) the Original Application and accompanying submissions and documents, which included a copy of Paul Kaan's certificate of completion of an approved responsible service of alcohol program dated 22 December 2015 (**RSA certificate**);

(b) Paul Kaan's new entrant training certificate (**new entrant certificate**) dated 14 January 2016; and

(c) the information, submissions and supporting documents referred to in paragraphs 3-9 above.

27. The Commission on review had before it and considered additional information and evidence, including:

(a) the Delegate's decision and reasons for decision dated 8 April 2016;

(b) the Review Application;



- (c) the Applicant's written submissions filed on 2 June 2016; and
- (d) Victoria Police's written advice of 9 June 2016 that the Chief Commissioner's objection was withdrawn.

28. On 14 June 2016, the Commission conducted a public inquiry in relation to the Review Application (**the Hearing**). Mr Paul Kaan, assisted by Mr Sam Boehm, appeared for the Applicant. Mrs Naomi Martin Edwards appeared as Counsel Assisting the Commission. The Commission heard, and has considered, the oral submissions made by the Applicant at the Hearing.

29. The Commission allowed the Applicant additional time following the Hearing to file further submissions in relation to its application. No further submissions were received.

## **REASONS FOR DECISION ON REVIEW**

### **Issues for determination on review**

30. In order for the Commission to make its decision on review, several issues require determination:
- (a) the application of the Guidelines to the supply of packaged liquor under a renewable limited licence;<sup>12</sup>
  - (b) whether the Commission is satisfied that the scale and scope of the supply of liquor the subject of the licence sought is limited in nature;<sup>13</sup> 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.<sup>14</sup>

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 sought is such a licence having regard to the nature of the business that is the subject of this Review Application – that is, an internet-based wine sales business. Therefore the Guidelines ostensibly apply, and the Commission must have regard to them under section 9(4) of the VCGLR Act.

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<sup>12</sup> See paragraphs 18, 21 and 22 above.

<sup>13</sup> Section 26(1).

<sup>14</sup> See paragraphs 18-20 above.



32. It is less clear, however, that the Guidelines have any operative effect in relation to the Commission's decision in this Review Application.
33. This is because the only relevant paragraph of the Guidelines, paragraph 3, applies to "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 [LCR Act] ...*" (emphasis added). However, the LCR Act does not define 'ordinary trading hours' with respect to renewable limited licences.
34. Nevertheless, having regard to the policy intent that appears to underpin the Guidelines, the Commission considers that delivery under the licence sought should only occur during the ordinary trading hours of a packaged liquor licence unless there are exceptional circumstances.<sup>15</sup>
35. In this instance, the Applicant seeks to deliver liquor between:
- (a) 9 a.m. and 8 p.m. on any day other than Sunday, Good Friday, Anzac Day or Christmas Day;
  - (b) 10 a.m. and 8 p.m. on Sunday; and
  - (c) 12 p.m. and 8 p.m. on Anzac Day,
- with no deliveries to occur on Good Friday or Christmas Day.
36. These delivery hours are within the ordinary trading hours for a packaged liquor licence. The Commission therefore considers that imposing a condition to restrict delivery times as proposed by the Applicant would not only be consistent with the policy intent of the Guidelines but also appropriate in the circumstances.

***Limited scale and scope of liquor supply***

37. In order to grant the licence sought, the Commission is required to be satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature.
38. In initially determining this issue, the Delegate concluded that this requirement was not satisfied. That determination was made having regard to the proposed nature of the liquor supply, the nature of the business, the amount of lines available for sale, the lack of a limitation on the quantity of liquor to be supplied and the type of customers.

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<sup>15</sup> See paragraph 3 of the Guidelines.



39. In relation to its general approach to the determination of this issue with respect to internet-based business models, the Commission refers to the reasons for its decision on the internal review application made by Fynix Pty Ltd at paragraphs 53-60 and adopts those reasons in this matter.<sup>16</sup> Those reasons are set out in **Appendix A**.

40. In this Review Application, the business model for which a licence is sought involves:

- (a) online sales of a diversity of high-quality wines only for \$10 or more per 750mL bottle;
- (b) the supply of wine in varying quantities, from individual purchases for personal consumption through to corporate purchasing and supply for functions and events;
- (c) the delivery of liquor as set out in paragraph 35 above;
- (d) the taking of internet orders 24/7 and only through the following websites and apps:
  - i. [www.winedecoded.com.au](http://www.winedecoded.com.au) (**the Website**);
  - ii. any website owned by the Applicant;
  - iii. ebay.com.au;
  - iv. gumtree.com.au; and
  - v. apps the Applicant has developed or is registered with;
- (e) membership-based participation in an online wine community via registration through the Website and purchasing of wine by members only; and
- (f) the storage of liquor at the Proposed Licensed Premises and possibly at unlicensed premises, eg a warehouse.

41. At the Hearing, the Applicant:

- (a) clarified that it would proceed with its Review Application based on the proposed supply of liquor on a retail basis and, at a later date, may apply for an appropriate licence to authorise the wholesale supply of any liquor it manufactures;
- (b) was unable to satisfy the Commission that the Applicant's wine selection process or the quality of the Applicant's wines could be the subject of meaningful and enforceable conditions limiting the scale and scope of the proposed liquor supply; and

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<sup>16</sup> In the matter of an application for internal review made by Fynix Pty Ltd [2016] VCGLR (25 July 2016) (Commissioners Cohen, Versey and O'Donnell) (*Fynix*).



(c) was likewise unable to satisfy the Commission that the proposed \$10 per bottle minimum could be the subject of an appropriate, enduring and enforceable condition limiting the scale and scope of the proposed liquor supply.

42. Having said that, the Commission acknowledges the ideas and efforts of the Applicant in relation to the issue of whether the scale and scope of the proposed liquor supply is limited in nature.

43. The Commission is satisfied, in all the circumstances of this Review Application, that an internet-based business of this nature, if permitted with appropriate conditions, is one in which the scale and scope of the supply of liquor under the licence is limited in nature. The corollary of this is that the Commission considers that in order for it to grant the limited licence sought in accordance with section 26(1), conditions will be required. The Commission is empowered to impose any conditions it thinks fit on the grant of an application.<sup>17</sup>

44. The Applicant advised at the Hearing that it could comply with a condition requiring that internet orders are taken only through the Website and any “associated” apps. The Commission considers that a condition requiring that internet orders be taken only through the Website (**Website Condition**) would be appropriate for the following reasons:

(a) Firstly, the Commission considers that the Website Condition forms part of the basis on which it can be satisfied that the proposed liquor supply is limited in scale and scope.<sup>18</sup> Conversely, the Commission considers that, in the circumstances, it may not be satisfied as to that in the absence of the Website Condition or if the Website Condition was widened to include other websites.

(b) Secondly, the Website Condition is consistent with the Applicant’s members-only business model. Such a model necessarily implies that orders for the purchase of liquor will be restricted to those taken on one website – the website through which purchasers have registered as members. Any alternative model would not truly be a members-only model, which is the model that has been put forward by the Applicant and based on which the Commission is deciding this application, including in relation to s 26(1).

(c) The final reason for which the Commission considers the Website Condition appropriate relates to the objects of the LCR Act and is discussed at paragraph 55 below.

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<sup>17</sup> Section 49.

<sup>18</sup> Under s 26(1).



45. It is incumbent upon the Applicant to ensure that it complies with the Website Condition, including in relation to the use of any associated apps or other websites. The Commission notes that the Website Condition does not preclude the use of apps or other websites, provided that the use is consistent with the Website Condition.
46. At the Hearing, the Applicant advised that it could comply with a condition that liquor may be purchased only by persons who have registered on the Website as members and, through that registration process, declared that they are aged 18 or over (**Membership Condition**). The Commission considers that the Membership Condition is appropriate, having regard to the harm minimisation object of the LCR Act. This is discussed further at paragraph 55 below. However, the Commission does not consider that the Membership Condition represents a true limitation for the purposes of s 26(1), given that only persons aged 18 and over can legally purchase liquor in any event.
47. Prior to the Hearing, the Applicant had contended in its written submissions that no limitation was required with respect to the quantity of liquor to be supplied under the licence sought. At the Hearing, the Applicant referred to "limitations on quantity for each sale", but did not suggest a quantity. As stated above, the Commission allowed the Applicant additional time following the Hearing to file further submissions on this and any other aspect of its application, but no further submissions were received.
48. In order to grant the licence sought, the Commission is required to be satisfied of the limited nature of both the scale and scope of the proposed liquor supply.<sup>19</sup> In all the circumstances of this Review Application,<sup>20</sup> without a condition limiting the quantity of liquor that may be supplied to each customer each day, the Commission is not satisfied that the scale of the proposed supply is meaningfully limited in nature. A condition limiting the quantity of liquor that may be supplied is therefore required or else the s 26(1) restriction will prevent the grant of the licence sought. In imposing such a condition, the Commission's touchstone is what is required to ensure that it is satisfied that the scale of the proposed supply is meaningfully limited in the circumstance of this matter.<sup>21</sup>
49. Having regard to the section 26(1) restriction, the policy of the Guidelines and the need for licence conditions to be both meaningful and enforceable, the Commission considers that it would be

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<sup>19</sup> Section 26(1).

<sup>20</sup> Those circumstances include the Applicant's intention to supply liquor in bulk amounts, for example, to corporate purchasers and for functions and events.

<sup>21</sup> Not some other test – for example, whether the limitation is substantial or significant: *Club 8 Pty Limited v Director of Liquor Licensing* [2009] VCAT 716, [24] (Member Megay).



appropriate to impose the following conditions on the grant of a licence in respect of this Review Application:

- (a) the supply of liquor is restricted to wine only;
- (b) internet orders may only be taken through the website [www.winedecoded.com.au](http://www.winedecoded.com.au);
- (c) orders are limited to one order of up to 48 bottles of wine per customer per day; and
- (d) liquor may only be delivered between:
  - i. 9 a.m. and 8 p.m. on any day other than Sunday, Good Friday, Anzac Day or Christmas Day;
  - ii. 10 a.m. and 8 p.m. on Sunday; and
  - iii. 12 p.m. and 8 p.m. on Anzac Day,

with no deliveries to occur on Good Friday or Christmas Day.

50. In light of those conditions 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. Were the business operations of the Applicant to change from those outlined at the Hearing and in the material before the Commission, it would be open to the Commission to consider whether additional conditions might be appropriate.

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

51. Having been 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.

52. The Commission considers that enabling small internet-based providers to supply liquor to niche markets is consistent with the object of facilitating “the development of a diversity of licensed facilities reflecting community expectations”.<sup>22</sup>

53. However, the Commission is also mindful of the need to ensure that appropriate regard be given to the harm minimisation object,<sup>23</sup> recognising that it is the primary object of the LCR Act, and also to

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<sup>22</sup> Section 4(1)(b).

<sup>23</sup> Section 4(1)(a), (2).



the object that its determinations contribute "to the responsible development of the liquor, licensed hospitality and live music industries".<sup>24</sup>

54. Consistent with the objects of the LCR Act, the Commission considers that several licence conditions relating to harm minimisation, the responsible service of alcohol and the delivery of liquor are appropriate, including the "standard" conditions relating to the display of a warning and the licence number on the licensee's website (**Standard Display Conditions**). In the context of an online business model for the supply of liquor, it is necessary for the Commission to consider those objects at both the time of sale and delivery of the liquor.
55. Having regard to the harm minimisation object at the time of the sale of liquor, the Commission considers that the Membership Condition is an important safeguard, restricting orders to those from members who have declared that they are aged 18 or over. However, the Commission is cognisant that, without the Website Condition (restricting the taking of orders for liquor to one website), the effectiveness and enforceability of the other conditions that apply to the Website, such as the Standard Display Conditions and the Membership Condition, could be undermined. Those conditions therefore work in conjunction with one another in a way that is consistent with the objects of the LCR Act.
56. Having regard to the harm minimisation object at the time of delivery, the Commission has considered whether any couriers used by the Applicant should be required to complete an approved responsible service of alcohol program (**RSA program**). At the Hearing, the Applicant submitted that it would be using couriers to deliver liquor supplied under its licence, but it had not yet made any arrangements that would comply with the "standard" delivery conditions requiring evidence of age and prohibiting the delivery of liquor at unoccupied premises (**Standard Delivery Conditions**). Nor had the Applicant made arrangements to ensure that couriers it uses have completed an RSA program. However, the Applicant indicated its preparedness to make such arrangements.
57. As stated above, the Commission allowed the Applicant additional time following the Hearing to file further submissions, but no further submissions were received.
58. The Commission has placed weight on the Applicant's indication that it will make arrangements ensuring that its couriers have completed an RSA program and accordingly does not regard it as necessary to impose a condition to that effect. The Commission considers the Standard Delivery

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<sup>24</sup> Section 4(1)(c).



Conditions sufficient, noting that it is incumbent on the Applicant to comply with the licence and its conditions.

59. There is no legislative requirement for a director of a corporate limited licensee to complete an RSA program.<sup>25</sup> However, there is such a requirement for the responsible person of a corporate packaged liquor licensee.<sup>26</sup> Given the licence sought is for the supply of packaged liquor (albeit on a limited basis), and the Applicant's directors' residence will be the Proposed Licensed Premises, the Commission considers that it is appropriate for both co-directors of the Applicant to complete new entrant training and an RSA program and accordingly that there should be a condition to this effect.
60. The Commission understands that the effect of this condition will be that Maree Kaan will be required to complete new entrant training and an RSA program. Based on the RSA certificate and new entrant certificate filed on behalf of the Applicant, the Commission understands that Paul Kaan is already compliant with this condition. In relation to the issue of the Applicant's knowledge of the LCR Act<sup>27</sup> and the harm minimisation object, the Commission has also placed weight on Mr Kaan's extensive training and experience in relation to wine and his responsible approach to the consumption of wine, demonstrated through the Applicant's written and oral submissions.
61. In the context of the harm minimisation object of the LCR Act, the Commission does consider that, in determining to grant the licence sought, it is appropriate to impose the conditions relating to the delivery of liquor and harm minimisation which are set out in full in **Appendix B** to these reasons.
62. Finally, the Commission considers that it would not be in accordance with the objects of the LCR Act for it to grant a licence in circumstances where it is not satisfied that the licensee is reasonably able to comply with the LCR Act and the licence. Based on the material before it, the Commission:
- (a) notes that the LCR Act may be contravened if any aspect of 'supply'<sup>28</sup>, or the taking or receiving of orders for liquor, occurs on unlicensed premises;<sup>29</sup> but
  - (b) considers that the Applicant is reasonably able to operate its licensed business in a way that is consistent with the LCR Act and the licence.

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<sup>25</sup> Sections 26B, 108AA.

<sup>26</sup> Sections 26B, 108AA.

<sup>27</sup> Section 44(2)(b)(iv).

<sup>28</sup> As defined by ss 3(1) and 3B.

<sup>29</sup> See ss 108(1)(b) and 109(1).



63. Based on this, the Commission exercises its discretion to grant a renewable limited licence.

#### **DECISION ON REVIEW**

64. For these reasons, the Commission on review has decided to set aside the Delegate's decision and, in substitution, grant the application for a renewable limited licence subject to the conditions set out in **Appendix B**.

*The preceding 64 paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Deputy Chair, Mr Des Powell, Commissioner, and Ms Deirdre O'Donnell, Commissioner.*



## Appendix A

### Extract of the Commission's reasons for decision in *Fynix*:

53. The provision of goods and services via the internet has become a ubiquitous feature of modern life. Consistent with this trend, the supply of liquor in Victoria over the internet also appears to have burgeoned in recent years. The manner in which this now occurs varies considerably, with a spectrum of business models ranging from small, home based operations that specialise in particular product types and/or supply to niche markets, through to national chains that utilise the internet to supplement a large physical presence across the community.
54. In regulating the supply of liquor via the internet, the task for the Commission is to ensure that this occurs in accordance with the regulatory framework that has been established by Parliament. In this regard, the Commission recognises that this can involve a range of challenges given the significant technological changes that have and which are continuing to occur, together with the marked and ongoing shifts in consumer behaviours.
55. The Commission is mindful that the LCR Act, to a large extent, pre-dates the emergence of internet-based liquor sales, and more specifically, does not have a licence category that caters for purely internet based business models. The creation of such a licence category may be an issue valuably addressed in any future review of the LCR Act. For the foreseeable future, however, the challenge for the Commission is to ensure that all licence applications with respect to internet-based models are considered in a consistent manner, having regard to the fact there will be ongoing social, economic and technological changes.
56. The Commission is aware that over the past four years the manner in which it has managed and determined internet based applications has evolved having regard to the changes that have occurred to the environment in which it undertakes its regulatory task.
57. The Commission is mindful that in past decisions it was considered that supply of liquor solely via the internet was in itself a limitation of the scale and scope of supply.<sup>30</sup> In more recent times, however, the view of the Commission has shifted. Specifically, the evolution of internet-based commerce is such that the Commission no longer considers it appropriate to view the supply over the internet in itself as a basis for satisfying the requirement that the supply will be limited in scale and scope.
58. The Commission is cognisant that it has provided guidance to prospective licensees to consider limited licences if intending to operate purely internet based businesses. However, it should also be noted that this

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<sup>30</sup> See, for example, Liquorun, as well as other applications – Application from The Public Brewery Pty Ltd [2013] VCGLR (8 October 2013) (Commissioners Owen, Kennedy and Hamond) (**the Public Brewery**); Application from Mr Yong Cheng [2014] VCGLR (3 September 2014) (Commissioners Kennedy, Kerr and Hamond) (**Bottle Online**).



has generally been with the caveat that the proposed supply of liquor is required to be limited in scale and scope.

59. The Commission considers that the question of whether the scale and scope of supply of liquor the subject of a licence is limited in nature will depend on the circumstances of each individual application and, therefore, the merits of each application will be assessed accordingly.
60. In doing so, the Commission has regard to the decision of *Club 8 Pty Limited v Director of Liquor Licensing*<sup>31</sup> (**Club 8**). In that matter, the Victorian Civil and Administrative Tribunal (**the Tribunal**) considered the question of what amounts to a limitation on the scale and scope of the supply of liquor. While the circumstances of Club 8 are very different from those in this matter,<sup>32</sup> in that instance the Tribunal rejected the submission that the operations at the premises must not only be subjected to a limitation, but that the limitation must also be a substantial/significant restriction.<sup>33</sup>

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<sup>31</sup> [2009] VCAT 716.

<sup>32</sup> Club 8 operated an entertainment centre in Colac that provided pool, snooker and billiard tables, as well as lounge areas that remained open seven days per week. The premises was subject to a planning permit that permitted trade between 9am to 6pm (during which no liquor would be sold or displayed). In the matter before the Tribunal, Club 8 sought to extend the hours of trade and permit the service of alcohol after a one-hour shutdown period, with the premises reopening from 7pm, but not admitting minors from this time.

<sup>33</sup> Ibid at [24]. It was the view of the Tribunal that the trading hours (and intermittent closing hours), exclusion of minors from the premises during the evening, and exclusion of alcohol from daytime trading hours amounted to a sufficient limitation on the scale and scope of the supply of liquor so as to satisfy section 26 of the LCR Act (see at [26]).



## Appendix B

### TYPE OF LICENCE

This licence is a renewable limited licence and authorises the licensee to supply packaged liquor only when such liquor is ordered by mail, telephone, facsimile transmission or internet.

### RESTRICTIONS ON SALES

The licensee must not use the above licensed premises to provide for:

- personal shopping for liquor
- browsing for liquor
- the display of liquor for sale
- the collection of liquor by customers.

### 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 where appropriate.
- Liquor must not be delivered and left at unoccupied premises.
- Liquor may only be delivered between:
  - 9 a.m. and 8 p.m. on any day other than Sunday, Good Friday, Anzac Day or Christmas Day;
  - 10 a.m. and 8 p.m. on Sunday; and
  - 12 p.m. and 8 p.m. on Anzac Day,with no deliveries to occur on Good Friday or Christmas Day.

### HARM MINIMISATION

The following notice must be prominently displayed on the website [www.winedecoded.com.au](http://www.winedecoded.com.au):

#### "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 \$17,000)
- 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 the website.

Each director of the licensee must complete new entrant training:

- prior to, or within two months after, the date on which the licensee commences supplying liquor under this licence; or



- within two months of being appointed as a director of the licensee,  
whichever is the later.

Each director of the licensee must complete an approved responsible service of alcohol program:

- prior to, or within two months after, the date on which the licensee commences supplying liquor under this licence, or within two months of being appointed as a director of the licensee (whichever is the later); and
- within 3 years from the date on which the director last completed an approved responsible service of alcohol program.

#### ORDERS FOR LIQUOR

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

Internet orders may only be taken through the website [www.winedecoded.com.au](http://www.winedecoded.com.au) from persons who are registered on that website as members who have declared that they are aged 18 or over.

Orders are limited to one order of up to 48 bottles of wine per customer per day.

#### SPECIAL CONDITION

The supply of liquor is restricted to wine only.