



DECISION AND REASONS FOR DECISION

In the matter of an application by Alpine Valley Vigneron Inc. 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, Chair

Ms Deirdre O'Donnell, Deputy Chair

Mr Des Powell AM, Commissioner

Date of decision:

29 June 2017

Date of reasons:

29 June 2017

Decision:

The Commission has determined to set aside the reviewable decision and, in substitution, grant a renewable limited licence subject to the conditions set out in Appendix A.

Signed:

Ross Kennedy

Chair



REASONS FOR DECISION

BACKGROUND

1. On 2 February 2017, Alpine Valley Vigneron Inc. trading as Alpine Valley Vignerons Association (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for a renewable limited licence (**Proposed Licence**) under the *Liquor Control Reform Act 1998* (**the Act**).¹
2. The Applicant sought the Proposed Licence to, “allow the supply of liquor at any Bush Market, Farmers Markets, or other community event held within the Alpine Shire on premises other than premises that operate under any other liquor licence”. The Applicant sought to restrict its supply of liquor to products that are, “produced by or for members of the Alpine Valley Vignerons Association” (**Original Application**).
3. The proposed trading hours of supply of liquor in the Original Application were, “Saturday, Sunday and public holidays (other than Christmas Day and Good Friday) between 8am and 5pm” (**Proposed Trading Hours**).
4. On 2 February 2017, a copy of the Original Application was forwarded to Victoria Police under section 33(3). By a notice, dated 13 February 2017, the Commission was informed that the Chief Commissioner of Police (**Chief Commissioner**) did not object to the Original Application.
5. On 7 April 2017, a delegate of the Commission (**the Delegate**) refused to grant the Original Application (**Original Decision**).
6. On 7 April 2017, the Delegate provided a statement of reasons with respect to the Original Decision. In summary, having considered the Applicant’s submissions for the Proposed Licence, the Delegate was not satisfied that:
 - the Original Application had been made in accordance with the Act in that a grant of the Proposed Licence would not align with the objects of the Act;
 - the grant of the Proposed Licence for the activities proposed would not provide adequate control over the supply and consumption of alcohol; and
 - the grant of the Original Application would not contribute to the responsible development of the liquor industry.

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



APPLICATION FOR INTERNAL REVIEW

7. By application received on 12 April 2017 (**Review Application**), the Applicant sought internal review of the Delegate's decision.
8. On 21 April 2017, the Commission advised the Applicant it would be given the opportunity to attend a hearing if it wished; otherwise the Review Application could be decided on the papers. The Applicant elected for the Review Application to be determined on the papers. Accordingly, the Commission has determined the Review Application on the papers.

LEGISLATION AND THE COMMISSION'S TASK

The Commission's internal review power

9. Division 2 of Part 9 governs internal review applications. Under section 152, the Original 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.
10. Under the Act, an application for a limited licence may be contested or uncontested.² Pursuant to section 3(1), an uncontested application means:

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).
11. The Commission on review stands in the shoes of the original decision maker and, in respect of an uncontested application, must make a fresh decision³ that either affirms, varies or sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.⁴
12. The Commission on review must either grant the application⁵ (and may do so subject to conditions),⁶ refuse to grant the application⁷ or, in respect of a decision that refuses the grant of a liquor licence, grant another licence instead.⁸
13. 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

² This Review Application is an uncontested application.

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

⁴ S. 157(1)

⁵ S. 44(1)

⁶ S. 49

⁷ S. 44(2)

⁸ S. 158(2)(b)



pursuant to sections 44(1) and 157(1) at the discretion of the Commission with reference to the objects of the Act.

14. Further, given that the Applicant has applied for a 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 the subject of the licence is limited in nature.

EXERCISING THE INTERNAL REVIEW POWER

15. Section 9(3) 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 Act and any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.⁹
16. The objects of the 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
- (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.

17. 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.¹⁰

⁹ VCGLR Act, s. 9(4)

¹⁰ 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 Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).



18. 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.¹¹
19. 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(1) 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.
20. In exercising the internal review power, the Commission must consider all the information, material and evidence before the original decision maker;¹² and may also consider further information or evidence¹³ and, in respect of uncontested applications on review, have regard to any matter the Commission considers relevant¹⁴ and make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.¹⁵

CONDUCT OF AN INQUIRY

21. Section 34 of the VCGLR Act provides that, subject to this Act, gambling legislation or liquor legislation, the Commission may conduct any inquiry in any manner it considers appropriate.
22. Relevant provisions governing the conduct of an inquiry by the Commission in this matter are: 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.
...

section 25(3) of the VCGLR Act, which provides:

In performing a function or duty the Commission—

¹¹ *Victorian Government Gazette*, G 23, 7 June 2012, 1176-1177.

¹² S. 157(2)

¹³ S. 157(3)

¹⁴ S. 44(4)(a)

¹⁵ S. 44(4)(b)



- (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

23. The Commission on review had before it and considered all of the material received by the Delegate, including the Original Application and accompanying submissions and documents, which included a copy of:
- a certificate of completion of an approved responsible service of alcohol program by the Applicant's Treasurer, dated 25 May 2016, (**RSA certificate**);
 - a new entrant training certificate by the Applicant's Treasurer, dated 6 December 2016; and
 - the Applicant's ASIC extract, dated 22 February 2017.
24. The Applicant's further submissions, dated 1 March 2017, indicated that the activities for which the Proposed Licence was sought included the setting up of a stall at public events, such as the monthly Bright Farmers Market and the monthly Myrtleford Farmers Market, at which members of the public could taste and purchase wines produced by eleven of the Applicant's members based in the Alpine Valleys wine region. The Applicant submitted that under the Proposed Licence it would attend between 25 to 30 public events per year.
25. The Commission on review also had before it and considered additional information and evidence, including:
- the Original Decision and reasons for the decision, dated 7 April 2017;
 - the Review Application, dated 10 April 2017; and
 - the Applicant's written submissions attached to the Review Application, dated 12 April 2017.
26. In its Review Application the Applicant restricted the proposed trading hours to between:
- 8 a.m. and 5 p.m. on Saturday and each Public Holiday other than Sunday, Good Friday, ANZAC Day or Christmas Day; and
 - 10 a.m. and 5 p.m. on Sunday other than ANZAC Day or Christmas Day; and
 - 12 noon and 5 p.m. on ANZAC Day. (**Revised Proposed Trading Hours**)
27. The Applicant's written submissions, attached to the Review Application, indicated that the



Applicant is an association established for the purpose of developing the local vigneron community in the Alpine Valley. The Applicant states that it has a membership base that continues to promote the very existence of Alpine Valley vignerons. The Applicant indicates that many of its members are small and they do not have the capacity as individual vignerons to attend the many events that are conducted throughout the local government area of Alpine Shire. The Applicant states that it assists its members to showcase their products to the wider community.

REASONS FOR DECISION ON REVIEW

Issues for determination on review

28. In order for the Commission to make its decision on review, several issues require consideration:

- the application of the Guidelines to the supply of packaged liquor under a renewable limited licence;¹⁶
- 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;¹⁷ and
- whether the Review Application should be granted or refused, having regard to the objects of the Act and, in particular, harm minimisation, which is the primary object.¹⁸

Each of these issues is discussed in turn.

Application of the Guidelines

29. 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, which is packaged wine sales. The Commission therefore considers that, in these circumstances, it should have regard to the Guidelines under section 9(4) of the VCGLR Act.
30. It is less clear, however, that the Guidelines have any operative effect in relation to the Commission’s decision in this Review Application. 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 [Act] ...”. That definition of ‘ordinary trading hours’ specifies the ordinary trading hours for numerous licence categories, but not for limited licences.

¹⁶ See paragraphs 18 and 19 above.

¹⁷ S. 26(1)

¹⁸ See paragraphs 9-14 above. The Commission notes that in determining this matter, it has also considered each of the grounds set out in s. 44(2).



31. The Commission considers that as the Proposed Licence authorises the sale of packaged liquor in a manner which is similar in many respects to the sale of packaged liquor under a wine and beer producer's licence with a Promotional Event Authorisation (albeit that the Applicant does not produce the wine or beer), the Commission should have regard to the Guidelines (including paragraph 3) and the ordinary trading hours for a wine and beer producer's licence (as specified by the definition of 'ordinary trading hours' in section 3(1) of the Act). The Commission considers that a comparison to the ordinary trading hours of a wine and beer producer's licence is appropriate as the Applicant proposes to operate at events such as farmers markets, craft markets, festivals and other promotional events for which a wine and beer producer's licence with a Promotional Event Authorisation would permit the sale of packaged liquor.
32. Section 3(1) defines ordinary trading hours in relation to a wine and beer producer's licence as:
- i. the hours between 7 a.m. and 11 p.m. on each day, other than Sunday, Good Friday or ANZAC Day; and
 - ii. the hours between 10 a.m. and 11 p.m. on Sunday, Good Friday and ANZAC Day
33. Having regard to the policy intent that appears to underpin the Guidelines, the Commission considers that supply under the Proposed Licence should only occur during the ordinary trading hours of a wine and beer producer's licence, unless there are exceptional circumstances.¹⁹
34. In this instance, the Applicant seeks to supply liquor in accordance with the hours set out in paragraph 26. The Revised Proposed Trading Hours are within the ordinary trading hours for a wine and beer producer's licence. The Commission accordingly is satisfied that the Applicant's proposed operations, if permitted with appropriate conditions, is consistent with the requirements of the Guidelines.

Limited scale and scope of liquor supply

35. In order to grant the licence sought, the Commission is required to be satisfied that the scale and scope of the supply of liquor which is the subject of the Proposed Licence is limited in nature.
36. In this Review Application, the proposed supply for which the Proposed Licence is sought, as outlined in paragraphs 24 and 27 above, involves a limitation in terms of the:
- geographic area of supply;
 - type and source of liquor that the Applicant can supply;
 - nature, type and frequency of the public events at which the Applicant can supply liquor;
- and

¹⁹ See paragraph 3 of the Guidelines.



- trading hours, as set out in paragraph 26, during which the Applicant can supply liquor.
37. The Commission notes that the wine proposed to be supplied will be sourced from members of the Alpine Valley Vigneron Association, who are based in the Alpine Valleys wine region. Wine regions and their boundaries are specified in the Register of Protected Geographical Indications and Other Terms kept by the Registrar under the *Wine and Brandy Corporation Act 1980* (Cth) (the **WBC Act**). On 29 November 1999, the Australian Geographical Indication "Alpine Valleys" was entered in the Register of Protected Names in response to a direction received by the Registrar from the Presiding Member of the Geographical Indications Committee acting under section 40Z of the WBC Act.
38. The Commission also notes that the proposed supply of liquor is limited to public events which take place within the Alpine Shire local government area. This is the local government area that overlaps with the Alpine Valleys wine region. There is a significant geographic connection between the area where the wine is produced by or for the members of the Alpine Valley Vigneron Association and the area within which this wine is proposed to be supplied.
39. Having regard to section 26(1) and the nature of the operations proposed by the Applicant, the Commission has determined that, with the appropriate conditions imposed on its licence, the scale and scope of the supply of liquor, which is the subject of the Proposed Licence, is limited in nature. It is therefore appropriate to impose the following conditions on the grant of a licence:
- The licensee may only supply liquor at a maximum of thirty (30) events per calendar year, all of which must be conducted within the Alpine Shire region.
 - The licensee is only permitted to supply wine which has been produced within the Alpine Valleys wine region by or on behalf of members of the Alpine Valley Vignerons Association and is prohibited from supplying any other types of liquor.
40. The Commission considers that conditions to this effect are appropriate for the following reasons:
- the Commission considers that the conditions form part of the basis on which it can be satisfied that the proposed liquor supply is limited in scale and scope;²⁰ and
 - the Commission considers that the conditions relate to the objects of the Act. This is discussed further at paragraph 42 below.
41. In light of these proposed conditions, the Commission is satisfied that the scale and scope of the supply of liquor the subject of the Proposed Licence is limited in nature. Were the operations

²⁰ Under s. 26(1).



of the Applicant to change from those outlined 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 the licence having regard to the objects of the Act

42. Having been satisfied as to the requirements of section 26(1), the Commission must exercise its discretion to determine whether to grant or refuse the Proposed Licence that is the subject of this Review Application. In doing so, the Commission is required to have regard to the objects of the Act.
43. The Commission considers that enabling a wine growers association to supply liquor produced by its members to niche markets in close proximity to the region of production is consistent with the object of facilitating, “the development of a diversity of licensed facilities reflecting community expectations”.²¹
44. However, the Commission is also mindful of the need to ensure that appropriate regard be given to the harm minimisation object,²² recognising that it is the primary object of the Act, and also to the object that its determinations contribute, “to the responsible development of the liquor, licensed hospitality and live music industries”.²³ Consistent with the objects of the Act, the Commission considers that several licence conditions relating to harm minimisation are appropriate.
45. Having regard to the harm minimisation object, the Commission has considered whether at least one of the Applicant’s current office holders and any staff engaged by the Applicant should be required to complete a responsible service of alcohol program (**RSA program**).²⁴ There is no legislative requirement for a licensee holding a limited licence to complete an RSA program²⁵ or to ensure that any person who sells, offers for sale or serves liquor has completed an approved RSA program. However, there is such a requirement for the responsible person of a corporate general licence, on-premises licence, packaged liquor licence or late night licence to do so.²⁶ Given the Proposed Licence is for the supply of packaged liquor direct to members of the public, the Commission considers that it is appropriate that a person who is responsible for the management or control of the supply of packaged liquor and a person who sells, offers for sale or serves liquor to members of the public completes an RSA program and accordingly that there should be conditions to this effect. The Commission acknowledges that the Applicant’s Treasurer has already completed both the new entrant training as required under the

²¹ S. 4(1)(b)

²² S. 4(1)(a),(2)

²³ S. 4(1)(c)

²⁴ S. 108AB

²⁵ Ss.26B, 108AA

²⁶ Ss.26B, 108AA



Commission's endorsed policy related to training obligations for licence applicants²⁷ as well as an RSA program.

46. The Commission has also considered whether the activities of the Applicant would detract from or be detrimental to the amenity of the area where the supply occurs. The nature of the licence sought is for the supply of liquor at indeterminate locations within a specific local government area in Victoria. Whilst there were no objections received by the Commission with respect to the potential impact of the Proposed Licence on amenity there is limited opportunity for persons, aside from the Victoria Police who did not object to the Proposed Licence²⁸, to give consideration as to whether to object as there is no legislative requirement for an applicant for a limited licence to display a notice of the application. In any event, having regard to the submissions of the Applicant, the Commission finds that any potential impact on the amenity of the areas in which the supply of liquor takes place will be addressed by the requirements that:

- The licensee must have the written permission of an event organiser to supply liquor at any event.
- The licensee must keep a register of all events at which it has supplied liquor and produce the records for inspection upon request by an authorised person.
- A copy of the limited licence must be displayed when supplying liquor at an event.
- Samples of liquor may only be served in plastic disposable tasting cups of no more than 60 mls capacity.
- All wine supplied must not be chilled and must be in sealed containers.
- The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the licensed area to which the licence relates during or immediately after the trading hours authorised under this licence.
- The licensee shall ensure that the level of noise emitted from the licensed area shall not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No.N-2.

and accordingly that there should be conditions to this effect. As such, the Commission, subject to the conditions imposed on the licence, does not consider that the grant of the Review Application would detract from or be detrimental to the amenity of the area in which the supply

²⁷ New entrant training is a training course developed by the Commission to ensure that liquor licence applicants have an adequate knowledge of the liquor law. Section 44(2)(iv) provides that the Commission may refuse to grant a liquor licence application if no director of the applicant has an adequate understanding of the Act. As such, under the Commission's endorsed policy, at least one director is required to have completed new entrant training. In addition, all persons being appointed as a liquor licence nominee must complete new entrant training.

²⁸ See paragraph 4 above.



occurs.

47. Having regard to the objects of the Act, the Commission considers it appropriate to exercise its discretion to grant a renewable limited licence subject to the conditions set out in Appendix A to these reasons.

The preceding 47 paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, (Chair), Ms Deirdre O'Donnell, (Deputy Chair) and Mr Des Powell AM (Commissioner).



Appendix A

TYPE OF LICENCE

This licence is a renewable limited licence and authorises the licensee to supply liquor at public events during the trading hours specified below, subject to the following conditions:

- The licensee must keep a register of all events at which it has supplied liquor and produce the records for inspection upon request by an authorised person.
- The licensee must have the written permission of an event organiser to supply liquor at any event.
- The licensee may only supply liquor at a maximum of thirty (30) events per calendar year, all of which must be conducted within the Alpine Shire region.
- The licensee is only permitted to supply wine which has been produced within the Alpine Valleys wine region by or on behalf of members of the Alpine Valley Vignerons Association.
- A copy of the limited licence must be displayed when supplying liquor at an event.
- Samples of liquor may only be served in plastic disposable tasting cups of no more than 60 mls capacity.
- All wine supplied must not be chilled and must be in sealed containers.
- All staff engaged in the supply of liquor must have undertaken a "Responsible Service of Alcohol" course approved by the Victorian Commission for Gambling and Liquor Regulation:
 - prior to, or within two months after, the date on which the licensee commences supplying liquor under this licence; and
 - within 3 years from the date on which the staff last completed an approved responsible service of alcohol program.
- At least one current office holder of the licensee must have undertaken a "Responsible Service of Alcohol" course approved by the Victorian Commission for Gambling and Liquor Regulation:
 - prior to, or within two months after, the date on which the licensee commences supplying liquor under this licence; and
 - within 3 years from the date on which any current office holder of the licensee last completed an approved responsible service of alcohol program.



AMENITY

The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the licensed area to which the licence relates during or immediately after the trading hours authorised under this licence.

The licensee shall ensure that the level of noise emitted from the licensed area shall not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No.N-2.

TRADING HOURS

The hours between:

8 a.m. and 5 p.m. on Saturday and each Public Holiday other than Sunday, Good Friday, ANZAC Day or Christmas Day; and

10 a.m. and 5 p.m. on Sunday other than ANZAC Day or Christmas Day; and

12 noon and 5 p.m. on ANZAC Day.