


Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Archie Brothers Australia Pty Ltd for an internal review of a decision by a delegate to:

- 1) refuse an application for variation of an on-premises licence; and
- 2) refuse to grant an application for a permanent underage approval

for the premises trading as Archie Bros Cirque Electriq/Strike Bowling, located at Shop 2-006, Chadstone Shopping Centre, 1341 Dandenong Road, Malvern East.

Commission:	Mr John Larkins, Acting Chair Mr James O'Halloran, Deputy Chair Mr Steven Brnovic, Commissioner Ms Sue Timbs, Commissioner
Appearances:	Mr Daniel Robinson, Counsel for Archie Brothers Australia Pty Ltd Mr Michael Majewski, Counsel Assisting the Commission
Dates of Hearing:	1 – 2 May 2024
Date of Decision:	25 November 2024
Date of Reasons:	25 November 2024
Decision:	The Commission has determined to set aside the decision of the delegate and, in substitution, grant: <ol style="list-style-type: none">1) the variation of an on-premises licence; and2) the application for a permanent underage approval subject to the conditions set out in Appendix A.
Signed:	 John Larkins Acting Chair

Introduction

1. Alcohol consumption harms minors. Victorian law prohibits licensees from supplying liquor to minors, limits minors' exposure to liquor and limits the circumstances on which unaccompanied minors should be on licensed premises, for that reason.
2. The Applicant operates premises in a busy shopping centre, which includes novel, immersive attractions and games with varying degrees of appeal to minors.
3. This application involves careful consideration of whether unaccompanied minors should be permitted on those premises, to play games alongside adults, where alcohol is consumed during those games. Ultimately, the Victorian Liquor Commission (**the Commission**) has decided that they may be so permitted, but subject to strict conditions.

The Premises

4. Archie Brothers Australia Pty Ltd (**the Applicant**) is the holder of the on-premises licence (Licence No. 32371106) (**the Licence**) for the premises located at Shop 2-006, Chadstone Shopping Centre, 1341 Dandenong Road, Malvern East, trading as Archie Bros Cirque Electriq/Strike Bowling (**the Premises**).
5. The Applicant is part of the Funlab Group (**Funlab**), a leisure and entertainment company managing multiple venues offering activities such as arcade games, bowling, mini-golf, and escape rooms. These venues feature bar environments and tavern-style dining.
6. One section at the Premises is Archie Brothers Cirque Electriq (**Archie Bros**): a circus-themed arcade hall, featuring some traditional activities (e.g., claw machines, air hockey, dodgem cars) mixed with newer technology (e.g., arcade videogames, virtual rides, karaoke rooms). Archie Bros includes a licensed premises area, which is the main bar area. This area includes seating and is supported by the provision of food and drink. According to evidence of Niall O'Doherty, Chief Operating Officer of Funlab Group:

Archie Brothers is a favourite place for outings for young and old. It is an entertainment wonderland where you can try your luck against our games, have a chance to land your prize of goodies and collectables. More importantly, it is a place to get swept away in a kaleidoscopic circus of arcade games, dodgem cars, virtual reality, and play. It is a great spot for catch ups, date nights, and family fun for all involved.¹

¹ Witness Statement of Niall O'Doherty, dated 24 April 2024, at [17].

7. The other section at the Premises is Strike Bowling: a modern bowling alley. The tables behind the lanes or adjacent the lane seating can be used for the consumption of food. Like Archie Bros, Strike Bowling includes a licensed premises area, which is the main bar area that has seating and is supported by the provision of food and drink. In his witness statement, Mr O'Doherty describes the section as follows:

Strike Bowling is not your average ten pin bowling. Across the Funlab group and various Strike bowling centres, there is bowling alongside activations such as laser tag, karaoke and escape rooms. At the Chadstone venue, the Strike bowling activation is more separate to other activations but is complimented by the downstairs Archie Brothers facilities [...]. The fully equipped cocktail bar, gourmet kitchen offerings and a parade of party [sic] are packaged into the equation, making it a one stop shop for the ultimate entertainment experience.²

8. Strike Bowling's main entrance is located directly adjacent to the entry of Archie Bros, creating a contiguous flow between the two sections. In addition to its own dedicated staircase entrance, Strike Bowling may also be accessible through Archie Bros via an internal pathway that connects the sections.

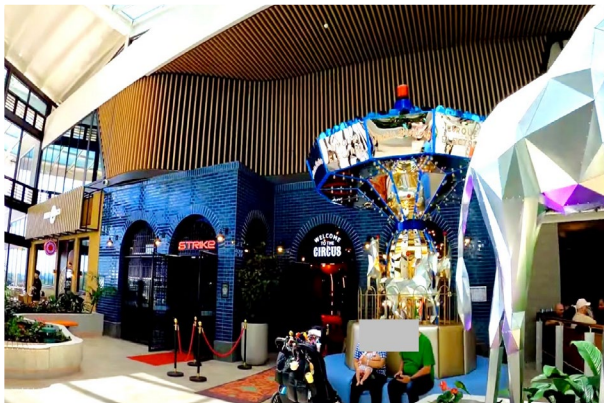


Figure 1: Entry to Archie Bros and Strike Bowling



Figure 2: Entry to Archie Bros and Strike Bowling #2

² See above n 1, at [18].



Figures 3 and 4: Examples of interior of Archie Bros



Figures 5 and 6: Examples of interior of Strike Bowling

The Licence

9. The Licence authorises the Premises to supply liquor for consumption on the licensed premises within defined trading hours:

- Monday to Sunday – between 11am and 1am the following morning.
- Good Friday and ANZAC Day – between 12 noon and 1am the following morning.

10. The Licence is endorsed with an authorisation for the Applicant to supply liquor within the unlicensed areas of the Premises, subject to delineation and signage requirements in accordance with section 9(1)(b) of the *Liquor Control Reform Act 1998 (the LCR Act)*.³
11. The red line plan of the Premises (**the Red Line Plan**) illustrates the location of the licensed premises areas in each section. These are designated as ‘L.P.’ in the below Figures 7 and 8:

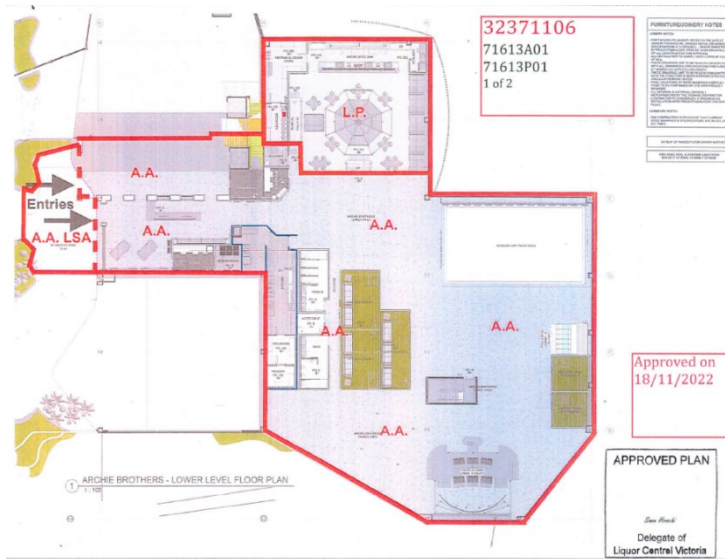


Figure 7: Archie Bros section

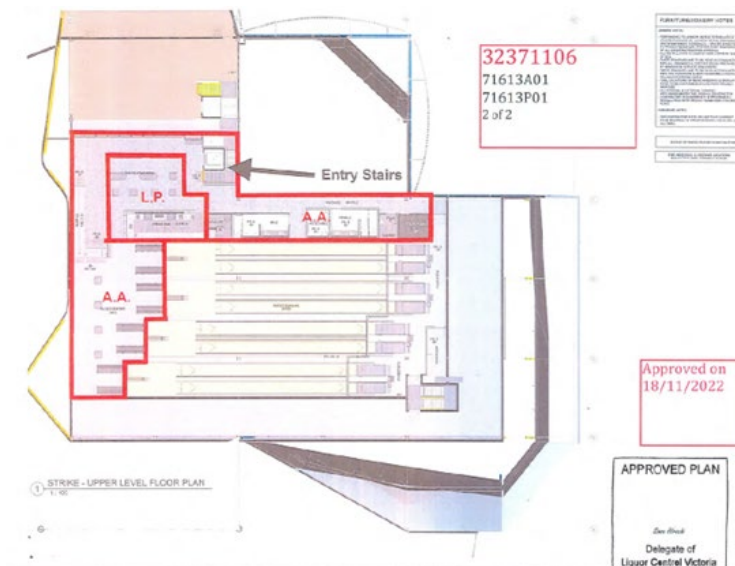


Figure 8: Strike Bowling section

12. Alcohol can also be supplied within the unlicensed areas of the premises, known as ‘authorised areas’. The authorised areas are designated on the Red Line Plan as ‘A.A.’.

³ All references to legislation are references to the LCR Act unless stated otherwise.

13. However, this is only in circumstances when the authorised areas are 'switched on', i.e.:
 - a) the authorised areas are clearly delineated with barriers or similar physical devices; and
 - b) signage must be prominently displayed at each entrance, stating that no person under the age of 18 is allowed within the authorised areas unless accompanied by a parent or legal guardian.
14. In effect, switching on the authorised areas permits the Applicant to supply liquor for consumption in all areas of the Premises, so long as there are no unaccompanied minors. For convenience, these conditions were referred to throughout the hearing as the 'Strike Conditions', and are so referred to here.
15. Funlab operates a number of other licensed premises in Victoria which also have the Strike Conditions.⁴
16. The Applicant's current practice of turning on the authorised areas at the Premises varies across its two sections:
 - a) At Strike Bowling, portions of the authorised areas are switched on, on an ad hoc basis. The bowling area operates as if it were unlicensed, except for when liquor is consumed at the bowling lanes. For example, when a group wishes to purchase liquor for consumption at bowling lanes, signage is put up just for their lane to switch on the authorised area. In effect, unaccompanied minors are excluded from both the licensed premises bar area and any switched-on authorised areas.
 - b) At Archie Bros, all authorised areas are switched off, and alcohol supply and consumption only occurs within the licensed bar area. In effect, unaccompanied minors are allowed throughout the arcade hall and karaoke rooms, but not in the licensed bar area.
17. From 8pm onwards, all minors (whether accompanied or not) are required to leave the Premises, and all authorised areas as delineated on the Red Line Plan.
18. The Licence conditions impose specific requirements for crowd control at the Premises. At least two crowd controllers must be employed for the first 100 patrons. For each additional 100 patrons, an extra crowd controller is required. Crowd controllers are required to be present during entertainment and for 30 minutes after it concludes. Furthermore, whenever entertainment is

⁴ The following premises have the Strike Conditions: Holey Moley/Hijinx Hotel (on-premises licence no. 32371083); Archie Brothers Morris Moor (on-premises licence no. 32373768); Strike/Archie Bros/Holey Moley, Point Cook (on-premises licence no. 32283078); Strike Bayside (late night (on-premises) licence no. 32276673); Strike CCW (on-premises licence no. 32293502); Strike City (late night (on-premises) licence no. 32271623); Strike Eastland (on-premises licence no. 32354934); Strike Highpoint (on-premises licence no. 32327848); Strike Melbourne Central (late night (on-premises) licence no. 32280339).

conducted beyond 7.30pm on any given day, crowd controllers are mandatory irrespective of the number of patrons in attendance.

19. In addition, the Premises must maintain a surveillance recording system to cover all entrances, exits, and entertainment areas, which include cubicles where karaoke activities are held. The surveillance must be operational from 30 minutes before entertainment commences until 30 minutes after it ends.
20. The Applicant must also comply with Responsible Service of Alcohol (**RSA**) requirements, including that it ensures that any person who sells, offers for sale or serves liquor on the licensed premises has completed responsible service of alcohol programs.⁵

The Original Applications

21. On 13 December 2022, the Applicant, represented by BSP Lawyers (**BSP**), lodged two applications with the Commission. In summary, these applications (**the Original Applications**) consist of the following:
 - a) an uncontested application for a variation of conditions on the Licence under section 29(2)(c) (**the Licence Variation**); and
 - b) an uncontested application for a permanent underage approval under section 120(2)(e) until 8pm (**the Permanent Underage Approval**).
22. The Applicant also proposed a condition on the Licence that the Permanent Underage Approval only applies when the licensees or a related entity within Funlab holds the Licence.
23. The Original Applications are interdependent, and cover two different sections on the Premises (i.e., Archie Bros and Strike Bowling). They are interdependent in that what is sought, is the substitution of the current Strike Conditions with an approval under section 120(2)(e).
24. The rationale behind the Original Applications is (in summary):
 - a) The Applicant aims to provide a consistent experience for guests across different venues both within Victoria and nationally. Currently, Victoria is the only jurisdiction where the Strike Conditions apply in a number of Funlab premises, creating inconsistencies in customer experiences across different locations.
 - b) A consistency in experience would improve how requirements regarding minors are conveyed to staff across all venues. Funlab would achieve consistent procedures and staff training by allowing the same rules to apply across its brands.

⁵ LCR Act, sections 108AA, 108AB, 108AC, 108AD.

- c) The Applicant wants to prevent customer disappointment and refunds due to misunderstandings regarding restrictions on unaccompanied minors, noting that customers expect uniform access across similar entertainment precincts.
- d) The Applicant wants its staff to focus more on liquor licensing compliance measures that directly reduce harm, such as preventing secondary supply of alcohol to minors and ensuring responsible alcohol service. This, the Applicant argues, is more effective than having staff focus on managing physical aspects of the Strike Conditions, such as signage and demarcation. By emphasising staff interaction, supported by RSA training, the Applicant believes that staff can better monitor and manage the consumption of liquor while enhancing the overall customer experience.⁶

25. In its submissions on behalf of the Applicant, BSP stated that the expected outcomes of the grant of the Original Applications were that “the proposal would allow unaccompanied minors to enjoy the activities and gaming components of the Premises, as well as the non-alcoholic food and beverage offerings.”⁷ Essentially, the arrangement would facilitate the supply, handling, and consumption of alcohol by adults while they are actively engaging in or near the same activities as unaccompanied minors. For example, a group of friends may include a mixture of teenagers and adults who visit the Premises together to enjoy bowling or games, and the adults in the group could responsibly purchase and consume alcohol during their visit. The intention is to create an inclusive experience where both unaccompanied minors and adults can participate in shared social activities.

26. In support of the Original Applications, BSP provided the Commission with a copy of the Venue Management Plan (**VMP**). Relevantly, the VMP included specific provisions for monitoring minors on the Premises:

- a) The Premises allows unaccompanied minors to attend the Premises until no later than 8pm on any given day. After this time, unaccompanied minors are prohibited from being on the Premises.
- b) All staff are under strict instructions to ensure that liquor is not sold or supplied to persons under the age of 18 years. This includes preventing secondary supply, where an adult might provide alcohol to a minor. To enforce this, any person suspected of being under 18 will be required to present appropriate identification confirming they are of legal drinking age. Acceptable forms of

⁶ See above n 1, at [20].

⁷ Annexure to variation application, dated 8 December 2022.

identification are strictly those approved under the LCR Act, and foreign passports are the only acceptable form of international ID.

- c) In addition, the VMP provides details of the operation of private function rooms where liquor may be supplied and consumed. Staff are required to check on patrons intermittently in these rooms to ensure compliance with responsible service of alcohol practices, and CCTV monitoring is in place to oversee patron behaviour.

27. BSP submitted that the Applicant is an experienced operator of licensed premises, with its director managing several other Funlab venues. It also submitted that a number of these venues have operated with a permanent underage approval without any infringements or non-compliance incidents over four years, demonstrating their capability to manage such conditions.

28. Pursuant to section 33, copies of the Original Applications were served on the Chief Commissioner of Police and on the Stonnington Council. Neither objected to the Original Applications.

29. On 14 February 2023, BSP provided supplementary submissions on behalf of the Applicant in support of the Original Applications (in summary):

- a) BSP emphasised that section 120(1) allows minors on licensed premises under certain conditions, and the broad powers granted to the Commission suggest that Parliament anticipated additional circumstances for granting of permanent underage approvals.
- b) The Premises is located in a family-friendly area within Chadstone Shopping Centre (**Chadstone SC**), where unaccompanied minors are expected to visit.
- c) The social profile of Chadstone SC's patrons does not indicate economic disadvantage or vulnerability to alcohol abuse, and there is no notable issue of underage drinking or secondary supply in the area.
- d) As part of Funlab, the Applicant has considerable experience managing premises with permanent underage approvals at other locations, including Crown Casino, Frankston Shopping Centre and Docklands. This demonstrates that the Applicant had proposed effective harm minimisation strategies in its management plan.
- e) The permanent underage approval sought is not a blanket authority but limited to 8pm, reflecting the venue's youth-friendly focus during the day, with liquor being an ancillary component. This reduces the risk of secondary supply.

Original Decision

30. On 6 September 2023, a delegate of the Commission refused the Original Applications pursuant to subsection 44(2)(b)(ii)⁸ (**Original Decision**).
31. In her reasons for decision, the delegate considered that the framework of the LCR Act placed a high bar before the Commission would grant a permanent underage approval.⁹ Given the activities of the Premises, as well as its size and layout, the delegate was not satisfied with the proposed management plan, citing a lack of measures beyond the industry minimum to deal with secondary supply or ID of minors.
32. In summary, the delegate was not satisfied that granting the Original Applications would be in line with the objects of the LCR Act, in particular the objects of harm minimisation and the responsible development of the liquor industry.¹⁰

Applications for Internal Review

33. On 18 September 2023, the Applicant applied to the Commission for review of the Original Decision (**Review Applications**).
34. Following a directions hearing,¹¹ on 15 February 2024, the Commission issued directions requesting that the Applicant lodge further material.¹²
35. On 24 April 2024, BSP provided the following material on behalf of the Applicant:
- Witness Statement of Niall O'Doherty, Chief Operating Officer of Funlab;
 - Witness Statement of Natasha Ciconte, Operations Manager of the Premises;
 - Witness Statement of Mitchell Bierman, Venue Manager of the Premises;
 - Expert witness report by Tony Zalewski of General Public Safety;
 - Expert witness report by Laura Thomas of Urbis;
 - Current version of the VMP for the Premises;
 - Copy of the House Policy for the Premises; and
 - Submissions on behalf of the Applicant by Daniel Robinson, Counsel for the Applicant.

⁸ Section 44(2) states that: The Commission may refuse to grant an uncontested application on any of the following grounds — [...] (b) in any case - [...] (ii) that the granting of the application would be conducive to or encourage harm.

⁹ The Delegate referenced section 22(1)(ca), which provides that the Commission must not grant a licence or BYO permit in respect of premises that, in the opinion of the Commission, are intended by the occupier of the premises to be primarily used by people under the age of 18 years, unless the Commission is satisfied that the grant of a licence or permit would not present a specific risk of supply of liquor to a person under the age of 18 years.

¹⁰ See section 4(1).

¹¹ Directions hearing held on 5 February 2024.

¹² The Commission requested the latest versions of the venue management plan and the House Policy for the Premises, as well as any available correspondence with the City of Stonnington in relation to the condition on the Planning Permit (No. 0345/22) allowing unaccompanied minors to be permitted on the Premises.

Legislation and the Commission's task

The Commission's internal review power

36. Division 2 of Part 9 governs internal review applications. Under section 152, the Original Decision is a reviewable decision, and the Applicant is eligible to apply for the review of that decision. The Review Application was made pursuant to section 153.

37. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Applications 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.¹³

38. Under the LCR Act, an application for variation of an on-premises licence may be contested or uncontested. Pursuant to section 3(1), an uncontested application is defined as:

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).

39. The Original Application was uncontested as no objections were received under Division 5 of Part 2 within the period set out in that Division (or that period as extended under section 174).

40. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Original Applications. In this case, the Commission either has to:

- a) grant the Original Applications and, if so, whether to do so subject to conditions;¹⁴ or
- b) refuse to grant the Original Applications.¹⁵

Determination of an uncontested application

41. Where an application is an uncontested application, pursuant to section 44(1):

Subject to Division 3, the Commission must grant or refuse to grant an uncontested application at any time after the expiry of the period for objection under Division 5 (or that period as extended under section 174).

¹³ Section 157(2) to (5) further prescribe the manner in which the Commission is to undertake internal reviews.

¹⁴ Sections 44, 49 and 157.

¹⁵ Sections 44 and 157.

42. Section 44(2) empowers the Commission to refuse to grant the Review Applications on various grounds, including that granting of the application would be conducive to or encourage harm.¹⁶

Conduct of an Inquiry

43. Section 44(4) provides that the Commission may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate.

44. Section 172W(3) provides that the Commission is not bound by the rules of evidence but may inform itself in any way it thinks fit and is bound the rules of natural justice

Exercising the internal review power

45. Sections 172D(3) and 172U(3)(b) require the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines in respect of the regulation of liquor issued by the Minister. The objects of the LCR Act are set out at section 4(1):

(a) to contribute to minimising harm 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.

46. Section 4(2) further provides 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.¹⁷

¹⁶ Section 44(2)(b)(ii).

¹⁷ See further *Kordister Pty Ltd v Director of Liquor Licensing* (2012) 39 VR 92; [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).

47. Section 3(1) defines harm as follows:

harm arising from the misuse and abuse of alcohol, including—

- (a) harm to minors, vulnerable persons or communities, including groups within communities; and*
- (b) family violence; and*
- (c) anti-social behaviour, including behaviour that causes personal injury or property damage.*

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

Other sections of the LCR Act relevant to this matter

Section 120 Permanent underage approval

49. Section 120(1) provides that a licensee is guilty of an offence if a person under the age of 18 years is on a licensed premises or any authorised premises and is not in the company of a responsible adult.

50. Section 120(2)(e) provides an exception to the offence, providing that it does not apply to the presence on licensed premises or authorised premises of a person under the age of 18 years in accordance with the approval of the Commission and any conditions to which that approval is subject.

51. Section 120(3) provides that, if the Commission grants or revokes an approval for the purposes of subsection (2)(e), the Commission must cause the licence or permit to be endorsed accordingly.

Section 9 Authorised Premises

52. Pursuant to section 9(1)(b), the Commission may approve an on-premises licensee to supply liquor on any other premises authorised by the Commission and specified in the licence for consumption on those premises.

Section 22 Restrictions on Grants of Licenses and BYO Permits

53. Section 22(1)(ca) provides that the Commission must not grant a licence or BYO permit in respect of premises that, in the opinion of the Commission, are intended by the occupier of the premises to be primarily used by people under the age of 18 years, unless the Commission is satisfied that the grant of a licence or permit would not present a specific risk of supply of liquor to a person under

the age of 18 years. Factors that the Commission may consider for the purposes of section 22(1)(ca) include, but are not limited to – (a) whether the proposed licence or permit authorises supply of liquor at a time when the premises will not be used primarily by persons under the age of 18 years; and (b) whether the proposed licence or permit provides that any person under the age of 18 years must be accompanied by a responsible adult at all times during which the proposed supply of liquor is to occur (s 22(3A)).

Factors guiding the Commission’s discretion under section 120(2)(e)

54. This application seeks the exercise of the Commission’s discretion under section 120(2)(e). It is a discretion that is to be exercised having regard to the objects of the LCR Act and of the provision conferring the discretion.
55. 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).¹⁸ The objective of contributing to harm minimisation includes by providing ‘adequate controls over the supply and consumption of liquor’ and by ‘encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impacts on the community’.¹⁹
56. In the Commission’s view, there is an intention within section 120 of the LCR Act that minors be on licensed premises unaccompanied in very limited circumstances; i.e., under subsections 120(1) and (2). There is also an intention within the framework of the LCR Act, that minors are limited in the nature and circumstances of their access and exposure to the supply and consumption of liquor. In particular, the LCR Act prohibits premises that are intended to be primarily used for minors, unless there is not a specific risk of supply (section 22(1)(ca)); contemplates that minors ought to be monitored by a responsible adult in licensed premises; the prohibition of alcohol in areas providing entertainment for or mainly for minors (section 120(2)(a)) and prohibiting advertising and promotion appealing to minors (sections 115A and 115B).
57. At the same time, section 120(2)(e) confers a discretion on the Commission to grant permanent underage approvals. The discretion is not at large, but is to be exercised consistently and in accordance with the objectives of the LCR Act, particularly, harm minimisation.
58. Internal reviews of decisions under section 120(2)(e) are not common. Over the years, there have been some cases on the matter giving rise to principles for how the Commission should exercise its discretion in the circumstances of those particular cases.

¹⁸ *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325.

¹⁹ Sections 4(1)(a)(i) and (iv).

59. In *Palace Cinema Nominee Pty Ltd v Director of Liquor Licensing* [2007] VCAT 1829, the Tribunal considered that the issue under section 120(2)(e) is one of ‘balance and discretion in the circumstances of a particular application’²⁰ and that there ‘should be a demonstrable case for particular concern’.²¹
60. Similarly, in *University of Melbourne – Melbourne Theatre Company v Director of Liquor Licensing (Occupational and Business Regulation)* [2009] VCAT 1535, the Tribunal considered that ‘the particular circumstances, site and premises should be taken into account and dealt with in a specific context’.²² In that case, the Tribunal took into account that the patrons were likely to be ‘of a more mature, genteel type and the evidence is that neither this, nor similar venues, has presented evidence of the misuse or abuse of alcohol in this type of environment’.²³
61. While consistency in decision-making is desirable and there are often good reasons why like cases should be treated alike, it does not always follow that where one type of venue has previously been the subject of a section 120(2)(e) approval, that same type of venue will necessarily be approved on a subsequent occasion. In *Packenham Racing Club Inc at Packenham Racing Club premises* [2015] VCGLR 28, the then regulator recognised that underage approvals have been granted with respect to similar premises, but it took into account that a number of other similar venues were not so endorsed: each application needed to be determined based on its individual circumstances and the merits of the particular application.²⁴

A shift in venue and entertainment paradigms gives rise to the need to focus on harm minimisation

62. It is worthwhile setting out some historical and regulatory background as to the liquor regulator’s hitherto practice as to permanent underage approvals.
63. There are more than 3000 permanent underage approvals issued with respect to Victorian liquor licences. The licences holding an approval vary, so too do the activities of the licensee vary, but there has been longstanding practice by the regulator to grant approvals for licensed premises where there are legitimate reasons for minors to be on the premises, where such reasons are not connected with alcohol supply and consumption.
64. For this reason, the majority of approvals granted under section 120(2)(e) have been in relation to sporting clubs or licensed venues which are not, in and of themselves, attractive to minors.

²⁰ *Palace Cinema Nominee Pty Ltd v Director of Liquor Licensing* [2007] VCAT 1829, at [15] and [28].

²¹ *Ibid*, at [16].

²² *University of Melbourne – Melbourne Theatre Company v Director of Liquor Licensing (Occupational and Business Regulation)* [2009] VCAT 1535 at [39], citing *Black Lula Evangeline & Cooke Brian v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459.

²³ *Ibid*, at [40].

²⁴ *Packenham Racing Club Inc at Packenham Racing Club premises* [2015] VCGLR 28, at [34].

65. The Commission has previously taken an approach to approvals under section 120(2)(e) that it will only grant an approval to allow unaccompanied minors on licensed premises in specific circumstances, and for particular events with clear plans and strict controls to ensure that minors cannot obtain or consume alcohol at the licensed premises.²⁵
66. But new forms of entertainment and experiences have developed over time. Minors and adults can be attracted to experiences that are immersive and entertaining and self-paced. Patrons are attracted to these forms of entertainment and experiences not primarily because alcohol is offered there, but to engage in the activity (and choose to consume alcohol if they so wish).
67. Over the years, there have been changes in the nature and offerings of venues seeking permanent underage approvals; so too have there been changes in the focus of the LCR Act in terms of harm to minors arising from the misuse and abuse of alcohol.

Harm to minors is now a specific harm for consideration

68. Recent amendments to the LCR Act by way of the *Liquor Control Reform Amendment Act 2021* were enacted to provide greater clarity and certainty as to the definition of harm. ‘Harm’ means ‘harm arising from the misuse and abuse of alcohol’. Such harm is specified to include ‘harm to minors, vulnerable persons or communities, including groups within communities’. “Family violence” and ‘anti-social behaviour’ are ‘harms’ brought within that definition of harm.
69. The Explanatory Memorandum accompanying the *Liquor Control Reform Amendment Bill 2021* (**the Bill**) referred to the new definition of harm to be inserted into s 3(1):

*The new definition of harm includes harm to minors and vulnerable persons, family violence and anti-social behaviour. This broad definition of harm replaces the term "misuse and abuse of alcohol" where that term is used in the Principal Act.*²⁶

70. The amendments of the objects provision, section 4, were described as being ‘to remove references to misuse and abuse of alcohol’.
71. The Bill was also accompanied by a Statement of Compatibility in accordance with the *Charter of Human Rights and Responsibilities Act 2006*. That Statement of Compatibility noted that:
- Clause 4 introduces a new definition of "harm" which includes "harm to minors" and family violence. This definition will protect children and families by allowing the [then Commission] to consider broader factors... when making licensing decisions.*²⁷

²⁵ *Caswell Nominees Pty Ltd at Funfields Theme Park premises (Liquor-Internal Review)* [2021] VCGLR 24, at [62]. See also *Gas Works Bar Pty Ltd at Gas Works Bar premises (Liquor-Internal Review)* [2021] VCGLR 19 at [31]; *Fortress Melbourne premises (Liquor-internal review)* [2020] VCGLR 31 at [86]; *Fortress Melbourne Pty Ltd at Fortress Melbourne premises (Liquor-internal review)* [2019] VCGLR 33 at [86].

²⁶ Explanatory Memorandum, *Liquor Control Reform Amendment Bill 2021* (Vic) 2.

²⁷ Victoria, Parliamentary Debates, Legislative Assembly, 23 June 2021, 2308 (Melissa Horne, Minister for Gaming and Liquor Regulation). See also Victoria, Parliamentary Debates, Legislative Council, 14 September 2021, 3103 (Jaala Pulford).

72. What follows from that statutory history and context, is that ‘harm to minors’ is in itself a ‘harm arising from the misuse and abuse of alcohol’.

Material before the Commission

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

- a) the Original Decision and reasons for the Original Decision of 6 September 2023;
- b) the Review Applications of 18 September 2023;
- c) supporting material provided to the Commission on 24 April 2024;
- d) a copy of the Chadstone SC liquor management plan;
- e) supplementary report of Tony Zalewski of 19 May 2024;
- f) a proposed updated VMP with Annexures A-M;
- g) information received during the Commissioners’ site visit on 20 May 2024;
- h) a summarised ‘pros and cons’ table of the current versus proposed operation of the Premises under the licensing arrangements, dated 2 July 2024; and
- i) further submission on the dodgem car activation of the Premises, provided on 2 July 2024.

Hearing

74. Between 1 and 2 May 2024, the Commission held a public hearing of the Review Applications (**the Hearing**).

75. David Robinson appeared for the Applicant, and the following people gave evidence for the Applicant:

- a) Niall O’Doherty, Chief Operating Officer of Funlab;
- b) Natasha Ciconte, Operations Manager of the Premises;
- c) Mitchell Bierman, Venue Manager of the Premises;
- d) Tony Zalewski, Director of General Public Safety; and
- e) Laura Thomas, Director of Urbis.

Reasons for decision on review

Issues for determination on review

76. The main issues for the Commission in this review, are whether varying the Licence would be conducive to or encourage harm or otherwise contrary to the objects of the LCR Act, and whether

the grant of the Permanent Underage Approval would be consistent with the objects of the LCR Act; particularly, minimising harm to minors.

77. Specifically, the question is whether allowing the Applicant to supply liquor for consumption across the whole Premises when minors are unaccompanied by a parent or legal guardian would increase the risk of harm to minors.

78. For the reasons that follow, the answer to that question is a qualified 'no'.

Whether granting the Review Applications would be conducive to or encourage harm, or be contrary to the objects of the LCR Act

The Commission is concerned to minimise harm to minors

79. The Commission has a specific and serious focus on giving effect to the statutory objective of minimising the risk of alcohol-related harm to minors. That is because of the nature of the harms/understanding of impact on liquor on minors. The concept of harm minimisation is anticipatory and there may be cases in which a conservative approach should be adopted.²⁸ When it comes to harm to minors, the Commission adopts a conservative approach.

80. Underage drinking poses unique risks, particularly due to its impact on the developing adolescent brain. Alcohol consumption during this critical growth period can interfere with brain functions related to memory, language, attention, and executive functioning, leading to cognitive impairments that may persist into adulthood. These effects can diminish an individual's ability to succeed in school, work, and daily life, highlighting the importance of minimising young people's exposure to alcohol. In addition, academic research indicates that peer influence plays a significant role in adolescent alcohol use, with both direct interactions and sustained exposure to peers impacting drinking behaviours.²⁹

81. In the context of the Review Applications, the Commission acknowledges that the Premises features distinct but interconnected areas, each providing a unique combination of entertainment options that may appeal to minors. This configuration necessitates a careful consideration of the potential risks posed by allowing unaccompanied minors in an environment where alcohol is served.

The Premises is in the Social Quarter, at Chadstone SC

82. The Premises is situated within The Social Quarter, a mezzanine dining area at Chadstone SC. In its submissions on behalf of the Applicant, BSP describes Chadstone SC as being 'undeniably a

²⁸ See further *Kordister* [34], citing *Nardi v Director of Liquor Licensing* [2005] VCAT 323 [51].

²⁹ Leung, R. K., Toumbourou, J. W., & Hemphill, S. A. (2014). The effect of peer influence and selection processes on adolescent alcohol use: A systematic review of longitudinal studies. *Health Psychology Review*, 8(4), 426–457. See also Henneberger, A. K., Mushonga, D. R., & Preston, A. M. (2021). Peer Influence and Adolescent Substance Use: A Systematic Review of Dynamic Social Network Research. *Adolescent Research Review*, 6(1), 57–73.

family-friendly area’, where ‘the patron demographic and social profile’ is ‘not questionable or problematic’, and ‘there is no profile of economic disadvantage or vulnerability to alcohol abuse’.³⁰

83. While it may be true that Chadstone SC is generally perceived as a family-friendly, low-risk location with a positive social profile, it is important to acknowledge that, as a large public shopping centre, it is not immune to the risk of antisocial behaviours, including incidents of violence and youth-related disturbances. The presence of multiple licensed venues increases the risk of alcohol-related harm, particularly during peak trading times and events that draw large crowds. Past incidents involving unruly behaviour, both alcohol-fuelled and otherwise, demonstrate that even locations typically regarded as safe and well-managed can experience periods of heightened risk.

84. Indeed, even the Applicant acknowledges this risk within its VMP³¹, where it states that ‘[s]taff and management are to be mindful of other licensed premises in the area when assessing patrons for intoxication, anti-social conduct, or any indication of use of illicit substances’.³²

85. The Social Quarter at Chadstone SC comprises several licensed premises that collectively form a centralised dining and entertainment area within the centre. Besides the Premises, these licensed venues include Cityfields, an all-day eatery and bar,³³ and Cinque Terre, an Italian restaurant.³⁴

86. In her report dated 24 April 2024, Ms Thomas describes The Social Quarter as a “precinct [that] was opened in 2023 with a focus on entertainment and dining”. According to Ms Thomas,

“[T]he aim of the Social Quarter is to expand the offering at the centre beyond shopping alone and to bolster the range of experiences available into the evening hours. The Social Quarter has been developed adjacent to the existing entertainment focus (Hoyts, Legoland, existing restaurants).

All of the restaurants in the Social Quarter and the adjoining Dining Terrace are licensed, as is the Hoyts Cinema”³⁵

87. In its submissions on behalf of the Applicant, BSP describes The Social Quarter as ‘a high-quality offering which will attract many young and adult patrons – and it is not a location with an association of high-risk behaviour when it relates to alcohol’.

88. Chadstone SC is particularly accessible to minors. The centre is well serviced by public transport, with several bus routes stopping directly at the shopping complex, including at the dedicated bus

³⁰ Addendum submissions in support of variation application, dated 9 February 2023.

³¹ Plan of Management – Archie Bros Cirque Electriq/Strike Bowling, Shop 2-006, The Social Quarter, 1341 Dandenong Road, Malvern East, VIC, 3148, dated December 2022.

³² Ibid, [71].

³³ General licence no. 31962328.

³⁴ Restaurant and café licence no. 32370312.

³⁵ Report of Laura Thomas, dated 24 April 2024, [8]-[9].

interchange. The Social Quarter is conveniently situated within walking distance from this interchange, making it easily reachable for young people using public transport. Additionally, the close proximity to Oakleigh Station, only a five-minute bus ride away, further enhances accessibility for minors traveling from other parts of the city.

89. This ease of access makes the Premises inherently attractive to younger individuals, who may frequent the shopping centre not only for retail or social purposes but also for recreation – potentially at a licensed venue. This level of accessibility, paired with the presence of multiple attractions at Chadstone SC that are targeted at youth, may increase the potential risk of underage individuals attempting to access or loiter near a licensed premises.

90. According to evidence of Dr Zalewski at the Hearing, the Premises within The Social Quarter is favourable because it is somewhat out of the way and not in high-traffic areas or thoroughfares. This reduces the likelihood of people merely passing by, as patrons have to physically go to the entertainment areas. He also noted that the Premises is not located adjacent to the food court, which often attracts loitering in shopping centres.³⁶

91. In addition, the witnesses for the Applicant described the physical layout of The Social Quarter as a "horseshoe-shaped precinct" that is relatively contained, with limited access points and minimal through-traffic.³⁷ In addition, the witnesses stated that Chadstone SC provides "central security" which the Premises can rely on for support in patron management.³⁸

92. The Commission accepts that, on balance, the risk profile of The Social Quarter appears to be low. The contained layout, low through-traffic, physical separation from high-traffic areas, and centralised security contribute positively to managing these risks. Nonetheless, vigilance must be maintained due to the shopping centre setting, which brings its own set of challenges in ensuring public safety and the responsible service of alcohol at licensed premises located therein.

The Premises has a broad age appeal

93. The Premises is unique as it has two joint-but-separate offerings, with each being a separate and distinct section that is part of the same licensed premises.

94. On behalf of the Applicant, BSP submitted:

The Premises is a family-oriented recreation facility with a multitude of activities and games that are designed to appeal to all ages – including to minors. The application therefore does not

³⁶ Transcript of 1 May 2024, p13.

³⁷ Transcript of 1 May 2024, p29; Transcript of 2 May 2024, pp30, 51.

³⁸ Transcript of 2 May 2024, p51.

establish a precedent, or an image that is contrary to the public interest, of allowing minors into Premises that are primarily designed to operate as 'bars'.³⁹

95. The marketing material for the Archie Bros section depicts it as a diverse entertainment space. There is an emphasis on family-oriented language. The visuals suggest that the venue targets a broad demographic, including children, with a range of activities and prize-based games that encourage longer visits and social gatherings.⁴⁰ The marketing material for the Strike Bowling section also describes it as a versatile entertainment facility. It is targeted at diverse groups, including families, students, and adults. The imagery and text on its website showcase a fun, casual environment.
96. The overall messaging of both sections illustrates the Premises as a destination for group entertainment.⁴¹ The supply of liquor at the Premises is designed to be ancillary to the broader entertainment offering, which focuses primarily on providing recreational and social activities. In his statement, Mr O'Doherty said that:

All Funlab venues are designed to create spaces where people of all ages can come to experience different forms of entertainment as a primary reason to visit, in a surrounding that is conducive to creating connections, fun and memories. Food and beverage offerings are complementary to these entertainment offerings and allow us to cater to the needs and wants of our guests in an inclusive and welcoming environment.

Whilst each concept and each venue has unique qualities, many of our venues are designed to cater for all groups with a focus on families and safe spaces during the day before catering for a more adult-centred demographic at night.⁴²

97. The layout of the Archie Bros section appears to be designed to create an immersive and engaging environment. It is divided into distinct zones, each dedicated to specific activities. The design incorporates vibrant colours, dynamic lighting, and circus-themed décor to enhance the overall atmosphere. There is, among other things, an experiential carnival setting of a merry-go-round and popcorn machine inviting into the offering within the Archie Bros section. These elements can be attractive to minors, as they evoke a sense of playfulness and entertainment that often appeals to a younger demographic.

³⁹ See above n 7.

⁴⁰ For example, see Archie Bros website: https://www.archiebrothers.com.au/activities/arcade-games?qad_source=1&gclid=Cj0KCCQiA_qG5BhDTARIsAA0UHSKKe29gRcT3AXat-FnU0sB53Eu5J9xaSdXR_fPPvpSix-0d5-j_0kAaAsypEALw_wcB.

⁴¹ For example, see Strike Brothers website: https://www.strikebowling.com.au/?gad_source=1&gclid=Cj0KCCQiA_qG5BhDTARIsAA0UHSJD6PePpsuRk1mOemc4yoeAxmL_woiy-7WC5AwJu-nBukkB3--huf_xwaAsDXEALw_wcB.

⁴² See above n 1, at [9]-[10].

98. The Strike Bowling section entry and interior is more adult in nature, resembling in part, a train subway, and with muted colours and décor. With its bowling lanes and more mature décor, Strike Bowling appears to attract a wider demographic, including young adults and families, thus contributing to an atmosphere that is not uniquely directed at minors.
99. The Commission recognises that the Premises represents a recent paradigm shift from venues for which permanent underage approvals are typically sought, where minors' presence may be ancillary to some other activity, such as partaking in a meal, or for a sporting occasion. In this case, the Premises allows for patrons to partake in activities while consuming alcohol, and so while a person may choose to drink alcohol or not, the consumption of alcohol is not necessarily ancillary to the entertainment on offer, but may be part of it, and part of its attraction.
100. The combination of amusement activities and licensed alcohol service at the Premises presents a challenge, as it risks blurring the lines between child-appropriate entertainment and adult-oriented experiences, potentially creating an environment where minors could be unduly influenced by the presence of alcohol and have easier access to it.
101. Evidence before the Commission was that players tend to spend up to three hours at the Premises at a time,⁴³ which is a lengthy period for a minor to potentially be in the vicinity of adults consuming alcohol throughout. This extended exposure not only heightens the risk of minors perceiving alcohol as a typical element of social engagement but also increases the possibility of secondary supply. Given the large and open nature of the Premises—covering 2303m² of floor space—the ability to monitor such behaviour consistently becomes challenging.
102. With a permanent underage approval in place, minors at the Premises would be exposed to people other than their parents drinking. In her evidence, Ms Thomas identified that peer influence is a risk factor when it comes to alcohol-related behaviours, as older peers drinking in the presence of minors could influence alcohol behaviours.⁴⁴ The research reviewed by Ms Thomas highlighted that peer behaviours can play a major role in normalising drinking for young people.⁴⁵
103. Moreover, the diverse sections of the Premises and their interconnected nature pose additional supervisory difficulties. The size and complexity of the layout, featuring multiple zones with distinct entertainment offerings, may make it easier for minors to access areas where alcohol is being consumed without sufficient oversight. This is especially concerning during busy periods or events where the staff's capacity to maintain a safe and controlled environment might be strained.

⁴³ Transcript of 2 May 2024, p135.

⁴⁴ Ibid, p112.

⁴⁵ Ibid, p126.

104. In the Archie Bros section of the Premises in particular, the Commission gives weight to the fact that:
- a) Archie Bros has a distinctly child-friendly appeal, in a venue particularly attractive to minors. Minors in mixed-aged groups participating in arcade games might view alcohol consumption as an inherent part of socialising and entertainment due to the visible influence of their older peers; however, the Commission takes no concluded view on this as a particular risk of harm to minors in light of the whole of the material before it in this case; and
 - b) Archie Bros offers a range of high-energy, as well as skill, concentration, and movement-based games. The physical configuration of offerings within the Premises would allow minors to move quickly from one activity to another, where the offerings' arrangement could impede lines of sight, and which could make appropriate supervision of unaccompanied minors difficult.

Licensee mitigation measures

105. The Commission notes that the Applicant has made submissions about Funlab's experience in operating multiple licensed premises with similar Strike Bowling and Archie Bros activations. In effect, the Applicant is seeking to adopt licence conditions and authorisations similar to those already in operation at a number of other Funlab premises with a permanent underage approval.⁴⁶ The Commission accepts the strong compliance history of these venues operated by Funlab. This is a significant protective factor against the risk of harm to minors at the Premises: Funlab's compliance history gives the Commission comfort that it will also be able to appropriately mitigate risks of harm to minors arising from their presence on licensed premises; that being so, the Commission has determined to impose the conditions suggested by the Applicant, that the Permanent Underage Approval applies only so long as the Applicant or a related entity within the Funlab Group holds the Licence. It stands to reason that the removal of the Strike Conditions should be granted on the same basis.
106. The Applicant provided information to the Commission about measures currently taken by the Applicant to mitigate the risks of harm at the Premises, including those arising from the misuse and abuse of alcohol at the Premises.
107. In her evidence at the Hearing, Ms Ciconte provided a comprehensive outline of the training process for all team members, which starts with an induction and continues with sectional training for specific areas, such as floor, bar, and reception duties.⁴⁷ Ms Ciconte stated that managers

⁴⁶ The following premises have a permanent underage approval: Archie Brothers Cirque Electric (on-premises licence no. 32347911); Archie Brothers Century City Walk (on-premises licence no. 32379219); Holey Moley Crown (late night (on-premises) licence no. 32351897); B. Lucky and Sons (late night (on-premises) licence no. 32280371); Holey Moley (on-premises licence no. 32276160).

⁴⁷ Transcript of 2 May 2024, p5.

receive training on the use of the 'Safety Culture' platform for incident reporting, which is part of their onboarding. According to Ms Ciconte, incidents are recorded on the Safety Culture platform and reviewed regularly. If there are learning opportunities or corrective actions to be implemented, they are communicated back to the management teams.⁴⁸ Ms Ciconte gave the example of how a hazard report was followed up when a guest was injured on the dodgem cars on the Premises:

"There was an incident where a guest had cut themselves on the Dodgems. We reviewed the hazard being our Dodgems car, and we identified that we needed to fix up how that one was situated. That one then got fixed and we reported back to the wider management team and facilities team that that hazard had been reviewed, identified and the action to resolve it had taken place."

108. In her witness statement, Ms Ciconte provided details regarding staffing, indicating that during quiet periods, a minimum of six staff work per shift, increasing to a maximum of 25 staff at peak times. The evidence of Mr Ciconte describes the staffing and operational processes at Archie Bros, specifically how team members are assigned to various positions within that section:⁴⁹

- a) there are fixed staff positions, one at reception near the entrance, one at the bar, one at the dodgems attraction, and another at the XD Thrillrider (a 12-seat amusement activity). Each morning, the manager reviews the roster, assigns people to these positions, and fills out a shift management document detailing where each team member will be stationed and their break times;
- b) besides these fixed positions, roaming staff members (floor people and managers) provide additional support throughout the venue; and
- c) all staff are equipped with radios to enable communication.

109. While Ms Ciconte was unable to provide an example of when an alcohol-related incident arose, including in the context of underage supply, the Commission accepts that Applicant has successfully operated for a period of two years without any alcohol-related incidents. The Commission further notes that Victoria Police did not raise any concerns with regard to the Original Applications.

110. The Commission accepts that the Applicant has established appropriate controls relating to staff training and incident reporting. The Applicant's proactive approach to minimising risks, including staff training on harm minimisation, regular audits of compliance measures, and dedicated

⁴⁸ Transcript of 2 May 2024, pp26-27.

⁴⁹ Ibid, pp11-12.

supervisory staff during peak hours, provides the Commission with confidence that the risks of harm to minors on the Premises can be effectively mitigated in part through these measures.

111. Other strategies are proposed. Ms Ciconte described that if the grant was successful, the Applicant would implement a wrist-banding policy. She said:

“Any patron who attends and purchases liquor will be provided with a wrist-band. The purpose of this is to simplify the ability for staff to visually monitor any drinking activities of patrons – as staff would be prompted to approach any patron who appears to have liquor but not a wristband. Patrons would have to provide identification to the satisfaction of staff in accordance with our House Policy.”⁵⁰

112. Ms Ciconte also made clear that if alcohol were permitted, staff would include checking for unattended glasses or drink sharing within their checks of the games floor.⁵¹

113. In his report, Dr Zalewski stated that, overall, the existing VMP for the Premises “provides a reasonable basis for effective management, compliance and security”. In addition, he stated that he was of the view that the Premises did not “disclose any specific risks that would not be evident in any similar licensed premises where unaccompanied minors are permitted”. However, he did propose several changes to the existing VMP to ensure effective risk mitigation, compliance and improve safety procedures, relevantly including:

- a) attaching Standard Operating Procedures (SOPs) to the existing VMP to provide clear, step-by-step instructions for key operational activities (e.g., how to manage patrons, respond to incidents, intervene on suspect patrons, identify fake IDs, and deal with unaccompanied minors);
- b) providing documented guidance on specific risks, such as images of all approved forms of identification, steps to identify fake IDs, and actions to take if a fake ID is detected;
- c) detailing specific methods for monitoring and managing unaccompanied minors, such as allocating responsible staff to oversee specific areas and taking proactive steps to prevent secondary supply of alcohol to minors.

114. The Commission accepts Dr Zalewski’s evidence in this regard. It is important that the Applicant maintains and complies with a VMP that is appropriate to the risks posed by unaccompanied minors on the Premises, and that it continues to abide by the training and management practices of at least

⁵⁰ Witness Statement of Natasha Ciconte dated 24 April 2024, at [50].

⁵¹ Ibid, at [49].

the standard and quality described to the Commission by the Applicant and Dr Zalewski. The Commission will impose conditions on the Licence that the Applicant does so.

115. Given the importance of ensuring proper monitoring of the Premises in reducing the risk of harm to minors, the Commission imposes specific conditions requiring security guards, CCTV and embedding appropriate RSA measures as set out in the VMP.
116. For those reasons, the Commission is not satisfied that it would be conducive to or encourage harm to revoke the Strike Conditions from the licence and there is no other reason to refuse the application to vary the conditions, subject to a grant of the Permanent Underage Approval.

Should a permanent underage approval be granted?

117. Whether the Permanent Underage Approval ought to be granted requires a consideration of the particular circumstances and risks involved in the grant, having regard to the objectives of the LCR Act, both explicit and inferred.
118. The particular circumstances, site and premises is that it provides a novel entertainment offering in terms of it being an immersive, electronic-based gaming experience which is not of a nature that is typically associated with the consumption of liquor by adults in the presence of minors. It allows for patrons to partake in activities while consuming alcohol, and so while a person may choose to drink or not, a person may drink while playing any of the games on offer.
119. This case has been finely balanced.
120. On one hand, there is a clear statutory intention that unaccompanied minors should not be on licensed premises except in very limited circumstances, particularly in circumstances where there is entertainment for or mainly for minors on a part of the premises – such as in the case of the Archie Bros section.⁵² In the Commission's view, Archie Bros is so clearly a venue attractive to minors, and accessible within a shopping-centre precinct that is itself attractive to minors, that any focus on alcohol in it (regardless of it being ancillary, secondary or necessarily part of it), gives the Commission serious concern as to whether it would be too far a leap in the responsible development of the liquor, licensed hospitality or live music industry, to grant the section 120 approval sought.
121. Similarly, the Commission held concern as to whether the community would expect limits on the prevalence of alcohol in what are fundamentally and objectively a child-friendly entertainment venue that is Archie Bros (regardless of whether or not they also have an appeal to adults).
122. Further, it presents a risk of secondary supply of alcohol, where the nature of the offering and configuration of the premises poses particular challenges for effective supervision.

⁵² See LCR Act, section 120(2)(a).

123. To be clear, the Commission does not hold the same concerns with respect to the Strike Bowling offering:
- a) It is an activity that has broader appeal than mainly for minors. In the Commission's experience, it is a sport that is popular with and played by adults, just as it may be played by minors and minors with adults. It is not uncommon for ten-pin bowling alleys in Victoria to offer alcohol as part of the social and recreational offering by the alley. In the Commission's view, community expectations are not such as to hold concerns about the association of ten-pin bowling at Strike Bowling with the consumption of liquor; accordingly, licensing this premises with an approval under section 120(2)(e) would not be contrary to the objective of facilitating the diversity of licensed premises reflecting community expectations, nor would it amount to an irresponsible development of the liquor, licensed hospitality and live music industries.
 - b) The Strike Bowling section at The Social Quarter is not one, in the Commission's view, that is mainly for minors, or has a particular appeal to minors. The Strike Bowling entry and interior is more adult in nature, resembling in part, a train subway, and with muted colours and décor. While the section of the Premises is to be taken on its own merits, by comparison, it has an entirely different appeal and appearance to Archie Bros, so too is the nature of the offering: whereas players could remain in the Archie Bros section so long as they please, the game of ten-pin bowling is necessarily limited to however long it takes to play the game. The opportunity for consuming alcohol (and so to engage in risky drinking or secondary supply) is thereby limited by time and activity.
 - c) The layout of the Strike Bowling section is in and of itself conducive to minimising harm. Areas where alcohol may be consumed are limited: patrons may gather and remain in small areas at or near the bowling alley lanes, or at tables in front of the bar area. Each of those areas are confined, easily visible to staff with good opportunity for appropriate supervision to reduce the chance of secondary supply and risky drinking
124. On the other hand, the Applicant is an experienced operator who has operated similar venues without incident. The absence of evidence of harm from those venues is a matter of considerable weight. The Commission accepts the Applicant is well-aware of its obligations to minimise harm to minors and has implemented (and will implement) a number of appropriate strategies to do so (as described above). The Commission gives further weight to the Applicant's commendable history as a significant protective factor in terms of minimising the risk of harm to minors.
125. Given these factors, and compliance with conditions imposed on the Licence, the Commission considers that the risk of harm to unaccompanied minors, is low.

126. To further reduce this risk, the Applicant has indicated it would limit the Permanent Underage Approval to 8pm on any day and also require any person who purchases alcohol to wear wristbands.
127. The Commission considers these measures would reduce the risk of harm to minors to an acceptably low level. They are appropriate additional layers of protection against harm, and so the Commission will impose these as conditions on the grant of the Permanent Underage Approval.

Decision on review

128. Having regard to all the matters set out above, the Commission has determined to grant the Review Applications.
129. Separately, the Commission makes two final comments:
- a) First, the Commission acknowledges that it has taken some time to give this application proper and necessary consideration given its complexity, the circumstances of the Premises, and that it involves an issue of increasing concern, being the ease by which minors are exposed to alcohol in child-friendly settings;
 - b) Second, there was in this matter, a question as to whether or not exposure of minors to the consumption of alcohol in family-friendly venues was a harm for the purposes of the LCR Act. It was hypothesised that such exposure would have flow-on harms for minors where adults consuming alcohol while also having fun engaging in activities in which minors are also engaged, in the presence of such minors, exacerbates the risk of minors wanting to consume alcohol or forming early, confusing or inappropriate associations between the consumption of alcohol and having fun. The Commission remains concerned about the impact of minors' exposure to the consumption of alcohol in a premises mainly for minors; however, it was not a question that needed to be decided in this case; nor was the Commission satisfied on the state of current research, submissions and evidence in this matter, that minors being exposed to adults consuming alcohol while in an arcade-setting, is a particular harm that ought to be specifically minimised in this case. It may well be that in the future, the Commission has cause to consider other venues, offerings and more direct and relevant research on this point and the Commission may come to a different conclusion.

The preceding 129 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Acting Chair), Mr James O'Halloran (Deputy Chair), Mr Steven Brnovic (Commissioner), and Ms Sue Timbs (Commissioner).

Appendix A

Type of licence

This licence is an on-premises licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises during the trading hours specified below.

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 premises to which the licence relates during or immediately after the trading hours authorised under this licence.

No unaccompanied minors may be present on the licensed premises after 8pm on any day.

Venue Management Plan

To the extent that a matter is not already dealt with on this licence, the licensee must maintain and comply with a Venue Management Plan (however described), that:

- (a) contains, at minimum, the matters included in the Plans of Management dated December 2022 as provided by the licensee with respect to responsible service of alcohol, prevention of sale and supply of liquor to minors and supervision of the licensed premises;
- (b) requires persons over the age of 18 years to wear and display wristbands as a condition of entry; and
- (c) implements the recommendations of Dr Tony Zalewski at page 20 of his report dated 25 April 2024.

The licensee must ensure that the Venue Management Plan is retained on the licensed premises at all times for inspection by an authorised member of Victoria Police or Liquor Inspector.

CCTV

The licensee shall install and maintain a surveillance recording system able to clearly identify individuals, which shows time and date and provides continuous images of all entrances and exits, bars and entertainment areas including all cubicles where karaoke occurs.

The surveillance recording system must operate from 30 minutes before the start of the entertainment until 30 minutes after closure.

A copy of the recorded images must be available upon request for immediate viewing or removal by the Victoria Police, or a person authorised in writing by the Victorian Liquor Commission or its successors, or otherwise retained for at least 1 month.

The positioning of the cameras is to be to the satisfaction of the Licensing Inspector.

Signs are to be displayed in all areas subject to camera surveillance. Such signs shall read "For the safety and security of patrons and staff this area is under electronic surveillance".

Security

Crowd controllers, licensed under the Private Security Act 2004, are to be employed at a ratio of 2 crowd controllers for the first 100 patrons and 1 crowd controller for each additional 100 patrons or

part thereof. One crowd controller is to be present outside the premises to monitor patrons arriving and departing the premises. Crowd controllers are to be present from 30 minutes before the start of the entertainment being provided, until 30 minutes after closure.

Special conditions

Notwithstanding the above, crowd controllers are not required to be employed prior to 7.30pm on any given day when all of the below requirements are satisfied:

- (a) The live or recorded amplified music is in the form of karaoke entertainment in private cubicles only; and
- (b) The number of patrons in the private cubicles where the karaoke entertainment is being provided does not exceed 100 patrons.

Maximum Capacities

650 patrons

Trading Hours

Monday to Sunday

Between 11am and 1am the following morning.

Good Friday & ANZAC Day

Between 12 noon and 1am the following morning.

Approvals/Consents

Section 9(1)(b) - The areas endorsed as licensed seating area (L.S.A) on the approved plan may operate as authorised premises when the following conditions are satisfied:

- (a) the area or areas are delineated by barriers, rope and post devices, planter boxes or similar demarcation devices; and
- (b) at the entrance to each authorised area a notice of no less than A4 size is displayed which states: "No person under the age of 18 years is permitted within this area unless in the company of a parent or legal guardian" in letters no less than 10mm in height followed by the words: "This area is an authorised area permitting the supply and consumption of liquor pursuant to an on-premises licence under the Liquor Control Reform Act 1998" in letters no less than 5mm in height.

Liquor can be supplied either within the licensed premises or within the authorised premises.

Liquor supplied under this licence may only be consumed within the licensed premises or the authorised premises.

Raves, dance parties or equivalent events are not to be conducted on these premises.

This authorisation operates only when the licensee, or a related body corporate or associated entity (within the meaning of the Corporations Act 2001 (Cth)) of Funlab Pty Ltd holds the licence or is otherwise sub-let or assigned the permissions under the licence.

Section 120(2)(e) - Persons under the age of 18 years are permitted on the licensed premises other than in the company of a responsible adult subject to the following conditions:

- (a) Persons under the age of 18 years are not permitted on the licensed premises later than 8pm on any day;
- (b) The approval operates only when the licensee, or a related body corporate or associated entity (within the meaning of the Corporations Act 2001 (Cth)) of Funlab Pty Ltd holds the licence or is otherwise sub-let or assigned the permissions under the licence;
- (c) The approval operates only so long as the conditions of the licence are otherwise complied with.

End of conditions