


Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Ms Roslyn Wagg for an internal review of a decision by a delegate to refuse an application for a general licence for the premises trading as Oak and Hound Wine Bar, located at 188 Barkly Street, Ararat

Commission:	Mr John Larkins, Acting Chair Mr James O'Halloran, Deputy Chair Ms Susan Timbs, Commissioner
Appearances:	Ms Roslyn Wagg as the Applicant Mr Michael Majewski, Counsel Assisting the Commission
Date of Hearing:	3 July 2024
Date of Decision:	7 November 2024
Date of Reasons:	24 December 2024
Decision:	The Commission has determined to set aside the decision of the Delegate and, in substitution, grant another licence instead namely, a temporary limited licence subject to the conditions as set out in Appendix A.
Signed:	 John Larkins Acting Chair

Background

Original Application

1. On 14 November 2023, Roslyn Wagg (**Applicant**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*¹ for a general liquor licence (**Original Application**) for the premises located at 188 Barkly Street, Ararat (**Premises**).
2. The Applicant applied for a general licence so that she could trade at the Premises as the 'Oak and Hound Wine Bar', selling a range of local wines, and a small selection of craft beers, for consumption both on and off the Premises during the following trading hours:

FOR CONSUMPTION OFF THE LICENSED PREMISES	
Sunday	Between 10am and 11pm
Good Friday and ANZAC Day	Between 12noon and 11pm
On any other day	Between 7am and 11pm

FOR CONSUMPTION ON THE LICENSED PREMISES	
Sunday	Between 10am and 1am the following morning
Good Friday and ANZAC Day	Between 12noon and 1am the following morning
On any other day	Between 7am and 1am the following morning

Maximum internal patron capacity:	40
Maximum external patron capacity:	20
3. In addition to the provision of liquor, the Applicant proposed to offer food by way of a range of charcuterie (i.e., cold cooked meats) boards and also to offer soft drinks and coffee.
4. Approximately once a month, the Applicant also proposed that the Premises would feature live music by solo or acoustic musicians on a Friday or Saturday, between the hours of 7-10pm.
5. On 27 December 2023, in accordance with section 33, a copy of the Original Application was served on the Chief Commissioner of Police (**Victoria Police**) and the Ararat Rural City Council (**Council**).
6. On 23 January 2024, Victoria Police informed the Commission that it did not object to the grant of the Original Application.

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

7. The Council did not lodge an objection. In addition, the Commission did not receive any public objections from the display of the public notice.

Original Decision

8. On 2 April 2024, the Delegate refused the Original Application (**Original Decision**) on the basis that the Applicant was not a suitable person to hold a liquor licence.
9. The question of suitability arose from material before the delegate of the Commission (**Delegate**), that liquor inspectors of the Commission (**Liquor Inspectors**) had attended the Premises on 10 November 2023, in response to two anonymous complaints that the Applicant was purportedly trading in liquor without a licence (**2023 Incident**).

Application for Internal Review

10. The Applicant made an application for internal review of the Original Decision on 19 April 2024 (**Review Application**).
11. On 27 May 2024, the Commission invited the Applicant to provide additional documents that she intended to rely on. The Commission also invited the Applicant to provide copies of any correspondence between the associate nominated by the Applicant – Anthony Miles-Morland (**Associate**) – and a third party, which may be relevant as to the issue of suitability.²
12. On 28 June 2024, the Associate submitted further documents that he and the Applicant intended to rely on as part of the Review Application.

Legislation and the Commission's task

The Commission's internal review power

13. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the Original Decision is reviewable, and the Applicant is eligible to apply for a review of the Original Decision. The Review Application was made pursuant to section 153.
14. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
 - (a) affirms or varies the Original Decision; or

² In its correspondence to the Applicant inviting further relevant material, the Commission referred to the operation of section 130F, which addresses a person's protection against self-incrimination.

- (b) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.³
- 15. 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 Application. In this case, the Commission must decide whether to:
 - (a) grant the Original Application and, if so, whether to do so subject to conditions;⁴
or
 - (b) refuse to grant the Original Application.⁵
- 16. Pursuant to section 158(2), in circumstances where the Original Decision was a refusal to grant a liquor licence, the Commission may, on review, grant a different liquor licence than that originally applied for.

Determination of an uncontested application

- 17. 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).
- 18. Pursuant to section 44(2), the Commission may refuse to grant an application on certain grounds, including:
 - (a) that an applicant is not a suitable person to hold or carry on business under the licence (section 44(2)(a));
 - (b) that an applicant does not have an adequate knowledge of the LCR Act (section 44(2)(b)(iii)).
- 19. Section 44(3) states:

Without limiting the reasons why a person is not a suitable person to hold, or carry on business under, a licence... a person is not a suitable person to hold, or carry on business under, a licence ... if the person or, if the person is a body corporate, any director of the person has, within the preceding 3 years—

 - (a) *been convicted, whether in Victoria or elsewhere, of an offence of supplying liquor without a licence or of supplying adulterated liquor or of an offence against any law relating to customs or excise; or*

³ Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

⁴ Sections 44, 49 and 157.

⁵ Sections 44 and 157.

- (b) *engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of this Act.*

20. The Commission also considers it appropriate to have regard to the suitability of persons who are associates of the Applicant. Section 3AC provides a definition of associates being:

(1) *For the purposes of this Act, an associate of a person (the **first person**) is—*

(a) *a person who—*

(i) *holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in any business of the first person involving the sale of liquor; and*

(ii) *by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or*

(b) *a person who is or will be a director, whether in right of the person or on behalf of any other person, of any business of the first person involving the sale of liquor; or*

(c) *if the first person is a natural person, a person who is a relative of the first person, other than a relative—*

(i) *who is not, and has never been, involved in any business of the first person involving the sale of liquor; or*

(ii) *who will not be involved in the business the first person proposes to conduct as a licensee or permittee.*

(2) *In this section—*

relative, *in relation to a person, means—*

(a) *the spouse or domestic partner of the person; or*

(b) *a parent, son, daughter, brother or sister of the person; or*

(c) *a parent, son, daughter, brother or sister of the spouse or domestic partner of the person;*

relevant financial interest, *in relation to a business involving the sale of liquor, means—*

(a) *any share in the capital of the business; or*

(b) *any entitlement to receive any income derived from the business; or*

(c) *any entitlement to receive any payment as a result of money advanced;*

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial, or executive decision; or*
- (b) to elect or appoint any person as a director.*

21. Further, section 3(1) defines “director” to include:

- (a) any person occupying or acting in the position of director of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and*
- (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act.*

22. Section 44(4) provides that, before granting or refusing an uncontested application under subsection (1), the Commission may:

- (a) have regard to any matter the Commission considers relevant; and*
- (b) make any enquiries the Commission considers appropriate.*

Exercising the internal review power

23. 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) as follows:

The objects of this Act are—

- (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.*

24. 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.⁶

25. Section 3(1) defines “harm” as follows:

harm means 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.*

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

- (a) must consider all the information, material and evidence before the original decision maker;⁷ and*
- (b) may consider further information, material or evidence.⁸*

27. 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.

28. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.

Conduct of an inquiry

29. As stated above, section 44(4) provides that the Commission may have regard to any matter it considers relevant and make any enquiries it considers appropriate.

30. 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 by the rules of natural justice.

⁶ 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).

⁷ Section 157(2).

⁸ Section 157(3).

Material before the Commission

31. The Commission on review had before it, and considered, all the information, material and evidence before the Delegate at first instance:
- (a) Certificate of completion of RSA Program for Anthony Miles-Morland, dated 7 September 2023.
 - (b) Certificate of completion of RSA Program for Roslyn Wagg, dated 7 September 2023.
 - (c) Australian Securities and Investment Commission Record of Registration for Business Name for 'Oak & Hound Wine Bar', dated 26 September 2023.
 - (d) Certificate of completion for New Entrant Training for Anthony Miles-Morland, dated 5 October 2023.
 - (e) General licence application, dated 11 November 2023.
 - (f) Declaration of Associates for Roslyn Wagg, dated 11 November 2023.
 - (g) Declaration of Associates for Anthony Miles-Morland, dated 11 November 2023.
 - (h) Questionnaire for Roslyn Wagg, dated 11 November 2023.
 - (i) Questionnaire for Anthony Miles-Morland, dated 11 November 2023.
 - (j) Declaration of right to occupy for 188 Barkley Street, Ararat, dated 11 November 2023.
 - (k) Email correspondence passing between Jess Wright (Team Leader, Ararat Regional Team – Compliance) and Roslyn Wagg, dated 18 November 2023.
 - (l) Planning permit no. PA3334 issued by Ararat Rural City Council, dated 22 November 2023.
 - (m) Certificate of completion of New Entrant Training for Roslyn Wagg, dated 22 January 2024.
 - (n) Application lodgement notification by Victoria Police, dated 23 January 2024.
 - (o) Statement of display for the general licence application, dated 29 January 2024.
 - (p) Suitability submission of Roslyn Wagg, dated 12 March 2024.
 - (q) Proposed Red Line Plan for 'Oak & Hound Wine Bar', undated.
 - (r) Limited licence no. 36167753, undated.
32. The Commission on review also considered the following materials:
- (a) Decision email from Nick Kotsiopoulos (Assistant Manager, Processing and Determination – Delegate of the Victorian Liquor Commission) to Roslyn Wagg, dated 2 April 2024.
 - (b) Memorandum by Roslyn Wagg, dated 15 April 2024.

- (c) Application for internal review, dated 19 April 2024.
- (d) Statement of Reasons for the Decision, dated 30 April 2024.
- (e) Memorandum by Roslyn Wagg, dated 4 May 2024.
- (f) Character reference letter by Chris Eagle, dated 14 June 2024.
- (g) Letter of Support by Tom Clark (President, Greater Ararat Business Network), dated 18 June 2024.
- (h) Character reference letter by Andrew Emery (Commander, Fire Rescue Victoria – Country Fire Authority), dated 20 June 2024.
- (i) Character reference letter by Jodie Hallam (District Business Manager, Country Fire Authority), dated 25 June 2024.
- (j) Letter of Support by Tim Harrison (Chief Executive Officer, Ararat Rural City Council), dated 26 June 2024.
- (k) Character reference letter by Jeffrey Whittaker AFSM, undated.
- (l) Photographs of text messages between Anthony Miles-Morland and the separate business operator between 09/23-10/23, undated.

Public Hearing

- 33. On 3 July 2024, the Commission held a public hearing of the Review Application (**Hearing**). The Applicant appeared self-represented, and the Associate appeared as a witness.⁹
- 34. At the commencement of the Hearing, the Commission – for completeness and in fairness to the Applicant and the Associate present – again drew attention to section 130F, which addresses a person’s protection against self-incrimination (see note 2 to paragraph 11 above).

Post-Hearing Conference

- 35. On 3 October 2024, in light of the then forthcoming listing at the Magistrates’ Court of the mention hearing relating to the Liquor Control Victoria (**LCV**) prosecution against the Applicant and the Associate (**Magistrates’ Court Mention**), the Commission held a video conference with the parties (**Conference**). This was primarily directed at ensuring that the operation of section 44(3)(a) was again brought to the attention of all parties,

⁹ At the Hearing, the Commission informed the Applicant and the Associate that it is a reasonable excuse to refuse or fail to answer questions or provide information that they are required to answer or provide under the LCR Act if the answer of the question or provision of the information would tend to incriminate them. See section 130F(1).

given its potential relevance depending on the outcome of the prosecution. Mr Scott Belcher, solicitor, appeared at the conference on behalf of both the Applicant and the Associate.

36. On Mr Belcher's request, the Commission agreed to stay the internal review decision until after the outcome of the Magistrates' Court Mention on 1 November 2024.
37. At the conclusion of the Conference, the Commission emphasised that no decision had been made by the Commission but raised with the parties an alternative outcome, namely, a temporary limited licence rather than a renewable limited licence as raised in the Hearing.¹⁰ On behalf of both the Applicant and the Associate, Mr Belcher indicated that they would be receptive to a grant of a temporary limited licence if that was the decision of the Commission.

Reasons for decision on review

Issues for determination on review

38. In deciding whether to exercise its discretion to affirm, vary or set aside the Original Decision and in turn grant or refuse a liquor licence, the key issues to be determined by the Commission are:
 - (a) the suitability of the Applicant to hold a licence for the purposes of section 44(2)(a); and
 - (b) whether the Applicant has an adequate knowledge of the LCR Act.
39. In deciding whether to grant or refuse a licence, the Commission must also consider whether:
 - (a) granting of the application would detract from or be detrimental to the amenity of the area in which the premises are situated; and
 - (b) granting of the application would be conducive to or encourage harm.
40. Furthermore, in exercising its discretion to grant or refuse a liquor licence, the Commission must have regard to the objects of the LCR Act, with particular regard to the object of harm minimisation.

¹⁰ Transcript, pp45-47.

Suitability of the Applicant

Assessing suitability

41. In addition to assessing suitability against the objects of the LCR Act, the Commission can also be guided by principles applied in previous decisions. This includes ensuring that the public have confidence in the liquor industry.
42. The Commission must be satisfied that the Applicant has the ability to manage a licensed premises in a manner that promotes harm minimisation and complies with a licensee's obligations under the LCR Act.¹¹

Submissions and evidence regarding suitability

43. According to the Applicant's submissions to the Commission and evidence at the Hearing, the following sequence of events occurred in approximately September 2023, prior to lodging the Original Application:
 - (a) The Applicant became aware that LCV was taking a minimum of twelve weeks to process liquor licence applications.¹²
 - (b) The Applicant announced via social media that she and the Associate were opening a wine bar in Ararat. Subsequently, the holder of limited licence no. 36167753 (a separate and unrelated liquor licence holder) reached out to the Associate offering her advice.¹³
 - (c) The separate licence holder advised the Applicant and the Associate that they could use her liquor licence to supply liquor at the Premises, as long as patrons made an advance booking.¹⁴
 - (d) From this advice the Applicant was under the impression that, by virtue of purported discussions between the separate licence holder and LCV, LCV was satisfied that "it would be fine" to operate the Premises under the separate licence holder's licence in such a way. On that basis, the Applicant made plans to open for trade on the Melbourne Cup weekend in 2023, and otherwise apply for her own licence in the quieter winter months.¹⁵

¹¹ *UPK Pty Ltd Decision and reasons for decision* (30 July 2024) (deidentified).

¹² Memorandum by Roslyn Wagg, dated 15 April 2024, p1. See also Transcript, p38.

¹³ Memorandum by Roslyn Wagg, dated 4 May 2024, p1. See also Transcript, p25.

¹⁴ See n12, p1. See also Transcript, p9 and p37.

¹⁵ *Ibid*, p1. See also Transcript, p31.

43. The Applicant said that her willingness to rely on the separate licence holder’s advice especially stemmed from the separate licence holder’s own experience working “within the Grampians region” and the Associate’s employment connection with her.¹⁶
44. The Applicant also gave evidence to the effect that the separate licence holder seemed to have apparent knowledge of liquor licensing requirements due to running her own local microbrewery.¹⁷ The Applicant stated in her submissions of 15 April 2024 and 4 May 2024 that:
- (a) “we now understand that we did not follow due diligence, and operated without a valid licence”;¹⁸
 - (b) “we now acknowledge that our level of due diligence was not what was required, and we did the wrong thing”;¹⁹ and
 - (c) “we now understand we were not operating legally”.²⁰

Section 44(3)

45. Section 44(3) provides relevantly that, without limiting the reasons why a person is not a suitable person to hold or carry on business under a licence, a person is not a suitable person to hold or carry-on business under a licence if the person within the preceding three years –
- (a) been convicted, whether in Victoria or elsewhere of an offence of supplying liquor without a licence; or
 - (b) engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of the LCR Act
46. As a result of the 2023 Incident, LCV brought charges in the Ararat Magistrates’ Court against both the Applicant and the Associate for selling liquor when not a licensee, contrary to section 107(1); and with indicating that the Premises was licensed when it was not a licensed premises, contrary to section 116(a).
47. On 1 November 2024, the Applicant and the Accused pleaded guilty to the charges. The Magistrates’ Court sentenced each of them to a good behaviour bond – without conviction – and a payment of \$500 to the Court fund.

¹⁶ Transcript, p26.

¹⁷ Ibid.

¹⁸ See n12, p1.

¹⁹ Ibid, p2.

²⁰ See n13, p2.

48. Section 44(3)(a) is mandatory in its terms and renders a person unsuitable to hold a licence if that person has been convicted of supplying liquor without a licence within the preceding 3 years. As set out in paragraph 35 above, the Commission brought the terms of section 44(3)(a) to the attention of the Applicant and her lawyer during the Conference.
49. As neither the Applicant nor the Associate were convicted of an offence, section 44(3)(a) does not render either party unsuitable to hold a licence.
50. Arguably, the offence of indicating that the Premises was licensed when it was not a licensed premises, contrary to section 116(a) could fall under section 44(3)(b), which does not require a conviction to render a person unsuitable.
51. However, the Commission finds that the activity engaged in by the Applicant, being indicating that the Premises was licensed when it was not a licensed premises, contrary to section 116(a), is not the type of activity intended to be caught by subsection 44(3)(b) for the reasons that follow. The Commission considers that section 44(3)(b) has a significant consequence being that of a finding of unsuitability.
52. Looking to the context of section 44(3), the Commission notes that section 44(3)(a) deals with the circumstances of a person having been convicted of an offence of supplying liquor without a licence. This is an offence against section 107(1) of the LCR Act and includes conduct amounting to 'offering' liquor for sale. Section 107(1) is one of the most serious offences in the LCR Act.
53. The Commission considers that Parliament's intention was for a conviction to be recorded for this offending conduct, in order to automatically render a person unsuitable. It would appear incongruous for the Commission to determine that conduct which fails to meet the threshold for a conviction under section 107(1) would automatically fall within subsection 44(3)(b) to render the person unsuitable anyway.
54. The Commission notes that, even if it found that the Applicant had contravened section 44(3)(b), it holds a discretion under section 44(2)(a) to either grant or refuse a licence. In exercising that discretion, the Commission must carefully consider all the circumstances. Insofar as the potential contravention of section 44(3)(b) is concerned, the Commission is not persuaded that the facts and circumstances are sufficient to justify it exercising its discretion to refuse grant of the liquor licence to the Applicant.²¹

²¹ See *Bourke's Liquor Laws Victoria*, p1911 LCR 44.15

Whether the Applicant and the Associate have demonstrated insight into the offending

55. Both the Applicant and the Associate informed the Commission that they closed the Premises after the inspection by the Liquor Inspectors, and that it has remained closed ever since. The Commission considers this fact is not in dispute.
56. The Commission considers that the Applicant has demonstrated insight into her offending. She acknowledged that there was “naivety on [her and the Associate’s] part not to make enquiries [themselves]” with LCV.²² Specifically, the Applicant expressed regret at having failed to make further enquiries with LCV prior to trading at the Premises in November 2023.
57. The Commission also notes the Associate as acknowledging that he and the Applicant “were probably remiss not to follow up” with LCV.²³ On behalf of himself and the Applicant, the Associate stated that “[their] biggest mistake was not doing [their] due diligence on moving forward and making sure that [...] the information [they] were getting [from the separate business operator] was correct”.²⁴
58. Furthermore, as set out in paragraphs 46-47 above, the Commission was informed that both the Applicant and the Associate pleaded guilty before the Magistrates’ Court to offences stemming from the 2023 Incident. The guilty pleas by the Applicant and the Associate reinforce that they have insight into the offending and accept responsibility.
59. On balance, the Commission is of the view that the Applicant and the Associate have provided sufficient evidence to demonstrate that they have insight into and have taken responsibility for the offending.

Public confidence

60. It is important that the public have confidence in the liquor industry and confidence in the administration of the liquor industry.²⁵ Both the public and the Commission expect licensees to be fully aware of this and to actively take measures to reduce the risk of harm associated with the supply of alcohol.
61. The Commission was impressed by the character references provided as part of the Review Application. Many of the referees appear to be senior, experienced professionals within the emergency services sector who hold positions of accountability and responsibility. They generally described both the Applicant and the Associate as

²² Transcript, p8.

²³ Ibid, p31

²⁴ Ibid, p24.

²⁵ See *Galafaro v Director of Liquor Licensing* [2009] VCAT 919 and *Buzzo Holdings Pty Ltd & Anor v Loison* [2007] VSC 31.

upstanding individuals who consistently demonstrate professionalism, ethical responsibility, and a commitment to supporting their colleagues and community members. One reference in particular stated that they are confident of their ability to adhere to the requirements of such a privilege (as a licensee) including adherence to correct regulatory and compliance requirements. The Commission considers that the referees' endorsements reflect a confidence in the Applicant's suitability to fulfil the obligations of running a licensed premises.

62. Despite the 2023 Incident, on balance, the Commission does not consider that this matter gives rise to significant doubt as to the Applicant's (or the Associate's) character such that the community would lack confidence in the Applicant being able to fulfill the obligations of a liquor licensee. This view is supported by the lack of any prior criminal history preceding the 2023 Incident.

Finding regarding suitability

63. Having considered all the materials before the Commission and having regard to the objects of the LCR Act, the Commission is not satisfied that the Applicant is an unsuitable person to hold, or carry on business, under a licence; nor that the Associate is an unsuitable person for the Applicant to otherwise be an unsuitable person to hold, or carry on business under, a licence.

Adequate knowledge of the LCR Act

64. The Commission may also consider whether to refuse to grant a liquor licence on grounds that the Applicant does not have adequate knowledge of the LCR Act.
65. The Commission accepts the explanations of the Applicant and the Associate that they had acted naively and had erroneously relied on the separate licence holder's advice to operate the Premises when unlicensed. The Commission also accepts that both the Applicant and the Associate have accepted responsibility for the 2023 Incident and have demonstrated a genuine willingness to comply with the requirements of the LCR Act. The plea of guilty to both charges by the Applicant and the Associate reinforces that they now have an adequate knowledge of the operation of the LCR Act.
66. Noting that the RSA Certificate and New Entrant Training for both the Applicant and the Associate have been provided, the Applicant in evidence showed an understanding of the requirements of the LCR Act regarding minors and serving intoxicated persons.
67. The Commission does not in this instance consider this to be a ground upon which to refuse the liquor licence. Despite this, the Commission encourages the Applicant and

the Associate to take all necessary and reasonable steps to ensure that they develop an enhanced understanding of the LCR Act. In turn, this will assist in ensuring that they maintain strict compliance with their obligations under the LCR Act, the regulations and any licence, particularly if granted on an ongoing basis.

Alternative licence category

68. The Commission has power under section 158(2) to grant a different licence than that originally applied for where the Original Decision was a refusal to grant a liquor licence which is the case in this proceeding.
69. The Applicant applied for a general licence for the Premises which, due to the broad permissions a general licence allows a licensee, is considered a high-risk licence category. In particular, the long trading hours of a premises with a general licence can lead to increased alcohol consumption and associated public health and safety concerns. Research has shown a correlation between extended hours of alcohol availability and higher incidences of alcohol-related harm, including violence, public disorder, and health issues. The Commission would therefore expect an applicant for a general licence in most circumstances to provide detailed documentation and demonstrate proactive risk management strategies to minimise alcohol related harm and to ensure there is no detracting from or detriment to the amenity of the area.
70. However, what is actually now sought and will be permitted is a relatively modest and highly restricted licensed operation with limited potential to raise the prospect of impacts on amenity or to cause alcohol related harms, if such licence is managed responsibly and within the confines of the strict conditions imposed by the Commission.
71. Furthermore, the licensee will be, in effect, on a form of probation for the period of the temporary licence assuming that it is intended to apply for a permanent and potentially expanded licence in the future. This also provides an additional safeguard against any irresponsible conduct of the temporary licence and an opportunity for those involved to demonstrate competence in the operation of the licence over that period.
72. The Ararat Rural City Council (Council) granted Planning permit number PA3334 (**Planning Permit**) on 22 November 2023 in respect of the Premises which allows the Premises to be used for 'licensed retail premises trading as a wine bar for the consumption of alcohol, and the provision to purchase take away alcohol' subject to the following conditions:

- a) The Hours of Operation are Thursday – 5pm to 11pm; Friday and Saturday – noon to 11pm; and Sunday – noon to 9pm.
 - b) No more than 30 patrons may be present on the Premises at any time.
73. The Commission notes that the general licence applied for and the Planning Permit granted are significantly different in hours and patron numbers.
74. At the Hearing, the Commission engaged in a discussion with the Applicant regarding the potential suitability of an alternative licence category.²⁶ The Commission informed the Applicant that, while its application for a general licence would be assessed, the Commission may also consider the possibility of a limited licence as an alternative option that might provide an opportunity for the Applicant to operate on a more contained scale and scope, aligning with a “crawl before you walk” approach. In addition, due to the scale and scope requirement per section 26 of the LCR Act (see further details below), a limited licence is normally considered lower risk compared to a general licence.²⁷
75. As stated in paragraph 37, the Commission had raised with the Applicant and the Associate the possible suitability of a temporary limited licence rather than a renewable limited licence. A temporary limited licence is normally considered lower risk than a renewable limited licence as it is for a fixed period and cannot be renewed.
76. The Commission’s consideration of the exercise of its discretion under section 158(2) to grant a temporary limited licence as appropriate is discussed below.

Consideration of grant of Temporary Limited Licence

77. Section 14 provides that a limited licence “authorises the licensee to supply liquor at the times determined by the Commission and specified in the licence”. However, unlike other categories of licences, limited licences are subject to the additional restriction found at section 26 in that the Commission may only grant a limited licence if satisfied “that the scale and scope of the supply of liquor the subject of the licence is limited in nature” (**Scale and Scope Requirement**).
78. There are no statutory signposts which prescribe specific factors for the Commission to consider in determining whether the Scale and Scope Requirement is met. On previous occasions the Commission has considered “the nature, location, duration or frequency

²⁶ Transcript pp45-49.

²⁷ During the Conference, Mr Belcher – on behalf of the Applicant – expressed the Applicant’s willingness for the Commission to grant a limited licence, should it consider a limited licence category to be more appropriate for the purposes of the Review Application.

of the hours of operation of a licence in question” as relevant to the Scale and Scope Requirement.

79. In their evidence at the Hearing, both the Applicant and the Associate provided further details about how they intend to operate the Premises. In summary, the Applicant and the Associate gave evidence to the effect that:
- (a) the Applicant would operate the Premises only during the trading hours specified in the Planning Permit (as set out in paragraph 72 above);²⁹
 - (b) the Associate would also work at the Premises during the trading hours as specified in the Planning Permit.²⁸ The Associate has contributed financially to the setup of the business and would work front-of-house serving patrons, however, “ongoing it’s [the Applicant’s] business for her to run”,³⁰
 - (c) the Premises would only seat a maximum of 30 patrons, in accordance with the maximum patron capacity as specified in the Planning Permit;²⁹
 - (d) the liquor supplied at the Premises would consist of wine from seven local wineries and a small range of craft beer from one local brewery;³⁰
 - (e) while the Premises would offer liquor for sale for off-premises consumption, it would not be taking any orders for off-site delivery;³¹
 - (f) the range of charcuterie boards offered by way of food at the Premises would consist of local offerings, e.g., “a nice small cheese platter or a large platter if a larger group came in”. This would be available at all times. There is otherwise no kitchen on the Premises.³²
80. The Commission considers that the supply described above appears to be restricted in scale and scope. In particular, the Commission notes that the hours of supply are far more limited than any ordinary trading hours as defined at section 3(1) or as sought in the Original Application, and that food will be available at all times when liquor is available for supply.
81. On that basis, and in conjunction with the conditions specified in Appendix A, Pursuant to section 158(2), the Commission is satisfied that the Scale and Scope Requirement is met.

²⁹ Transcript, p4.

²⁸ Ibid, p5.

³¹ Ibid, p33.

³² Ibid, p10.

³³ Ibid, p11.

³⁴ Ibid.

Amenity

82. The Commission must also determine whether the grant of a temporary limited liquor licence would detract from or be detrimental to the amenity of the area in which the Premises are located, which may give rise to a ground of refusal under section 44(2).
83. Moreover, the Commission notes the Applicant's evidence at the Hearing that the Premises would not have loud music. The Applicant said that, at present, the Premises would only feature "jazz through Spotify". As for any live music, the Applicant would only seek to have "a single person to come just maybe with a guitar or their own music". Due to the small size of the Premises, the Applicant is looking to only have "very quiet", "acoustic music" that is not above background level so that patrons are able to converse easily amongst themselves.³³
84. Furthermore, notwithstanding that the Applicant specified in the Original Application that the external maximum patron capacity was 20 patrons outside, the Applicant clarified during the Hearing of the Review Application that the Premises does not have any room outside. The intention is to have the maximum number of 30 patrons remain inside.
85. Based on the nature of the Premises and the limited scope of the permit granted by the Council, the Commission is satisfied that, on balance, the grant of a temporary limited licence subject to the amenity conditions detailed in Appendix A would not detract from or be detrimental to the amenity of the area.

Harm

86. An application may be refused if granting the application would be conducive to or encourage harm.³⁴
87. The Commission considers that in all circumstances, given the limitations on the supply of liquor specifically proposed in Appendix A, that the risk of harm would be minimal. The Commission also notes that the requirement for service of food with the supply of alcohol also assists in the responsible service of alcohol and the minimising of the risk of harm.
88. The Commission further notes that both the Applicant and the Associate have completed the RSA program.

³³ Transcript, p13.

³⁴ Section 44(2)(b)(ii).

89. The Applicant completed the New Entrant training in January 2024. The Associate completed that training in September 2023, prior to the commission of the offences. The Commission requires the Associate to retake that training no later than 30 May 2025 in order to obtain an enhanced knowledge of the Act and to ensure that he maintains strict compliance with the LCR Act and the licence. A condition will be imposed on the licence to this effect.
90. Due to the above reasons, the Commission does not consider that granting a temporary limited licence would be conducive to or encourage harm.

Objects of the LCR Act

91. Although the Commission is satisfied that no grounds for refusal exist under section 44(2), the Commission must exercise its discretion whether or not to grant the proposed temporary limited licence by the Commission with regard to the objects of the LCR Act, particularly harm minimisation, which is the primary object.
92. With the imposition of the conditions in Appendix A, the Commission is satisfied that adequate controls will exist over the supply of liquor and that any harm should be minimised. Accordingly, the Commission considers that the grant of a temporary limited licence in this instance would not be contrary to the LCR Act's object concerning harm minimisation.
93. Further, the Commission considers that granting the temporary limited licence would facilitate the development of a diversity of licensed facilities reflecting community expectations in furtherance of the object outlined in section 4(1)(b). In her application, the Applicant stated that there was no other similar licensed premises serving a range of local wine in or around Ararat.

Decision on review

94. Having regard to all the matters set out above, the Commission has determined to set aside the decision of the Delegate and to exercise its discretion under section 158(2) to grant a temporary limited licence subject to the conditions set out in Appendix A.

The 94 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Acting Chair), Mr James O'Halloran (Deputy Chair), and Ms Sue Timbs (Commissioner).

Appendix A

Type of licence

This licence is a limited licence and authorises the licensee to supply liquor on the licensed premises for consumption on and off 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 by this licence.

The licensee must not permit the playing of any live or recorded music on the premises at higher than background music levels at any time.

Supply of liquor

The supply of liquor shall be limited to no more than 10 lines of wine and 10 lines of beer.

The quantity of liquor supplied per order for off premises consumption must not exceed two 750 ml bottles of wine and six 375 ml bottles/cans of beer, and supply is limited to one order per person per day.

Provision of food

Food must be available for purchase at all times that liquor is being supplied.

Restrictions on sales and Deliveries

The licensee must not use the above licensed premises to supply liquor to a person who makes an off-premises request.

Responsible Service of Alcohol

All staff involved in the supply or service of liquor must have completed an approved Responsible Service of Alcohol course within the preceding three years.

All copies of the Responsible Service of Alcohol certificate for each member of staff must be at one central place within the licensed area for inspection if requested by a member of Victoria Police or a Liquor Inspector.

By no later than 30th May 2025, any associate of the licensee pursuant to s3AC of the Liquor Control Reform Act 1998 must complete a New Entrant Training course including the current associate must recomplete the Training course by such date.

Maximum capacities

30 patrons.

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Period of licence

This licence has effect and continues in force from 7 November 2024 until 7 November 2025 inclusive, during the trading hours specified below.

Trading hours

Thursday	Between 5pm and 11pm
Friday and Saturday	Between 12pm and 11pm
Sunday	Between 12pm and 9pm