

# Unlocking liquor licensing

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## Resource 2: Liquor licensing laws

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INFORMATION FOR THE VICTORIAN COMMUNITY ABOUT LIQUOR LICENSING

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# Acknowledgements

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# Preface

VicHealth's Unlocking Liquor Licensing project aims to increase Victorians' knowledge and understanding of Victoria's liquor licensing system and help reduce the harmful impact of alcohol within Victorian communities.

To help achieve this, VicHealth has created two resources targeted at Victorian communities. These resources, which cover both Victoria's planning and liquor licensing laws, are intended to provide the community with useful, relevant information about how these laws work in relation to licensed premises and provide information about how they can participate in planning and liquor licensing processes.

**Resource 1: Information for the Victorian community about liquor licensing: Planning permits for licensed premises**

provides information about the planning permit process for licensed premises, including how community members can make objections to planning proposals.

**Resource 2: Information for the Victorian community about liquor licensing: Liquor licensing laws**

provides an overview of Victoria's liquor licensing laws, including how community members can make an objection in response to a liquor licence application.

This resource outlines the step-by-step process involved in the liquor licensing process, including how liquor licence applications are made, how community members can object to a liquor licensing application and how the commission makes a decision in response to that objection.

The resource is set out in the order of this process:

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**SECTION 1:** The liquor licence application process

**SECTION 2:** Objecting to a liquor licensing application

**SECTION 3:** Contested applications

**SECTION 4:** Requesting an internal review

**SECTION 5:** The commission panel's decision

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## INTRODUCTION

# About the Victorian liquor licensing system

### KEY POINTS

- The *Liquor Control Reform Act 1998* controls the sale and supply of alcohol. Its main objective is harm minimisation.
- The Victorian Commission for Gambling and Liquor Regulation is the independent statutory authority that administers Victoria's liquor licensing laws. It is responsible for granting liquor licences and undertaking liquor disciplinary actions.

## Introducing the *Liquor Control Reform Act 1998* (Vic)

In Victoria the *Liquor Control Reform Act 1998* (Vic) (referred to in this document as 'the Act') controls the sale and supply of alcohol. Generally, any person or organisation that intends to sell, offer or provide liquor in Victoria must have a liquor licence but there are some exceptions.<sup>1</sup>

The Act has several objectives. Its main objective is harm minimisation.<sup>2</sup>

'Harm minimisation' involves focusing on the negative health, economic and social impacts of alcohol on both individuals and the community.

The Act aims to minimise harm by:

- providing adequate controls over the sale and consumption of liquor
- ensuring as far as practicable that the sale of liquor contributes to, and does not detract from, the amenity of community life
- restricting the supply of certain other alcoholic products
- encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community.<sup>3</sup>

The Act also aims to encourage diversity among licensed businesses and to contribute to the responsible development of the liquor, licensed hospitality and live music industries in Victoria.<sup>4</sup>

## Introducing the Victorian Commission for Gambling and Liquor Regulation

The Victorian Commission for Gambling and Liquor Regulation ('the commission') is the independent statutory authority that administers Victoria's liquor licensing laws.

The commission is responsible for granting liquor licences and undertaking liquor disciplinary actions. It also undertakes compliance activities to prevent and detect breaches of the Act as well as educating industry and the general public about regulatory practices and requirements.

The commission makes licensing decisions and determines contested liquor licence applications. It has also taken on the role of reviewing decisions about contested licence applications that was previously undertaken by the Victorian Civil and Administrative Tribunal (VCAT).

The commission replaces the previous Director of Liquor Licensing and has abolished the Liquor Licensing Panel.



## SECTION 1

# The liquor licence application process

### KEY POINTS

- Generally, anyone that intends to sell or provide liquor in Victoria must have a liquor licence from the Victorian Commission for Gambling and Liquor Regulation but there are some exceptions.
- You must make an objection to a liquor licence application within 30 days of the public notice of the licence application first being displayed.

## Applying for a liquor licence in Victoria

In general, any person or organisation that intends to sell or provide liquor in Victoria must first obtain a liquor licence from the Victorian Commission for Gambling and Liquor Regulation.

However, there are some exemptions from this requirement, for instance, for bed and breakfast businesses, florists, hairdressers, butchers, hospitals, residential care services, retirement villages and cruise ships.<sup>5</sup>

There are 14 different liquor licence categories such as a general licence (local pubs), a packaged liquor licence (bottle shops) and a limited licence (a temporary or short-term licence for one-off events).<sup>6</sup> Most liquor licences granted in Victoria authorise the supply of liquor for consumption on the licensed premises.

### Want to find out about a current liquor licence application in your area?

The Victorian Department of Justice website provides details of [current liquor licence applications](#).

The Victorian Commission for Gambling and Liquor Regulation provides detailed information about [the different types of liquor licences](#).

The commission also provides a [monthly statistical summary of current active liquor licences](#) in both metropolitan and regional Victoria, arranged by licence category.

## WHAT DO LIQUOR LICENCE APPLICANTS NEED TO PROVIDE?

In Victoria, an application for a liquor licence is made using an application form which can be downloaded from the commission's website. The application must include the applicant's name, address, the location of the licensed premises and a description of the nature and scope of the business.<sup>7</sup>

### Want to know more about making liquor licence applications?

You can find [more information about making liquor licence applications](#) on the Victorian Commission for Gambling and Liquor Regulation website.

Many liquor licence applications must also be accompanied by:

#### 1. plan of the licensed premises

Applicants need to supply a plan of the premises, highlighting the proposed area where alcohol will be consumed or sold.<sup>8</sup> This is shown by drawing a red line on the plan.

#### 2. planning permission

It is a condition of every liquor licence that all licensed premises must meet appropriate planning requirements.<sup>9</sup> Before obtaining a liquor licence in Victoria, many applicants will first need to also obtain planning permission from their local council for approval to use land to sell or consume alcohol.<sup>10</sup> Therefore, liquor licence applicants must provide the appropriate form of planning permission (e.g. a planning permit with their application to the commission). If planning permission is required from a local council, the commission will not grant or vary a liquor licence until this planning permission has been obtained.

### **Making an objection at the planning stage**

Community members have the opportunity to make an objection to a licensed business at the time it is seeking planning permission from a local council. (More information about this is available in *Resource 1: Information for the Victorian community about liquor licensing: Planning permits for licenced premises*).

### **DISPLAYING A PUBLIC NOTICE**

A liquor licence applicant must display an A3 public notice of the licence application. The notice must be placed on or next to the proposed licensed premises in an area visible to the public and be continuously displayed for 28 days or a shorter period as determined by the commission.<sup>11</sup>

If you wish to make an objection to a liquor licence, you must do so within 30 days of this notice being first displayed.

If a notice is not displayed in a way that attracts public attention, you can make a complaint to the commission. However, you cannot use this as a ground to object to a liquor licence application.

## SECTION 2

# Objecting to a liquor licensing application

### KEY POINTS

- You can make a liquor licence objection to the commission on the grounds of:
  1. amenity
  2. for packaged liquor licences only, the misuse and abuse of alcohol.
- All liquor licensing decisions by the commission will involve a balancing test where the commission must weigh competing objectives of the Act and consider the potential positive and negative benefits a liquor licensing application may have for the community.
- *Harm minimisation* is one key objective of the Act. Harm minimisation focuses on reducing the negative health, economic and social impacts of alcohol consumption on both individuals and the community.
- If you are considering making an objection, a key question is whether a licensing proposal will contribute to achieving the objective of harm minimisation under the Act. This involves assessing the *risk of harm* connected with a particular liquor licence.
- To support an objection to the commission, you can use three different types of evidence:
  1. general evidence
  2. locality evidence
  3. site-specific incident evidence.

In Victoria, you have the power to object to a liquor licence application if the licensed venue is, or will be located, in your local community area.<sup>12</sup>

## Grounds for objection

You can object to liquor licence applications on two grounds:

1. that the licence application would detract from, or be detrimental to, the amenity of the area in which the licensed business is or will be located<sup>13</sup>
2. that the licence application would be conducive to, or encourage the misuse or abuse of alcohol.<sup>14</sup> This ground of objection applies only to packaged liquor licences.

## Preparing your objection

All liquor licence objections must be in writing, stating the reason for the objection.<sup>15</sup>

You can only make a liquor licence objection based on certain grounds. These grounds are narrow as they are based on the wording of the Act. (For more information about grounds of objection see page 9, 'Arguments to support your liquor licensing objection'.)

## THE EVIDENCE YOU NEED TO SUPPORT YOUR LIQUOR LICENCE OBJECTION

Liquor licence objections are about individual liquor licences. To successfully object to a liquor licence, you must be able to provide evidence that links an individual liquor licence to alcohol-related harms in your community.

However, demonstrating this connection may be difficult if the business to which you would like to object has not yet started operating. This means that you must argue your objection on the basis of future, potential alcohol-related harms in the community rather than actual alcohol-related harms in the community.

(There's more information about kinds of evidence that can be used to support liquor licensing objections on page 12 in 'Evidence to support liquor licence objections').

### Obtaining evidence that links to a packaged liquor outlet

Alcohol purchased from packaged liquor outlets is usually consumed in people's homes.

This can make it difficult to obtain evidence that links any alcohol-related harms in your community to the packaged liquor outlet to which you are objecting. Any alcohol-related harms potentially caused through the excessive consumption of liquor from a packaged liquor business are more likely to occur away from public view rather than in the immediate vicinity of the packaged liquor outlet.

### TIMING OF YOUR OBJECTION

To meet the objection deadline under the Act, you must gather any material to support your objection within 30 days. If necessary, you can seek an extension of time from the commission.<sup>16</sup>

## Evidence to support liquor licence objections

Currently, the commission does not provide information about what kinds of evidence can be used to support liquor licensing objections or how objections should be set out.

In the absence of these guidelines, the recent Victorian Court of Appeal case of *Kordister Pty Ltd v Director of Liquor Licensing & Anor* [2012] VSCA 325 ('Kordister's case') provides useful information about what kinds of evidence can be used to support liquor licensing objections.

Kordister's case emphasises the importance of the idea of harm minimisation when you are making a liquor licensing objection.

## ***Kordister Pty Ltd v Director of Liquor Licensing & Anor [2012] VSCA 325***

Kordister Pty Ltd was licensed to operate a 24-hour bottle shop in central Melbourne attached to the Exford Hotel. The bottle shop was located in what police described as a 'hot spot' for antisocial street behaviour caused by excessive drinking.

In 2009, the Director of Liquor Licensing decided to reduce the bottle shop's opening hours to 7am–11pm to help reduce the level of antisocial behaviour in the area. In 2010, Kordister appealed this decision to VCAT, successfully arguing that ending late-night trading at the bottle-shop would damage the hotel's profitability.

The matter was appealed to the Supreme Court of Victoria. Liquor authorities successfully argued that VCAT had not given enough weight to the general impact of late-night trading of alcohol on the area surrounding the bottleshop. The Supreme Court ordered VCAT to review its decision.

Kordister appealed the case to the Victorian Court of Appeal. The Court of Appeal granted Kordister a permanent stay, allowing the bottle shop to continue 24-hour trading. The Court of Appeal ruled that liquor authorities needed to establish a direct link between the alcohol-related problems in the area and the bottle shop's extended trading hours to justify their proposal to reduce the shop's trading hours. This had not occurred.

The Court also said that licensing authorities were free to bring a fresh application to restrict the shop's trading hours. This has not occurred to date.

## HARM MINIMISATION AND BALANCING NEEDS

Kordister's case establishes that harm minimisation is the main purpose of the Act and the primary consideration when any decisions are made under the Act, including about liquor licensing objections.<sup>17</sup>

### Harm minimisation in Kordister's case

Under the Act, harm minimisation, "encompasses harm to the health and wellbeing of individuals, families and communities, as well as social, cultural and economic harm and harm to neighbourhood and street amenity...harm to our personal safety and our freedom to move in the streets without hindrance, disturbance or molestation".<sup>18</sup>

*Kordister Pty Ltd v Director of Liquor Licensing & Anor [2012] VSCA 325*

While harm minimisation is the primary purpose of the Act, Kordister's case also indicated that the other objectives of the Act remain important, like encouraging a diverse and responsible liquor licensing, hospitality and live music industries.<sup>19</sup>

In effect, liquor licensing decisions by the commission involve a balancing test where the commission must weigh competing objectives of the Act. The impact of a licence application on harm minimisation will be a primary consideration of the commission but it will not be the only one it must take into account. When considering a licensing decision, the commission must also consider the positive benefits arising the liquor industry as reflected by the Act's other objectives.<sup>20</sup>

This means that when liquor licence decision makers such as the commission are considering whether to grant, relocate or vary a liquor licence application, they must ask themselves whether the licence application:

- would be consistent with the objectives of the Act; and
- in particular, whether it would strike an appropriate balance between the need to minimise harm arising from the misuse and abuse of alcohol and the need to develop a diversity of licensed facilities, reflecting community expectations.<sup>21</sup>

Determining whether or not an individual licensing application may contribute to the Act's objective of harm minimisation or not is complex. Each licensed premises will be located in a different Victorian community and each will have its own set of individual circumstances such as its location or the socio-demographics of the particular area. Also, as harm minimisation is a broad concept, many potential factors – social, economic or cultural – could be relevant depending on where or how the licensed premises under consideration is or will be located.

### What does this mean for your objection?

The importance of harm minimisation in liquor licensing decision-making means that, if you are seeking to make a successful liquor licence objection to the commission, one of the key elements you must demonstrate is that the relevant licensing proposal would not contribute to minimising alcohol related harm. Or, to put it another way, you need to show that the proposal would not contribute to achieving the objective of harm minimisation under the Act.

Kordister's case provides some guidance on how to assess whether a licensing proposal would contribute to harm minimisation or not. It involves assessing the risk of harm connected with a particular liquor licence application, including the likelihood, nature and severity of that harm.<sup>22</sup> The risk may arise from a licensee's individual conduct or from some other source such as the venue's geographic location or the drinking context of the surrounding area.<sup>23</sup> There is no minimum level of alcohol-related risk that must be established in order for the commission to take that risk into account.<sup>24</sup>

## Categories of evidence

Kordister's case also indicated that there are three categories of evidence that can be considered when determining the risks associated with a particular licensing proposal. These are:

1. general evidence
2. locality evidence
3. site-specific incident evidence.

### 1. GENERAL EVIDENCE

General evidence of harm minimisation can be statistical, sociological or epidemiological evidence about the use and misuse of alcohol in Victoria.

This kind of evidence can be used to support both 'amenity' and 'misuse and abuse' arguments. (More information about this is set out in 'Arguments to support your liquor licensing objection' on page 17.)

Examples of general evidence include:

- evidence of government policy and efforts that have been made to reduce alcohol-related problems in the community. This might be initiatives made by the Victorian Government or the local government in your area<sup>25</sup>
- evidence about the social harms related to alcohol and the general linkage between opening hours, packaged liquor and social harms<sup>26</sup>
- statistical evidence from the Victorian Population Health Survey about the rate of people consuming alcohol at risky levels<sup>27</sup>
- hospital data on admissions and presentations due to alcohol-related incidents<sup>28</sup>
- evidence of the relationship between areas of socioeconomic disadvantage and consumption of alcohol at harmful levels.

While the commission must take into account any general evidence that you put forward, general evidence on its own is unlikely to persuade the commission to refuse to grant a liquor licence application.

What is also crucial is the extent to which the general evidence has a connection to, or is reinforced by, the locality evidence; that is, evidence of the particular local, social and geographic circumstances of the licensed premises you wish to object to.<sup>29</sup> (Locality evidence is discussed further below.)

General evidence, which has no connection to the locality evidence, may provide weak evidence of alcohol-related harms or the likelihood of such harms. Therefore, it is not likely to be given too much weight by the commission when it makes a decision in response to your objection. Alternatively, if the general evidence has a strong relationship to the locality evidence, then it is more likely to be an important factor when the commission makes its decision.

### Types of evidence

1. 'General evidence' is statistical, sociological or epidemiological evidence about the use and misuse of alcohol in Victoria.
2. 'Locality evidence' is evidence of the local, social, demographic and geographic circumstances of a licensed business selling alcohol.
3. 'Site-specific incident evidence' is evidence of specific occurrences such as social harms (e.g. assault) that can be attributed to an individual licensed business.

### 2. LOCALITY EVIDENCE

Locality evidence is evidence about the local, social, demographic and geographic circumstances of a licensed business selling alcohol.<sup>30</sup>

Locality evidence recognises that licensed premises cannot be treated in isolation from one another or from their surrounding environment.<sup>31</sup>

Examples of locality evidence include:

- evidence of antisocial behaviour or violence near the licensed premises such as arguing in the streets, assault, vandalism, property damage, theft and public drinking<sup>32</sup>
- police statements about alcohol-related harms in your area such as incidents of assault
- evidence that your area experiences greater levels of social disadvantage compared to the rest of Victoria
- evidence that alcohol-related harms are more prevalent in your community area (e.g. municipality) compared to the rest of Victoria
- evidence that alcohol-related harms are more prevalent within a particular part of your municipality (e.g. near or around the licensed premises you wish to object to) compared with the rest of the municipality.

To improve your chances of success with your objection using locality evidence, you must be able to show that for one reason or another, the particular local, social, demographic and geographic circumstances surrounding the licensed premises you are objecting to are conducive to alcohol being misused in your community.

However, it is not necessary to show that the licensed premises caused, or was responsible for, any antisocial behaviour. While locality evidence must have a direct connection to the licensed premises under consideration, it does not need to be a causal connection.<sup>33</sup> Instead, it is enough for you to be able to show through locality evidence that the objective of harm minimisation 'would not be well served' by the liquor licence application that you are objecting to.<sup>34</sup>

### 3. SITE-SPECIFIC INCIDENT EVIDENCE

Site-specific incident evidence is evidence of specific occurrences such as social harms that can be attributed to an individual licensed outlet.

Examples of site-specific incident evidence include:

- the sale of alcohol to intoxicated people
- public drinking on the street
- assaults and violence.

Some site-specific incident evidence can also fall into the category of 'locality evidence'. However, site-specific incident evidence requires you to establish a causal connection between the alcohol-related social harm (e.g. assault) and the individual licensed premises under consideration. Locality evidence does not require you to establish that connection.

Therefore, if you are intending to rely on site-specific evidence in your objection, you must be able to provide evidence that shows that it was the operation of the licensed business that caused or led to the alcohol-related harms in your community.<sup>35</sup>

## Arguments to support your liquor licensing objection

This section outlines arguments that you can use to support your liquor licensing objection.

While community members can make any arguments they wish to support their liquor licensing objection, the strongest arguments are likely to be those based on the two available grounds of objection:

1. amenity
2. for packaged liquor licences, misuse and abuse of alcohol.

Some arguments can be used to support both grounds of objection. Other kinds of arguments are specifically not permitted.

### 1. AMENITY

You can object to a liquor licence on the ground that it would detract from, or be detrimental to, the amenity of the area in which the premises is situated.<sup>36</sup>

For an amenity-based objection, you must be able to demonstrate:

1. that the liquor licensing proposal under consideration will affect the amenity of the area in which the licensed premises is or will be situated
2. that the impact on the amenity of the area will be a negative or detrimental one.

'Amenity' means "the quality that the area has of being pleasant and agreeable".<sup>37</sup>

Because 'amenity' is a broad term, you can take many factors into account to determine whether a liquor licence would have a negative impact on the amenity of an area. These include:

- the presence or absence of parking facilities
- traffic movement and density
- noise levels
- rubbish in the area
- nuisance, vandalism or property damage
- the harmony and coherence of the environment
- antisocial behaviour (real and potential) and drunkenness.<sup>38</sup>

This list is not exhaustive. You can include any other relevant factors that may detrimentally affect the 'pleasant and agreeable' nature of the area in your objection.<sup>39</sup>

For your objection, the amenity under consideration is the amenity of the area in which the licensed premises is (or will be) situated. You can consider potential amenity factors within the licensed premises, outside the licensed premises as well as the broader, surrounding area.<sup>40</sup>

You must also consider the impact the licensing proposal will have on amenity of the community in the area under assessment.

However, the impact that a licensing proposal may have on an individual person is irrelevant unless it also affects the amenity of the area.<sup>41</sup> For instance, 'amenity' does not include a person's specific preference or choice to go to an existing licensed business, for example, so they can access a larger range of specialist wines.

To support any amenity arguments, you must provide evidence that the impact of a licensing proposal on the community will be a negative one.

Relevant evidence could include:

- general statistical, sociological or epidemiological evidence about misuse and abuse of alcohol in the area; for instance, police crime statistics, ambulance data or community views
- locality evidence about the local, social and geographic circumstances of the licensed business selling alcohol. This may be evidence of antisocial behaviour or violence near the licensed premises such as property damage or public drinking.

## 2. MISUSE AND ABUSE OF ALCOHOL

The other ground you can use to object to a liquor licence application is that the licensing proposal would be conducive to, or encourage the misuse or abuse of alcohol.<sup>42</sup> This ground *only* applies to packaged liquor licences.

'Misuse and abuse of alcohol' is a broad term but it is not defined in the Act.

Some factors that could be characterised as 'misuse and abuse of alcohol' in an area include:

- increased levels of harmful drinking
- increased underage drinking.

The density of liquor outlets in your area could also be used as part of a broader misuse and abuse of alcohol argument.

Often, misuse and abuse of alcohol arguments can also be used to support amenity arguments in your objection. For instance, public drinking may impact on the community's amenity because it detracts from the pleasantness of an area but public drinking can also be characterised as an aggressive or threatening behaviour in a public place – a misuse and abuse argument.

### Increased levels of harmful drinking and increased underage drinking

An argument that you can make is that a licensing proposal will increase levels of harmful drinking – especially underage or youth binge drinking, leading to misuse and abuse of alcohol within the community.

However, this can be difficult to show in practice, especially if the licensed business is not yet in operation.

It can also be hard to show how levels of harmful drinking within the broader community may be connected to an individual packaged liquor outlet given that packaged alcohol is generally consumed in private settings such as people's homes. For instance, VCAT found that the granting of a packaged liquor licence to an IGA supermarket in Templestowe Village would not encourage or actively promote the underage consumption of liquor.<sup>43</sup>



In the past, VCAT has rejected arguments that the establishment of a packaged liquor outlet would lead to increased levels of harmful drinking in the community because, in VCAT's view, the necessary links between the licensing proposal and harmful drinking in the community were not established.<sup>44</sup>

Even where VCAT has accepted that there is a general community problem with underage drinking and youth binge drinking, it did not accept that the granting of a packaged liquor licence in a specific area would encourage or actively promote the consumption of liquor by underage people. Instead, VCAT indicated that liquor licence applicants were entitled to the benefit of the assumption that they would comply with the law, which forbids selling liquor to people underage. If licensed venues subsequently are found to sell alcohol to minors, they will be fined and dealt with under the Act.<sup>45</sup>

Since Kordister's case, it is clear that you do not need to show that an individual packaged liquor business will potentially cause increased levels of drinking in the community.

However, to successfully show that a licensed venue will lead to increased levels of harmful drinking within a community, you must be able to provide general evidence of harmful community drinking levels combined with site-specific evidence about the licensing proposal, linking it to unacceptable drinking levels in that area.

Examples of such evidence include:

- numbers of licensed venues within an area
- evidence that alcohol consumption is higher in your municipality compared to the rest of Victoria
- evidence that alcohol consumption is more prevalent within a particular part of a municipality (i.e. where the licensed premises is located) compared to the rest of the municipality.

## Density

'Density' refers to the number of licensed venues within the immediate vicinity.

Density is a major area of community concern. The increased density and availability of alcohol, especially through packaged liquor outlets can lead to higher levels of alcohol consumption and, in turn, increased levels of alcohol-related harms such as assaults.

While you cannot make an objection solely on density grounds under the Act, density arguments could form part of a broader misuse and abuse of alcohol argument.

You can also try to address density concerns through the concept of 'cumulative impact' under Victoria's planning laws. (More information about this is available in *Resource 1: Information for the Victorian community about liquor licensing: Planning permits for licensed premises.*)

However, it is also important to be aware that density arguments have not had much success at VCAT in the past. Firstly, VCAT had reservations about the inconclusive nature of the research that showed the link between the number of packaged liquor outlets and alcohol-related harms.<sup>46</sup>

More importantly, VCAT considered that while the evidence that established this link was worth noting, it was not enough on its own. Instead, what was critical was whether the general evidence about the association between liquor outlet density and alcohol-related harms had a connection with the locality evidence – the particular site and circumstances of the licensed premises. According to VCAT, this was what was important to determine whether the licence application would be conducive to or encourage the misuse or abuse of alcohol.<sup>47</sup>

Therefore, to successfully build a case about density as part of your objection, you must be able to provide general evidence of density issues combined with evidence of alcohol-related harms that can be linked to the licensed business you are making an objection about.<sup>48</sup>

## IMPACT ON COMPETITION

One argument that you cannot use when objecting to a liquor licence is *competition*.

For instance, you cannot argue that there is no need for another licensed venue in a particular area or that the establishment of a new licensed business will have a negative impact on the other licensed businesses that already exist.

The reason for this is long-standing government policy about the importance of having a competitive and diverse liquor and hospitality industry in Victoria.

Therefore, you cannot object to liquor licences on the basis that::

- the business carried on under the licence would or would not be successful
- the business of another licensee may be adversely affected by the licence application
- there is insufficient need or demand for alcohol in the area to justify the licence application.<sup>49</sup>

As you cannot make liquor licensing objections based on competition arguments, VCAT has rejected arguments that:

- the granting of a liquor licence to a supermarket would lead to a reduction in the business turnover of an existing wine cellar business, decreasing the range of fine wines available<sup>50</sup>
- there was no need for another licensed outlet in the area likely to be affected by the granting of an additional liquor licence.<sup>51</sup>

## Lodging your objection

Send your objection to:

Victorian Commission for Gambling and Liquor Regulation  
GPO Box 1988  
Melbourne Victoria 3001

### TIMING

You must make an objection to the commission within 30 days from the day when a liquor licence application is first displayed in public.<sup>52</sup>

If you wish to lodge an objection after the time for accepting objections has passed, you can apply to the commission for an extension of time or to seek acceptance of an objection that is made out of time.<sup>53</sup>

### Public notices

Liquor licence applicants must display an A3-sized public notice at the proposed or existing licensed premises in a manner that invites public attention for up to 28 days.

You can withdraw an objection to a liquor licensing proposal at any time.<sup>54</sup>

### YOUR OBJECTION CAN BE REFUSED

The commission can refuse to accept an objection if it considers that:

- the person making the objection is not affected by the liquor licence application
- the objection is frivolous or vexatious
- the objection is not in accordance with the Act.<sup>55</sup>

## SECTION 3

# Contested applications

### KEY POINTS

- A 'contested application' means a liquor licence application about which you have made an objection to the commission.
- When determining a contested application, the commission may make its decision solely on the basis of the written evidence provided, hold a preliminary conference or refer the matter to a public inquiry.
- The commission must make its decision within 28 days and give written reasons for its decision.

When you object to a liquor licence application, the application in question becomes known as a 'contested application'.<sup>56</sup> The next step will be for the commission to make a decision, or 'determination', in relation to that contested application.

## The contested application: what's the process?

During the contested application process, the commission can have regard to any matter that it considers relevant and make any enquiries it considers appropriate.<sup>57</sup> The commission must also give anyone making an objection a reasonable opportunity to be heard.<sup>58</sup>

Once an objection has been received, the commission will send you an acknowledgement letter.

### Want more information about the process?

The commission's website sets out in detail [how the contested application process works](#).

After the commission conducts an initial assessment of the contested liquor application, it will then determine the process that it will follow to decide the application. This can be:

- **Option A:** provide the parties with an opportunity to make written submissions
- **Option B:** hold a preliminary conference
- **Option C:** list the matter for inquiry.

### OPTION A: WRITTEN SUBMISSIONS

If the commission chooses Option A, it will request that everyone involved provides written submissions within 28 days.

The commission will then upload the written submissions onto its website. Each party has 14 days to make a response.

Based on these submissions, the commission will determine if the matter should be dealt with through either a preliminary conference (Option B), list the matter for inquiry (Option C) or that it will make a determination on the basis of the written evidence.

If the commission chooses to make a decision solely on the basis of the written evidence, you will not have the opportunity to appear before the commission and give evidence in person. It is therefore essential for you to include all relevant information in your written objection in case the commission chooses this option.

The commission must advise all parties within 28 days of its decision.<sup>59</sup> The commission must also give a statement of reasons for its decision as soon as practicable after the decision is made.<sup>60</sup> The commission's reasons for decisions are available on its website.

### OPTION B: PRELIMINARY CONFERENCE

If the commission chooses Option B, a commissioner will conduct a preliminary conference to determine the nature of the dispute, including the questions at issue. The commissioner will also attempt to resolve the particular matter.

If no resolution can be reached, the commission may hold a directions hearing immediately after the preliminary conference and set a date for an inquiry.

If parties are not able to determine procedural matters, an additional date and time will be set for a 'directions hearing'.

## OPTION C: REFER TO INQUIRY

### Directions hearing

A directions hearing may be conducted for matters referred to inquiry. The hearing will address all procedural matters prior to the commencement of the inquiry such as witnesses, issues in dispute and the inquiry date.

### Contested application inquiry

Contested application inquiries are generally held in public unless the commission determines that the hearing will:

- disclose confidential information
- be in the public interest or in the interests of justice to conduct the inquiry in private.<sup>61</sup>

#### When is the contested application inquiry?

The commission's website provides [the details of upcoming liquor licensing inquiries](#).

At the inquiry, you can appear in person or you can be represented by a lawyer.<sup>62</sup>

However, if you have been notified about the inquiry date but are not present (in person or through representation) at the actual inquiry, the commission can proceed to make a decision without your input.<sup>63</sup>

At the inquiry, the commission will hear opening submissions, evidence from the licence applicant, evidence from any objectors and then closing submissions.

### The commission's determination

Once the commission has conducted an inquiry, it will then make a determination whether to refuse or grant the liquor licence application based on the grounds of objection. This decision will be made on the basis of the written material supplied by the parties and the oral evidence given at the inquiry.

The commission must advise all parties within 28 days of its decision.<sup>64</sup> The commission must also give a statement of reasons for its decision as soon as practicable after the decision is made.<sup>65</sup>

#### Want to know why or why not?

[The commission's reasons for decisions](#) are available on the commission website.

## SECTION 4

# Requesting an internal review

### KEY POINTS

- You can ask the commission to conduct an internal review of a commission decision about a contested licence application if you were an objector to the original decision.
- You must lodge your application for review within 28 days after the commission makes its decision.

This section sets out the process of how you can object to the commission about a liquor license application. (Section 3 detailed how the commission will make its decision in response to your objection.)

## Seeking an internal review?

Once the commission has made a decision and, if you disagree with that decision, you have the option to ask the commission to conduct an internal review of that decision.

You can ask the commission to conduct an internal review of its decision if you are an 'eligible person' and if that decision was made by a single commissioner or delegate of the commission.<sup>66</sup>

You can seek a review of a decision of the application, variation or transfer of a liquor licence.<sup>67</sup>

### Are you eligible to ask the commission for an internal review?

An 'eligible person' includes someone who:

- originally objected to the commissioner's decision
- asked the commission to extend the time for making an objection under the Act or accepts a late objection.

If you did not object to the commission's decision (as set out in Section 2) or you did not ask the commission to extend the time for making an objection so that you could make an objection, you are unlikely to be an 'eligible person' under the Act.

## TIMING

If you wish to make an internal review application, you must do so within 28 days after the commission made its decision in relation to the contested licence application. This may be 28 days after the decision first came to your notice or 28 days after you received a statement of reasons for the commission's decision. The later of these two dates will be accepted.<sup>68</sup>

## LODGING YOUR REVIEW APPLICATION

### Lodging an application for internal review

To lodge an application for internal review, you must complete the commission's [Application to the Commission for Internal Review form](#).

You can lodge a review application by delivering your Application to the Commission for Internal Review form and supporting documentation to:

Victorian Commission for Gambling and Liquor Regulation  
49 Elizabeth Street  
Richmond Victoria 3121

or

GPO Box 1988  
Melbourne Victoria 3001.

## SECTION 5

# How the commission panel makes a decision

### KEY POINTS

- You must provide written submissions to the commission within 28 days of an internal review application being lodged.
- Based on the material received, the commission may conduct a private hearing, request further information or hold a public inquiry.
- The internal review of a contested application decision will be made by a panel of commissioners. To ensure the review's independence, the original decision-maker must be excluded from the panel.
- As soon as practicable after a decision is made, the commission panel must provide written reasons for its decision.

If you have made an application for an internal review of a commission decision, the commission will follow a set, formal process.

#### Want more information about the internal review process?

You can find more [detailed information about the commission's internal review process](#) on the commission's website.

## The internal review: what's the process?

This is a summary of the process of an internal review:

1. Once an application for internal review has been lodged, the commission will notify each person involved in the original contested application process.
2. The commission will then request everyone to provide written submissions in response to the review application within 28 days.
3. Once all received submissions have been uploaded onto the commission website, each person will have 14 days to respond.
4. Based on the written submissions, the commission will then decide whether further evidence (oral or written) is required and proceed with one of the following three options:
  - **Option A:** If no further evidence is required, the commission will conduct a private hearing.
  - **Option B:** If additional written evidence is required, the commission will request that evidence.
  - **Option C:** If additional oral evidence is required, the commission will set a date for a public inquiry.

### OPTION A: PRIVATE HEARING

If the commission decides that no further written evidence is required, the commission will conduct a private hearing involving a panel of commissioners (the commission panel).

The commission panel must include at least the chairperson or deputy chairperson of the commission.<sup>69</sup>

### OPTION B: ADDITIONAL WRITTEN SUBMISSIONS

If the commission determines that additional written submissions are required, the commission will request those submissions and then determine whether Option A (private hearing) or Option C (public hearing) is more appropriate in the circumstances.

### OPTION C: PUBLIC INQUIRY

If additional oral evidence is needed, the commission will refer the matter to a public inquiry, where evidence from both the licence applicant and any objectors will be heard.

A preliminary conference and/or directions hearing may be held before the public inquiry.

#### Waiting to hear?

The commission will advise you (and other parties) of the hearing date for the private or public inquiry once it has been set.

[Hearing dates](#) are also available on the commission's website.

## Making a new decision

To ensure the independence of the internal review, the commission must exclude the original decision-maker from the panel of commissioners and make its decision in a public forum (unless confidentiality considerations apply).<sup>70</sup>

At the inquiry, the commission panel will hear the liquor licence application afresh and make a new decision. The panel effectively stands in the shoes of the person (commissioner or commission delegate) who made the original decision and has his or her powers.

The commission panel can refer to any information or evidence that it considers relevant when holding the inquiry and is not limited to the information that was provided during the original contested application process.

### THE COMMISSION'S DECISION

At the conclusion of the inquiry, the commission panel will either affirm or vary the original liquor licensing decision or set aside the original decision and substitute another decision that it considers appropriate.<sup>71</sup>

As soon as practicable after a decision is made, the commission panel must give the person who requested the internal review the reasons for its decision.<sup>72</sup>

#### Want to find the reasons for a decision?

The commission panel will prepare a written statement of reasons for its decision.

## Making an appeal to the Supreme Court

If you are unhappy with the decision of the commission panel, it is possible to appeal that decision to the Supreme Court of Victoria – but only about a question of law.<sup>73</sup>

A 'question of law' is where you believe that the commission panel has made a decision, which is legally wrong.

This could be if you believe that the commission panel has applied the wrong law to the facts of the case or misinterpreted the meaning of the Act.

It is *not* when you believe that the commission panel has misinterpreted the evidence or made a wrong finding about the facts of the case.

You are strongly advised to obtain legal advice if you are considering appealing a decision of the commission panel to the Supreme Court.

You must appeal to the Supreme Court within 28 days of the commission panel's decision.<sup>74</sup>

#### Find out more about the Supreme Court

More information about the Supreme Court of Victoria is available on the Supreme Court of Victoria website.

# Glossary

<b>The Act</b>	<i>Liquor Control Reform Act 1998</i> (Vic)
<b>The commission</b>	Victorian Commission for Gambling and Liquor Regulation
<b>Contested application</b>	When a community member objects to a liquor licence application
<b>Kordister's case</b>	Victorian Court of Appeal case of <i>Kordister Pty Ltd v Director of Liquor Licensing &amp; Anor</i> [2012] VSCA 325
<b>LCRA</b>	<i>Liquor Control Reform Act 1998</i> (Vic)
<b>Licensed business</b>	Business that has or will need to obtain a liquor licence from the Victorian Commission for Gambling and Liquor Regulation
<b>Liquor licence</b>	Licence to sell or provide liquor in Victoria
<b>VCAT</b>	Victorian Civil and Administrative Tribunal



# Notes

## Introduction

1. Sections 6, 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H *Liquor Control Reform Act 1998* (LCRA) (Vic)
2. Section 4(1) LCRA
3. Sections 4(1)(a)(i),(ii), (iii), (iv) LCRA.
4. Sections 4(1)(b) & (c) LCRA.

## Section 1

5. Sections 6, 6A, 6B, 6D, 6E, 6F, 6G and 6H LCRA
6. Section 7 LCRA.
7. Regulation 9 *Liquor Control Reform Act Regulations 2009*.
8. Regulation 10(1)(a) *Liquor Control Reform Regulations 2009*. This requirement does not apply to limited or pre-retail liquor licences.
9. Section 16(1) LCRA. This requirement does not apply to a pre-retail licence, a limited licence or a major event licence: section 16(2) LCRA.
10. Planning permission is required for general licences, on-premises licences, full and restricted club licences, wine and beer producer's licences and packaged liquor licences, restaurant and cafe licences.
11. Section 34(1A) LCRA.

## Section 2

12. Section 38 LCRA.
13. Section 38(1) LCRA.
14. Section 38(1A) LCRA.
15. Section 38(2) LCRA.
16. Section 38(2) and 174 LCRA.
17. *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207, para 188.
18. *Ibid*, paras 270-271.
19. Kordister, n 17, para 20.
20. Kordister, n 17, paras 270-271
21. Kordister, n 17, para 105.
22. Kordister, n 17, para 122-3. Kordister, n 17, para 123.
23. Kordister, n 17, para 124.
24. O'Brien, P 2013, 'A risk-based approach to harm minimisation in liquor licensing decisions' *Drug and Alcohol Review*, vol. 32(5), pp. 536-538.
25. *Ibid*; Kordister, n 17, para 124.
26. Kordister, n 17, para 130.
27. *Ibid*
28. *Ibid*.

29. Kordister, n 17, para 191.
30. *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459, para 186.
31. Kordister, n 17, para 157.
32. Kordister, n 17, paras 57, 192.
33. Kordister, n 17, para 192.
34. Kordister, n 17, para 195.
35. Section 40(1) LCRA.
36. Section 38(1) LCRA.
37. Section 3A(1) LCRA.
38. Section 3A(2) LCRA
39. Section 3AA LCRA.
40. *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459. For instance, 'amenity' does not include a person's specific preference or choice to go to an existing licensed business, for example, so they can access a larger range of specialist wines.
41. *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459.
42. *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459.
43. See, for instance, *Nardi v Director of Liquor Licensing* [2005] VCAT 323; *Hansen v Director of Liquor Licensing* [2006] VCAT 2544.
44. *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459; *Avery v Director of Liquor Licensing* [2001] VCAT 2455.
45. See the evidence considered in *Nardi v Director of Liquor Licensing* [2005] VCAT 323; *Hansen v Director of Liquor Licensing* [2006] VCAT 2544; *Joshamie Nominees Pty Ltd v Director of Liquor Licensing* [2009] VCAT 2188; *Papas v Director of Liquor Licensing* [2008] VCAT 1944.
46. *Nardi v Director of Liquor Licensing* [2005] VCAT 323, para 24.
47. *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459.
48. Section 40(3) LCRA.
49. Section 38(3) LCRA.
50. *Joshamie Nominees v Director of Liquor Licensing* [2009] VCAT 2188.
51. *Nardi v Director of Liquor Licensing* [2005] VCAT 323; Section 34(2) LCRA.
52. Section 38(2) LCRA.
53. Section 174(a) and (b) LCRA.
54. Section 43 LCRA.
55. Section 42 LCRA.

### **Section 3**

- 56. Definition of "Contested Application", section 3(1) LCRA.
- 57. Section 47(3) LCRA.
- 58. Section 47(3) LCRA.
- 59. Section 47(3C) LCRA.
- 60. Section 47(3D) LCRA.
- 61. Section 47(3A)(a) LCRA.
- 62. Section 47(3B) LCRA.
- 63. Section 47 (3A)(b) LCRA.
- 64. Section 47(3C) LCRA.
- 65. Section 47(3D) LCRA.

### **Section 4**

- 66. Section 152: Item 1, 2 and 3 LCRA.
- 67. Section 152; Item 1, 2 and 3 LCRA.
- 68. Section 153(2) LCRA.

### **Section 5**

- 69. Section 156 LCRA.
- 70. Section 155 LCRA.
- 71. Section 157(1) LCRA.
- 72. Section 157(4) LCRA.
- 73. Section 172A(1) LCRA.
- 74. Section 172A(2) LCRA.





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