

Unlocking liquor licensing

Resource 2: Liquor licensing laws

INFORMATION FOR VICTORIAN COUNCILS ABOUT LIQUOR LICENSING

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Preface

To build upon our commitment to reduce harm from alcohol, VicHealth has created two resources for Victorian councils. The resources aim to improve the knowledge and understanding of Victoria's liquor licensing system and help councils to address alcohol-related harm within their communities.

Resource 1: Information for Victorian councils about liquor licensing: Planning permits for licensed premises explains how councils can use their powers under Victoria's planning legislation to influence the establishment and operation of licensed premises.

Resource 2: Information for Victorian councils about liquor licensing: Liquor licensing laws provides an overview of Victoria's liquor licensing laws, focusing on the process of how councils can make an objection in response to a liquor licence application.

This resource outlines the process of making a liquor licensing objection – from the council's initial receipt of the liquor licence application to the grounds on which they can make an objection, the commission's decision-making procedures and the review options available.

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

SECTION 1: The liquor licence application process

SECTION 2: Objections to liquor licensing

SECTION 3: Contested applications

SECTION 4: Applying for an internal review

SECTION 5: The commission's internal review process

INTRODUCTION

An overview of the Victorian liquor licensing system

The *Liquor Control Reform Act 1998* (Vic)

In Victoria, the *Liquor Control Reform Act 1998* (Vic) ('the Act') regulates the sale and supply of alcohol. Generally, most people or organisations that intend to sell, offer or provide liquor in Victoria must have a liquor licence. However, there are some exceptions.¹

The Act has several objectives. Its main objective is *harm minimisation*.² Harm minimisation focuses on reducing the negative health, economic and social impacts of excessive consumption of alcohol on both individuals and the community.

The Act aims to minimise harm arising from the misuse and abuse of alcohol by:

- providing adequate controls over the supply and consumption of liquor
- ensuring as far as practicable that the supply 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, thereby reducing risky drinking of alcohol and its impact on the community.³

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.⁴

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 empowered to grant liquor licences and to undertake liquor licensing 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 has also taken on the role of reviewing contested licence applications, 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.
- The commission must provide councils with a copy of all liquor licence applications it receives, excluding limited and major event licence applications and BYO permit applications (the commission may give a copy of limited and major event licence applications to councils if it is considered appropriate).
- If councils decide to object to a liquor licence application, the objection must be made within 30 days of the public notice of the licence application first being displayed.

Types of liquor licences

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

However, there are some exceptions.⁵ There are also specific exemptions from the Act for bed and breakfast businesses, florists or giftmaker businesses, hairdressers, butchers, hospitals, residential care services, retirement villages and cruise ships.⁶ There are 14 different liquor licence categories including general, on-premises, restaurant and cafe, packaged liquor, major event licence and BYO permit.⁷ Most liquor licences granted in Victoria authorise the supply of liquor for consumption on the licensed premises.

More information about liquor licences

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

The type of licence required will depend on how the applicant wishes to supply the liquor. Relevant factors include:

- the licence time period – whether it is for a one-off occasion, for a limited period or is ongoing
- where the alcohol will be consumed – on licensed premises or taken away to be consumed elsewhere
- the business intentions of the licence applicant – whether they intend to open a restaurant, plan to sell alcohol or allow patrons to bring their own
- council requirements about land use.

Information about current active liquor licences

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

Applying for a liquor licence: the requirements

Finding the liquor licence application form

In Victoria, applicants for a liquor licence need to use the appropriate liquor licence application form, which they can download from the commission website.

More detailed information on [how to apply for a liquor licence](#) is available from the commission website.

The appropriate liquor licence application form will require the applicant's name, address, the location of the licensed premises and a description of the nature and scope of the business.⁸

Many liquor licence applications must also be accompanied by:

- (a) plan of the licensed premises
- (b) planning permission.

(A) PLAN OF THE LICENSED PREMISES

Applicants must include a plan of the premises, highlighting the proposed area where alcohol will be consumed or sold.⁹ This is shown by drawing a red line on the plan.

Applicants must provide four copies of this plan to the commission when making their licence application. The commission will provide one of these copies to the relevant local council when the liquor licence application is referred to them.

(B) PLANNING PERMISSION

Before obtaining a liquor licence in Victoria, many applicants will first need to obtain planning permission from their local council for approval to use land to sell or consume alcohol.

Planning permission is required for general licences, on-premises licences, full and restricted club licences, wine and beer producer's licences, packaged liquor licences and restaurant and cafe licences.

Planning permission is not required for a renewable limited licence or a Bring Your Own (BYO) permit.

As the type of liquor licence is determined by the commission and not the council or licence applicant, applicants should contact the commission to determine the appropriate type of licence before making an application for planning permission.

Liquor licence applicants must provide the appropriate form of planning permission with their application to the commission. This planning permission could be:

- a copy of a planning permit for the licensed premises
- evidence that planning permission is not required from the local council.¹⁰

These documents could also be supported by a copy of an application for a planning permit. 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. It is also a condition of every liquor licence that all licensed premises must meet appropriate planning requirements.¹¹

Trading hours

The planning approval from the local council must also specify the trading hours of the licensed business. The hours the commission approves for a liquor licence will not exceed the trading hours specified by the local council.

More information about the planning powers of councils?

More information about the planning powers of councils in relation to licensed premises is available in Resource 1: Planning Permits for Licensed Premises.

DISPLAYING A PUBLIC NOTICE OF THE APPLICATION

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.¹² It should also be noted that this requirement is not mandatory for limited or major event liquor licences, or in the event of some liquor licence variations.

Any objection to a liquor licence application must be made within 30 days of this notice being first displayed.

More information about displaying a public notice

More information about [displaying an A3 public notice](#) can be found on the Victorian Department of Justice website.

GIVING A COPY OF THE LICENCE APPLICATION TO COUNCILS

Upon receiving a liquor licence application, the commission must give a copy of that application to the relevant local council, along with a plan of the licensed premises.¹³

There are exceptions to this requirement including applications for limited licences and major event licences.¹⁴ The commission may still give a copy of these applications to councils and may require the applicant to display notice of the application if the commission considers it appropriate.¹⁵

Want to know about current liquor licence applications?

The Victorian Commission for Gambling and Liquor Regulation provides details of current liquor licence applications.

SECTION 2

Objections to liquor licensing

KEY POINTS

- Councils can make an objection to the commission on the grounds of:
 1. amenity
 2. for packaged liquor licences only, the misuse and abuse of alcohol.
- Harm minimisation is a crucial factor to be considered in all liquor licensing applications, including objections. Harm minimisation focuses on reducing the negative health, economic and social impacts of alcohol consumption on both individuals and the community.
- A key question for councils to address when deciding whether to object to the grant of an application or not is whether a particular licensing proposal will contribute to achieving the objective of harm minimisation. This involves assessing the *risk of harm* connected with a particular liquor licence.
- To support an objection to the commission, councils can use three different types of evidence:
 1. general evidence
 2. locality evidence
 3. site-specific incident evidence.

Grounds of objection

In Victoria, a local council has the power to object to a liquor licence application if the proposed licensed venue is, or will be, located in their municipality.¹⁶ Councils can object to a liquor licence application on the basis that it would detract from, or be detrimental to, the amenity of the area in which the premises is situated.¹⁷

In the case of packaged liquor licences, councils can also make an objection on the basis that the grant of the application would be conducive to, or encourage, the misuse or abuse of alcohol.¹⁸

PREPARING EFFECTIVE OBJECTIONS: THE CHALLENGES

Councils objecting to a liquor licence must make their objections to the commission in writing, stating the ground(s) and reason for the objection.¹⁹

Preparing effective objections to liquor licensing proposals presents several challenges for councils.

The narrow grounds of objection

One challenge for councils is the narrow grounds of objection based on the wording of the Act. Further information about this is available in 'Arguments to support council liquor licence objections' on page 10 of this document.

Linking a specific liquor licence to alcohol-related harm

Liquor licensing objections must also focus on *individual* liquor licences. To object to a liquor licence, councils must provide evidence to link the specific licence under consideration to alcohol-related harm in their communities.

Showing this connection can be challenging for councils, especially if the licensed business has not yet opened because it means councils must attempt to argue their objections on the basis of *future* potential harm.

The particular challenge of packaged liquor venues

Packaged liquor venues present another challenge for councils. Alcohol purchased from packaged liquor outlets is generally consumed away from the outlet in private settings such as homes.

Given this, it is difficult for councils to provide evidence that links alcohol-related harm in the community to an individual packaged liquor business. Any alcohol-related harm potentially caused through the excessive consumption of packaged liquor is more likely to occur away from public view rather than in the immediate vicinity of the packaged liquor outlet.

Gathering and preparing material and evidence

Another issue for councils is the practical challenges involved in preparing objections. Councils must gather their material within 30 days to meet the objection deadline under the Act.²⁰

Collecting the necessary evidence to support an objection also uses significant resources, research and funds. The cost of preparing objections is a key reason why councils may choose not to object to many of the liquor licensing proposals affecting their municipalities.²¹

There is also confusion among councils about what kinds of evidence can be submitted to support their objections, or how the objection should be structured. (There are no current guidelines on these issues available from the commission.)

Evidence to support liquor licence objections

In the absence of guidelines for what kinds of evidence can be submitted, 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 decisions, including objections.²²

***Kordister Pty Ltd v Director of Liquor Licensing & Anor* [2012] VSCA 325 (Kordister's case)**

In this case, Kordister 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 anti-social street behaviour arising out of the misuse and abuse of alcohol.

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 anti-social behaviour in the area.

Kordister successfully appealed this decision to VCAT in 2010 on the basis that ending late-night trading at the bottle-shop would damage the hotel's profitability. The Supreme Court of Victoria subsequently ordered VCAT to review its decision, with liquor authorities successfully arguing that VCAT had not given enough weight to the general impact of late-night trading on the area.

This ruling was appealed by Kordister to the Victorian Court of Appeal. The Court of Appeal granted Kordister a permanent stay, allowing it to continue 24-hour trading.

The Court of Appeal ruled that, while harm minimisation was a primary purpose of the Act, it was up to liquor authorities to establish a direct link between the alcohol-related issues in the area and the outlet's extended trading hours. 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

Kordister's case also emphasises the importance of the principle of harm minimisation under the Act, stating that it is 'the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions'.²³

The policy of harm minimisation acknowledges that, while the consumption of alcohol is a fundamental part of Victorian and Australian society, the scale of preventable harm associated with alcohol misuse means that it is reasonable to place boundaries around its availability. As noted, the Act aims to achieve this and to minimise harm arising from the misuse and abuse of alcohol by:

- providing adequate controls over the supply and consumption of liquor
- ensuring as far as practicable that the supply 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, thereby reducing risky drinking of alcohol and its impact on the community.²⁴

Harm minimisation is a broad concept, encompassing a range of social, economic and cultural considerations as illustrated by the following definition from Kordister's case.

A definition of harm minimisation

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."
(*Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011])²³

However, while harm minimisation is the primary purpose of the Act, Kordister's case also indicated that other objectives of the Act remain important, like facilitating the diversity of licensed facilities and the responsible development of the liquor, licensed hospitality and live music industries.²⁶

On this basis, Kordister's case found when liquor licence decision-makers are considering whether to grant, relocate or vary a liquor licence, they must answer the question whether the grant of that application would be consistent with the objectives of the Act. In particular, they need to know whether it would strike an appropriate balance between the need to minimise harm arising from the misuse and abuse of alcohol on the one hand, and the interests in developing a diversity of licensed facilities reflecting the community expectations on the other.²⁷

In effect, when making liquor licensing decisions, the commission is required to weigh competing objectives of the Act. The impact of a proposal on harm minimisation will be a primary consideration of the commission but not the only one. Determining whether or not a licensing proposal will contribute to the objective of harm minimisation is a complex issue. As harm minimisation is a broad concept, it may require taking into account a variety of social, economic and cultural factors. The positive benefits arising from the liquor industry, which are reflected in the Act's other objectives, must also be weighed in the balance with minimising that harm.²⁸ Also, each licensing proposal under consideration by the commission will be situated in a particular community and have its own unique set of circumstances.

What does this mean for a council objection?

Based on Kordister's case, if councils wish to make an objection to a liquor licence, one of the key elements they must demonstrate to the commission is that the relevant licensing proposal would not contribute to minimising alcohol-related harm. Or, to put it another way, that the proposal would not contribute to achieving the objective of harm minimisation under the Act. Kordister's case gives some guidance to councils on how to assess whether or not a particular licensing decision would contribute to harm minimisation. It essentially involves assessing the *risk of alcohol-related harm* connected with a particular liquor licence. Making this judgment involves assessing any risks of alcohol-related harm connected with a licensed premises, including the likelihood, nature and severity of that harm.²⁹ The risk may arise from a licensee's individual conduct or from some other source such as the venue's character, its geographic location or the drinking context.³⁰

There is no minimum level of risk of alcohol-related harm that must be established in order for that risk to be taken into account.³¹ Kordister's case indicated that there are three categories of evidence that can be considered in determining the risks associated with a particular licensed premises. These are set out below.

Categories of evidence

Kordister's case identifies three categories of evidence that can be used by councils when making an objection to the commission. These are:

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

1. GENERAL EVIDENCE OF HARM MINIMISATION

General evidence of harm minimisation can be statistical, sociological or epidemiological evidence about the use and misuse of alcohol in Victoria. This may be provided by expert witnesses.

This kind of evidence can support both 'amenity' and 'misuse and abuse' arguments by councils.

Examples of general evidence include:

- government policy and efforts that have been made to reduce alcohol-related issues in the community³²
- evidence about the social harms related to alcohol and the general linkage between opening hours, packaged liquor and social harms³³
- statistical evidence from the Victorian Population Health Survey about the rate of persons consuming alcohol at risky levels that would result in short-term harm³⁴
- hospital data on admissions and presentations due to alcohol-related incidents³⁵
- the relationship between areas of socioeconomic disadvantage and consumption of alcohol at harmful levels.

While the commission must take into account any general evidence put forward by councils, depending upon its relevancy, general evidence on its own is unlikely to persuade the commission to refuse 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, the particular local, social, demographic and geographic circumstances of the relevant licensed premises under consideration.³⁶

General evidence, which has no connection to the specific premises or location, may provide weak evidence of harm or likelihood of harm. Therefore, it will not weigh heavily with the commission when it is balancing the other objectives of the Act.³⁷ Alternatively, if the general evidence has a strong relationship to the locality evidence, then the commission will give it greater importance when weighing up the competing objectives of the Act.

2. LOCALITY EVIDENCE

Locality evidence is evidence of the local, social, demographic and geographic circumstances of a licensed business selling alcohol.³⁸ Locality evidence recognises that licensed premises cannot be treated in isolation from one another or from their social and cultural environment.³⁹

Examples of locality evidence include:

- evidence of anti-social behaviour or violence near the licensed premises such as arguing in the streets, street violence, domestic violence, vandalism, property damage, theft and public drinking⁴⁰
- police statements about alcohol-related harm in the area such as incidents of assault
- evidence that an area experiences greater levels of social disadvantage compared to the rest of Victoria
- evidence that alcohol-related harm is more prevalent in a particular municipality compared to the rest of Victoria
- evidence that alcohol-related harm is more prevalent within a particular part of a municipality compared to the rest of the municipality.

To succeed in its objection using locality evidence, councils must show that, for one reason or another, the particular local, social, demographic and geographic circumstances surrounding the licensed premises are conducive to the misuse of alcohol.

However, it is not necessary to establish that the licensee or the operation of licensed premises caused, or was responsible for, any anti-social behaviour. While locality evidence must have a direct connection to the licensed premises under consideration, it does not need to be a *causal* connection.⁴¹ Instead, it is enough for the council objectors to show – through locality evidence – that the object of harm minimisation ‘would not be well served’ by the relevant licensing proposal.⁴²

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 congregation of unruly crowds, sale of alcohol to intoxicated persons, public drinking on the street, assaults and violence.

Some site-specific incident evidence may also fall into the category of locality evidence. However, site-specific incident evidence requires councils 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 councils to establish that connection.

Therefore, councils seeking to rely on site-specific evidence in their objections must show that the operation of the relevant licensed business was responsible for the specified alcohol-related harm.⁴³

PRODUCING DIFFERENT TYPES OF EVIDENCE

Kordister’s case shows that for councils to make a successful liquor licence objection, they must demonstrate to the commission that the licence in question would not contribute to achieving the objective of harm minimisation through general or site-specific evidence.

If councils can demonstrate on the basis of the evidence provided that a licence proposal would not minimise alcohol-related harm, then the commission may be more likely to reject the licensing proposal under consideration. Alternatively, if councils cannot provide sufficient evidence to convince the commission that a licensing proposal would be detrimental to the amenity of the area in which the premises is situated, and/or conducive to the misuse or abuse of alcohol, then that objection is unlikely to succeed.

When preparing their objections, councils do not need to produce evidence in all three evidence categories. However, the *kind* of evidence that councils provide to the commission will affect the importance that the commission attaches to it.

For instance, the weight given to any general evidence by the commission will depend on the extent of its connection with any locality evidence. If there is no available locality evidence, site-specific incident evidence will be more important.

When councils present both locality evidence and site-specific incident evidence to the commission, the exact weight to be given to each category of evidence will depend on the circumstances of each case.⁴⁴

Arguments to support council liquor licence objections

The previous part of this section, ‘Categories of evidence’, sets out the types of evidence that council objectors can provide to show that a licensing proposal will not contribute to achieving the objective of harm minimisation. This next part outlines *arguments that can and cannot be used* to support this proposition.

As previously mentioned, the wording of the Act is narrow. Arguments must generally be based on the two grounds of objection available to councils:

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

Councils 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.⁴⁵

For an amenity objection, councils must demonstrate that:

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

What is amenity?

Amenity means “the quality that the area has of being pleasant and agreeable.”⁴⁶

Because amenity is a broad term, councils can take many factors into account to determine whether, in the council’s view, 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
- anti-social behaviour (real and potential) and drunkenness.⁴⁷

This list is not exhaustive. Councils can include any other relevant factors that may detrimentally affect the ‘pleasant and agreeable’ nature of the area in their objections.⁴⁸

For a council objection, the amenity under consideration is the ‘amenity of the area in which the licensed premises is (or will be) situated’.⁴⁹

Councils can consider potential amenity factors within the licensed premises, outside the licensed premises as well as the broader, surrounding area.⁵⁰ Councils must also consider the impact the licensing proposal will have on the amenity of the community in the area under assessment. The impact of a licensed business on an individual is irrelevant unless it also affects the amenity of the area.⁵¹

To support amenity arguments, councils must provide evidence that the licensing proposal will have a negative impact on the community. 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 views⁵²
- locality evidence about the local, social and geographic circumstances of the licensed business selling alcohol. This may be evidence of anti-social behaviour or violence near the licensed premises such as property damage or public drinking.

2. MISUSE AND ABUSE OF ALCOHOL

The other grounds for liquor licence objection available to councils is that the licensing proposal would be conducive to, or encourage, the misuse and abuse of alcohol.⁵³ This argument only applies to packaged liquor licences.

‘Misuse and abuse of alcohol’ is a broad term that 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
- anti-social behaviour.

The density of liquor outlets 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 claims in council objections. 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

Councils could argue that a particular 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 challenging for councils to show in practice, especially if the licensed business is not yet in operation. It can also be challenging to show how levels of harmful drinking within the broader community may be connected to an individual packaged liquor venue given that packaged alcohol is generally consumed in private settings.⁵⁴

In the past, VCAT has rejected arguments that the establishment of a packaged liquor venue 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.⁵⁵

Even when 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 people underage.

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.⁵⁶

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

To show that a licensed venue will lead to increased levels of harmful drinking within a community, councils must 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 a council's 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 business is located) compared to the rest of the municipality.

Density and alcohol-related harm

'Density' – the number of licensed venues within the immediate vicinity – is often a major area of concern for councils.

The increased density and availability of alcohol, especially as packaged liquor outlets can lead to higher levels of alcohol consumption within a municipality and, in turn, increased levels of alcohol-related harm.

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

Councils can also address density concerns through the concept of 'cumulative impact' under Victoria's planning laws. (See Resource 1: Planning Permits for Licensed Premises.)

However, councils seeking to use density arguments in their objections should be aware that, in the past, density arguments have not had much success at VCAT.

Firstly, VCAT has had reservations about the inconclusive nature of the general research that showed the link between the number of packaged liquor outlets and alcohol-related harm.⁵⁷ 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 outlet density and alcohol-related harm had a connection with the locality evidence – the particular site and circumstances of the licensed premises. According to VCAT, this was important to determine whether the licence application would be conducive to or encourage the misuse or abuse of alcohol.⁵⁸

Therefore, consistent with arguments for increased harmful drinking, councils must provide general evidence of density issues combined with site-specific evidence in order to be successful in arguing density as part of a broader misuse and abuse claim.⁵⁹

Impact on competition

The Act does not permit councils to make liquor licensing objections on 'market competition' grounds.

For instance, councils 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 licensed businesses that already exist.

This is because the importance of a competitive, diversified liquor and hospitality industry in Victoria has been a long-standing government policy and is also reflected in the Act's objectives.⁶⁰

Therefore, councils *cannot* make objections 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 to justify the licence application.⁶¹

This restriction had led to the rejection of objector 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 available⁶²
- there was no need for another licensed outlet in an outer suburban area even though VCAT acknowledged that it was difficult to conclude that there was a need for another outlet given the surrounding area had a large number of liquor outlets – around 30 within a two-kilometre radius.⁶³

Lodging your objection

Councils must make a liquor licensing objection to the commission within 30 days from the day when a licence applicant first publicly displays the notice of his or her licence application.⁶⁴

Send council objections to:

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

If councils wish to lodge an objection after the time for accepting objections has passed, they can apply to the commission for an extension of time or to seek acceptance of an objection that is made out of time.⁶⁵

WITHDRAWING AN OBJECTION

Councils can withdraw their objections at any time.⁶⁶

SECTION 3

Contested applications

KEY POINTS

- A 'contested application' is a liquor licence application that has been objected to by a council to the commission.
- Many objections made to the commission are resolved by the commission through discussion between the applicant and objector(s).
- If the objection is not resolved through negotiation, a single delegate of the commission will usually make a decision about the contested application on the basis of the written submissions provided by the applicant and objector(s).
- As part of the process to resolve the contested application, a preliminary conference or inquiry may be held in certain circumstances
- Once the commission (or its delegate) has made a decision, it must advise all parties within 28 days of that decision.

COMMISSION'S RECEIPT OF THE OBJECTION

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

The commission may refuse or accept a council objection. The commission can refuse a council objection if it considers that:

- the council is not affected by the application
- the objection is frivolous or vexatious
- the objection is not in accordance with the Act.⁶⁷

NEGOTIATING THE OBJECTION

If it accepts the objection, the commission may contact the applicant and/or council objector to obtain more information about the issues under dispute. As part of this process, the commission may also attempt to resolve the objection through discussion with the licence applicant and the objectors. For instance, it may suggest that the applicant consider amending the licence application (e.g. to reduce trading hours in an external area, or to reduce the size of the proposed licensed area).

If the council objector is satisfied with these measures, it may choose to withdraw its objection and the Commission will proceed to finalise the application. Many of the objections that are made to the commission are resolved through this process and do not proceed any further.

Alternatively, the council objector may be unsatisfied with any proposals to resolve the issues of concern and choose to proceed with its objection as a contested application.

INQUIRY INTO THE AMENITY OF LICENSED PREMISES

In addition to making an objection, councils can also potentially raise their concerns about existing licensed premises through the Act's inquiry process. Where a council believes that a licensee has conducted their licensed business (or allowed it to be conducted) in a manner that detracts from or is detrimental to the amenity of the area in which the premises is situated, they can write to the commission, requesting that it conducts an inquiry into these issues. Councils must provide reasons for this request.⁶⁸

If, after making an inquiry, the commission determines that the continuation of a licence would detract from or be detrimental to the amenity of the area in which the licensed premises are situated, the commission may cancel, suspend or vary the relevant licence.⁶⁹

However, if the council is unsatisfied, it may choose to proceed with its objection. If this is the case, the application in question becomes known as a 'contested application'.⁷⁰

How the commission makes a decision about a contested application

If an application proceeds as a contested application, the commission will determine the process it will use to resolve the application. Subsequently, a delegate may invite submissions from the applicant and/or objectors and consider the responses and then proceed to finalise. The delegate may provide a period of time that is less than 28 days. However, sometimes a Commission delegate may decide that an application should be escalated to a Commissioner for first instance determination. In which case, the commission may use one of three processes to resolve the applications, including:

- **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.

The commission's website sets out in detail, in both [description](#) and [diagram](#) form, how the contested application process works. In addition, the commission may determine its own process and procedure if it considers it to be appropriate to the type of application and the issues involved.

During this process, the commission can have regard to any matter that it considers relevant and make any enquiries it considers appropriate.⁷¹ The commission must also give council objectors a reasonable opportunity to be heard, whether through a written submission or face to face hearing.⁷²

OPTION A: WRITTEN SUBMISSIONS

Option A involves the commission inviting parties to make written submissions about the matter under dispute. Submissions will be requested within 28 days.

Option A is the most common way that the commission resolves contested applications. Usually, this process is undertaken by a single delegate of the commission.

The commission will request parties to provide written submissions within 28 days of the request. The applicants and objectors then have 14 days to respond to each other's submissions.

From there, the commission will usually then proceed to make a determination on the basis of the written evidence that has been provided. As council objectors will not have the opportunity to make oral submissions before the commission, it is therefore essential for councils to include all relevant information in their written objections.

Alternatively, in certain circumstances, the commission may determine that the matter should be referred to a preliminary conference (Option B).

Once a decision has been made, the commission must advise all parties within 28 days.⁷³

The commission must also give a statement of reasons for its decision as soon as practicable after the decision is made.⁷⁴

Reasons for decisions

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 (Option C).

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 AN INQUIRY

For a matter referred to inquiry, the commission may first hold a directions hearing. The directions hearing will cover all procedural matters prior to the commencement of the inquiry such as length of the inquiry, witnesses and issues in dispute.

Contested application inquiries are generally held in public but some exceptions apply⁷⁵. The commission's website provides the details of upcoming liquor licensing inquiries.

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

Once the commission has conducted an inquiry, it will make a determination whether to refuse or grant the liquor licence application 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 of its decision within 28 days.⁷⁶

The commission must also give a statement of reasons for its decision as soon as practicable after the decision is made.⁷⁷ The commission's reasons for decisions are available on its website.

SECTION 4

Applying for an internal review

KEY POINTS

- Councils can ask the commission to conduct an internal review of a commission decision about a contested licence application.
- Councils must lodge their application for review within 28 days after the commission makes its decision.

How the internal review works

If councils disagree with a liquor licensing decision of the commission in response to their objection, they have the option to seek an internal review of that decision by the commission if that decision was made by a single commissioner or delegate of the commission.⁷⁸ This can be the review of a decision, regarding the application, variation or relocation of a liquor licence.⁷⁹

Previously, councils could appeal decisions of the Director of Liquor Licensing or Liquor Licensing Panel to VCAT. Since February 2012 the commission has taken over this responsibility.

LOGGING AN APPLICATION FOR REVIEW

Councils must lodge their application for review within 28 days after being advised of the commission's decision in relation to the contested licence application. This may be 28 days after the decision first came to the council's notice or 28 days after it received a statement of reasons for the decision. The later of these two dates will be accepted.⁸⁰

Application to the Commission for Internal Review form

You can find the [Application to the Commission for Internal Review](#) form on the Department of Justice website.

To lodge an application for internal review, councils must complete the Application to the Commission for Internal Review form.

Councils can lodge a review application by delivering the review application form and supporting documentation to:

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

or by posting the review application form and supporting documentation to:

The Victorian Commission for Gambling and Liquor Regulation
GPO Box 1988
Melbourne Vic 3001.

SECTION 5

The commission's internal review process

KEY POINTS

- Councils 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.

Responding to the review application

Once an application for internal review has been lodged, the commission will notify each person involved in the original contested application process.

The commission will then request parties to provide written submissions in response to the review application within 28 days, depending on the process that the commission determines

Detailed information about the internal review process

Detailed information, in [process](#) and [diagram](#) form, about the commission's internal review process is available on the commission's website.

Once all received submissions have been uploaded onto the commission website, each party has 14 days to respond.

Requiring further evidence

Based on the written submissions, the commission will then decide whether further evidence (oral or written) is required and proceed with either:

- **Option A: private hearing**

If no further evidence is required, the commission will conduct a private hearing.

- **Option B: receive written submissions**

If additional written evidence is required, the commission will request that evidence.

- **Option C: public inquiry**

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 full commission). The full commission must include at least the Chairperson or Deputy Chairperson of the commission.⁸¹

OPTION B: RECEIVE WRITTEN SUBMISSIONS

If the commission determines that further 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 further oral evidence is needed, the commission will refer the matter to a public inquiry where evidence from both the licence applicant and council objector will be heard. A preliminary conference and/or directions hearing may be held before the public inquiry.

HEARING DATE

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

Hearing dates for private or public inquiries

Hearing dates are available on the commission's website.

COMMISSION DETERMINATION

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.⁸³

As soon as practicable after a decision is made, the commission panel must give the party who requested the internal review reasons for its decision.⁸⁴

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

Reasons for decisions

The commission's reasons for decisions are available on its website.

The decision-making process

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).⁸²

At the inquiry, the full commission must hear the liquor licence application afresh and make a new decision. The panel effectively stands in the shoes of the original decision maker and has his or her powers.

The full commission can also refer to any information or evidence that it considers relevant. It is not limited to the information that was provided during the original contested application process.

Appealing to the Supreme Court

If a council is dissatisfied with the commission panel's decision, it can appeal that decision to the Supreme Court of Victoria but only on a question of law.⁸⁵ The council must initiate an appeal to the Supreme Court within 28 days of the commission panel's decision.⁸⁶

More information about the Supreme Court

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

Glossary

The Act	<i>Liquor Control Reform Act 1998</i> (Vic)
The commission	Victorian Commission for Gambling and Liquor Regulation
Contested application	When a council objects to a liquor licence application
Kordister's case	Victorian Court of Appeal case of <i>Kordister Pty Ltd v Director of Liquor Licensing & Anor</i> [2012] VSCA 325
LCRA	<i>Liquor Control Reform Act 1998</i> (Vic)
VCAT	Victorian Civil and Administrative Tribunal

Notes

Introduction

- 1 See sections 6, 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H Liquor Control Reform Act 1998 (LCRA) (Vic) – for instance, there are exemptions for florists, bed and breakfasts, hairdressers and butchers.
- 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 Section 6 LCRA
- 6 Sections 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H LCRA
- 7 Section 7 LCRA
- 8 Regulation 9 Liquor Control Reform Act Regulations 2009
- 9 Regulation 10(1)(a) Liquor Control Reform Regulations 2009. This requirement does not apply to limited or pre-retail liquor licences
- 10 Regulations 10(1)(b)(i), (ii) and (iii) Liquor Control Reform Regulations 2009. This requirement does not apply to limited or pre-retail liquor licences
- 11 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
- 12 Section 34(1A) LCRA
- 13 Section 33(2) LCRA
- 14 Section 33(3) LCRA
- 15 Ibid

Section 2

- 16 Section 40 LCRA
- 17 Section 40(1) LCRA
- 18 Section 40(1A) LCRA
- 19 Section 40(2) LCRA
- 20 Section 40(2) LCRA. However, councils can also seek an extension of time if necessary
- 21 Victorian Auditor General's Office 2012, *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*, PP No 141, Session 2010-12, viewed 10 July 2013, <http://www.audit.vic.gov.au/publications/20120620-Alcohol/20120620-Alcohol.pdf>
- 22 *Kordister Pty Ltd v Director of Liquor Licensing & Anor* [2012] VSCA 325

- 23 *Kordister*, n 19, para 188
- 24 Sections 4(1)(a)(i),(ii),(iii),(iv) LCRA
- 25 *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207, paras 270-271
- 26 *Kordister*, n 19, para 20
- 27 *Kordister*, n 19, para 188
- 28 *Kordister*, n 20, paras 270-271
- 29 *Kordister*, n 19, para 124
- 30 O'Brien, P 2013, 'A risk-based approach to harm minimisation in liquor licensing decisions', *Drug and Alcohol Review*, DOI: 10.1111/dar.12038
- 31 Ibid; *Kordister*, n 19, para 124
- 32 *Kordister*, n 19, para 130
- 33 Ibid
- 34 Ibid
- 35 Ibid
- 36 *Kordister*, n 19, para 191
- 37 *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459, para 186
- 38 Ibid
- 39 *Kordister*, n 19, para 191
- 40 Ibid, paras 199-200
- 41 *Kordister*, n 19, paras 57, 192
- 42 *Kordister*, n, 19, para 192
- 43 Ibid, paras 199-200
- 44 Ibid
- 45 Section 40(1) LCRA
- 46 Section 3A(1) LCRA
- 47 Section 3A(2) and section 3AAA LCRA
- 48 Section 3A(3) LCRA
- 49 Section 40(1) LCRA
- 50 Section 3AA LCRA
- 51 *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 venue, for example, so they can access a larger range of specialist wines.

- 52 City of Casey 2012, *Liquor Control Reform Act 1998/ Planning & Environment Act 1987: Council's role, responsibility and opportunity*, viewed 10 July 2013, <http://www.mav.asn.au/policy-services/social-community/community-safety/alcohol-other-drugs/lgaodif-meetings/All%20LGAODIF%20meeting%20resources/Council%20roles%20in%20liquor%20licensing%20in%20Victoria,%20City%20of%20Casey%20-%20Nov%202010.docx>
- 53 Section 3AA LCRA
- 54 For instance, VCAT had held that the granting of a packaged liquor licence to the IGA supermarket in Templestowe Village would not encourage or actively promote underage consumption of liquor: see *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459
- 55 See, for instance, *Nardi v Director of Liquor Licensing* [2005] VCAT 323; *Hansen v Director of Liquor Licensing* [2006] VCAT 2544
- 56 *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459; *Avery v Director of Liquor Licensing* [2001] VCAT 2455
- 57 See the evidence considered in *Nardi v Director of Liquor Licensing* [2005] VCAT 323; *Hansen v Director of Liquor Licensing* [2006] VCAT 2544; *Joshmie Nominees Pty Ltd v Director of Liquor Licensing* [2009] VCAT 2188; *Papas v Director of Liquor Licensing* [2008] VCAT 1944
- 58 *Nardi v Director of Liquor Licensing* [2005] VCAT 323, para 24
- 59 *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459; Kordister, n 19
- 60 Section 4(1)(b) and (c) LCRA
- 61 Section 40(3) LCRA
- 62 *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459
- 63 *Joshmie Nominees v Director of Liquor Licensing* [2009] VCAT 2188
- 64 Section 34(2) LCRA. 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
- 65 Section 174(a) and (b) LCRA
- 66 Section 43 LCRA

Section 3

- 67 Section 42 LCRA
- 68 Sections 94(2) and (4)
- 69 Section 95 LCRA
- 70 Definition of "Contested Application", Section 3(1) LCRA
- 71 Section 47(3) LCRA
- 72 Ibid
- 73 Section 47(3C) LCRA
- 74 Section 47(3D) LCRA
- 75 Commission hearings must be held in public unless the commission determines that the hearing will disclose confidential information, it is in the public interest or in the interests of justice to conduct the inquiry in private: Section 47(3A)(a) LCRA
- 76 Section 47(3C) LCRA
- 77 Section 47(3D) LCRA

Section 4

- 78 Section 153(1) LCRA; Section 151 LCRA
- 79 Section 152; Item 1, 2 and 3 LCRA
- 80 Section 153(2) LCRA

Section 5

- 81 Section 156 LCRA
- 82 Section 155 LCRA
- 83 Section 157(1) LCRA
- 84 Section 157(4) LCRA
- 85 Section 172A(1) LCRA
- 86 Section 172A(2) LCRA

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