

# Decision and reasons for decision

In the matter of an amended application under section 29 of the *Liquor Control Reform Act 1998* by Licensing Inspector Peter Fusinato for variation of Late Night (On-Premises) Licence #31821158 trading as Kay Street Entertainment Complex located at 21-23 Kay Street, Traralgon

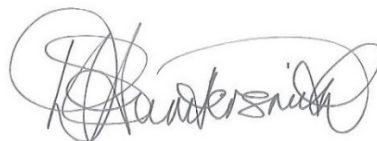
**Commission:** Ms Danielle Huntersmith, Commissioner

**Date of Decision:** 17 June 2022

**Date of Reasons:** 17 June 2022

**Decision:** The Commission has determined to grant the amended application for variation of the licence subject to the conditions set out in Appendix A

**Signed:**



**Danielle Huntersmith**

**Commissioner**

## Background

1. Kay Street Entertainment Complex is a bar and nightclub located at 21-23 Kay Street, Traralgon in the Latrobe Valley (**the Premises**).
2. On 21 January 2020, the Commission received an application by Licensing Inspector Peter Fusinato (**the Applicant**) for a variation to the category and the trading hours of Late Night (On-Premises) Licence #31821158 (**the Licence**) under section 29 of the *Liquor Control Reform Act 1998* (**the LCR Act**)<sup>1</sup> for the Premises (**the Application**). The Licence is held by Cush Enterprises Pty Ltd (**the Licensee**).
3. Specifically, the Applicant sought to vary the category of the Licence to an on-premises licence and reduce the end of trading hours on any given day from 4am to 1am.
4. The Application was made on the basis of the Applicant's expressed concerns regarding (in summary) amenity issues and misuse or abuse of alcohol arising out of alleged incidents that purportedly occurred sufficiently proximate to the area in which the Premises is situated.
5. In accordance with section 30(a)(i), the Commission gave a copy of the Application to the Licensee, and the Licensee subsequently informed the Commission on 26 February 2020 that it objected to the Application on the grounds (in summary) that the Application was not supported by the objects of the LCR Act nor was an appropriate application to be brought under section 29. The Licensee also contested the factual accuracy of alleged incidents as cited by the Applicant.
6. Between February 2020 and June 2022, there were various further documents and submissions filed by the Applicant and the Licensee, and various directions hearings, as well as periods of delay due to the effects of the COVID-19 pandemic.
7. On 2 June 2022, after discussions with the Licensee, the Applicant submitted an amended application proposing amended licence conditions as set out in **Appendix A (the Amended Application)**.
8. The Commission notes that the Amended Application did not seek to change the category of licence at the Premises.
9. On 6 June 2022, the Licensee advised that it did not object to the granting of the Amended Application.
10. On 6 June 2022, the Licensee requested that any variation of the Licence by reason of the Amended Application not take effect until 4 July 2022 to allow for preparation time to implement the amended proposed licence conditions, and on the same day the Applicant advised it had no objection to the

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<sup>1</sup> All references to legislation are references to the LCR Act.

proposed effective date of 4 July 2022.

## Legislation and the Commission's task

11. As discussed above, the Amended Application is uncontested.
12. The Commission must either:
  - (a) grant the Amended Application, and if so, determine whether to do so subject to conditions<sup>2</sup>;
  - (b) or refuse to grant the Amended Application<sup>3</sup>.
13. The Commission is not bound to accept any proposed licence conditions made by way of agreement with respect to an application under section 29; nor is there a power vested in the relevant parties to resolve such a matter by consent. However, it is open to the Commission to consider a possible outcome proposed by the parties and give it appropriate weight when exercising its discretion to grant or refuse the Amended Application.
14. In deciding whether to grant or refuse the Amended Application under section 44(1), the Commission must have regard to the objects of the LCR Act and, in particular, harm minimisation, which is the primary object.
15. The Commission may also refuse to grant the Amended Application on the basis of any of the matters listed in section 44(2)(b), which relevantly include:
  - (a) *the granting of the application would detract from or be detrimental to the amenity of the area in which the Premises to which the application relates are situated; or*
  - (b) *the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.*
16. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.

### On-the-papers determination of the Amended Application

17. With the consent of the parties the Commission determined to hear the matter 'on the papers', without an oral hearing.

### Whether to exercise discretion to grant or refuse the Amended Application having regard to the objects of the LCR Act

18. The Commission has considered the proposed licence conditions contained in the Amended

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<sup>2</sup> LCR Act, sections 44 and 49.

<sup>3</sup> LCR Act, section 44.

Application which, in effect, provide an outcome that the parties submit is appropriate. Having regard to the objects of the LCR Act in considering the Amended Application, the Commission is satisfied that there are no grounds for refusal under section 44(2).

19. The Commission notes that the proposed licence conditions as set out in Appendix A include a reduction in late night trading hours and reduced availability of drinks with a higher alcohol content as well as the introduction of ID scanners.
20. The Commission considers the proposed licence conditions as set out in Appendix A will assist in addressing any current amenity concerns arising out of the operation of the Licence and will assist in reducing the risk of alcohol-related harm.
21. The Commission has also taken into account the Licensee's request for any variation of the Licence by reason of the Amended Application to not take effect until 4 July 2022 to allow for essential preparation time in implementing the amended proposed licence conditions and notes that the Applicant does not object to the effective date of 4 July 2022. In coming to a decision to impose a condition to that effect, the Commission has had regard to the work that will likely be involved for the Licensee in arranging installation of ID scanners so as to comply with the proposed licence conditions as set out in Appendix A.
22. Accordingly, the Commission considers it appropriate that the varied conditions to be imposed on the Licence by reason of granting the Amended Application will not take effect until 4 July 2022.

## Decision

23. Based on the reasons set out above, the Commission is satisfied that granting the Amended Application is appropriate in the circumstances.
24. The Commission has determined to grant the Amended Application subject to the conditions set out in **Appendix A**.

**The preceding 24 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith (Commissioner).**

# Appendix A

The additional and varied conditions as specified below will take effect on and from 4 July 2022.

## Additional conditions

After the hours of 1:00 a.m. the licensee shall not serve any drink (commonly referred to as a “shot”, “slammer”, “bomb” or a “shooter”) that contains 30 ml or more of spirits or liqueur and that is designed to be consumed rapidly.

ID scanners are to operate at the entrances of the premises. A copy of the scanned data must be available on request for immediate viewing or removal by Victoria Police, or a person authorised in writing by the Commission, or otherwise retained for at least one month. If ID scanners cease to operate for reasons outside the Licensee's control, the Licensee is to notify the relevant Licensing Inspector as soon as practicable, and take all steps to fix or replace the ID scanners as soon as possible.

The Licensee is not required to refuse entry to patrons for the period in which ID scanners are non-operational. The licensee must display signage at, or near, any public entrance to the premises in a manner that enables patrons to be notified of the operation of the ID scanners, and the manner in which the information scanned may be used, before patrons are required to produce ID. The sign should be placed in a position to allow the patron to either give consent to the collection of his or her personal information or decide not to enter the licensed premises. It is the licensee's responsibility to comply with the Privacy Act 1988 (Cth) and the Australian Privacy Principles regarding personal information recorded by the ID scanners operating on the premises.

## Varied conditions

### Trading Hours

Sunday	Between 10am and 2am the following morning
Good Friday & ANZAC Day	Between 12 noon and 2am the following morning
Saturday	Between 7am and 3am the following morning
Eve of Public Holidays (Sunday)	Between 10am and 3am the following morning
Eve of Public Holidays (Any other day)	Between 7am and 3am the following morning
On any other day	Between 7am and 2am the following morning

### Special Occasion Trading Hours

Until 3:00am the following morning on up to six (6) single additional dates per calendar year to be nominated each year by the Licensee with no less than four (4) weeks written notice to the Commission and Victoria Police prior to each event.

Special Occasion dates may only be nominated for events featuring local, regional or international music artists where pre-sale tickets are available and entry to the event is restricted to ticketholders.