

Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Dya Australia Pty Ltd for an internal review of a decision by a delegate to grant an application for a renewable limited licence for the premises trading as Dya Australia Pty Ltd, located at 252 Graham Street, Port Melbourne

Commission:

Mr John Larkins, Deputy Chair
Mr James O'Halloran, Deputy Chair
Ms Susan Timbs, Commissioner

Date of Decision:

31 August 2023

Date of Reasons:

31 August 2023

Decision:

The Commission has determined to set aside the decision of the Delegate and grant the application subject to the conditions set out in Appendix A

Signed:



John Larkins, Deputy Chair

Background

Original Application

1. On 12 April 2023, Dya Australia Pty Ltd (**Applicant**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*¹ for a renewable limited licence for the premises at 252 Graham Street, Port Melbourne (**Premises**) trading as Dya Australia Pty Ltd (**Original Application**).
2. By the Original Application, the Applicant sought a renewable limited licence to provide liquor in a limited fashion to customers who have pre-booked public or private creative workshops and “paint and sip” classes which are 2.5 hours in duration.
3. The Applicant proposed to serve 17 lines of liquor, comprising beer, wine and pre-mixed cocktails in bottles or cans.
4. The Applicant sought to trade between 9am and 9:30pm on Monday to Sunday.
5. The Applicant sought a maximum capacity of 90 patrons across three studios.
6. In accordance with section 33 of the LCR Act, a copy of the Original Application was served on the Chief Commissioner of Police and the Licensing Inspector² (together, **Victoria Police**) and the City of Port Phillip (**Council**) on 12 April 2023. Victoria Police and the Council did not object to the Original Application.
7. On 19 May 2023, the Delegate granted the Original Application (**Original Decision**). The Delegate specified the following “special conditions” in the Applicant’s renewable limited licence:

The supply of liquor is limited to patrons who are participating in a pre-booked painting or creative class.

The duration of a class supplying liquor must not exceed three hours.

The supply of liquor is limited to a maximum of five classes per week.

The supply of liquor is limited to a maximum of 15 lines of liquor.

The supply of liquor is limited to liquor produced in Victoria.

The maximum number of patrons at a pre-booked class supplying liquor is 30 patrons.

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

² As to the meaning of “licensing inspector”, see section 3.

Application for Internal Review

8. On 21 May 2023, the Applicant applied for an internal review of the Original Decision (**Review Application**).
9. In completing the Review Application, the Applicant provided the following reasons for applying for review of the Original Decision: “The license limit [sic] the company [to] 5 classes per week and 30 people at one time. In the floor plans you approved you can see we have 3 studios and we run classes at the same time in some days (usually on Saturdays and Sundays).”
10. The Applicant sought the following amendments to the special conditions:
 1. *"The supply of liquor is limited to a maximum of 7 time slots of 3 hours per week (meaning we can supply alcohol to all classes at the same time)*
For example- 6:30pm-9:30pm on a Saturday will consider one time slot across all the red floor plan spaces.
 2. *"The maximum number of patrons at a pre-booked class supplying liquor is 85 patrons in total."*
The floor plans approved as allows [sic] up to 95 people according to the square per meter liquor limitation so we would like to expend [sic] that to the whole venue and not per class.³
11. The Applicant stated that there will be at least four team members when the Premises is at full capacity and at least two RSA managers that will be supplying the alcohol.

Legislation and the Commission's task

The Commission's internal review power

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

³ The Applicant subsequently clarified that a maximum of 95 patrons was sought.

- (b) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.⁴
- 14. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Original Application. In this case, the Commission must decide whether to:
 - (a) grant the Original Application and, if so, whether to do so subject to conditions;⁵
or
 - (b) refuse to grant the Original Application.⁶

Determination of an uncontested application

- 15. Under the LCR Act, an application for the grant of a licence may be contested or uncontested. The Original Application was uncontested, as no objections were received under division 5 of part 2 within the relevant period.⁷
- 16. Where an application is an uncontested application, pursuant to section 44(1):

Subject to Division 3, the Commission must grant or refuse to grant an uncontested application at any time after the expiry of the period for objection under Division 5 (or that period as extended under section 174).
- 17. Section 44(2) empowers the Commission to refuse to grant the Review Application on various grounds, including that:
 - (a) the granting of the application would be conducive to or encourage harm (section 44(2)(b)(ii)); and
 - (b) the application has not been made, displayed or advertised in accordance with the LCR Act (section 44(2)(b)(v)).

Exercising the internal review power

- 18. Sections 172D(3) and 172U(3)(b) require the Commission, in exercising its internal review power, to have regard to the objects of the LCR Act and any decision-making

⁴ Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

⁵ LCR Act, sections 44, 49 and 157.

⁶ LCR Act, sections 44 and 157.

⁷ LCR Act, section 3(1) (definition of “uncontested application”).

guidelines in respect of the regulation of liquor issued by the Minister. The objects of the LCR Act are set out at section 4(1) as follows:

The objects of this Act are—

- (a) *to contribute to minimising harm including by—*
 - (i) *providing adequate controls over the supply and consumption of liquor; and*
 - (ii) *ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and*
 - (iii) *restricting the supply of certain other alcoholic products; and*
 - (iv) *encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and*
- (b) *to facilitate the development of a diversity of licensed facilities reflecting community expectations; and*
- (c) *to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and*
- (d) *to regulate licensed premises that provide sexually explicit entertainment.*

19. Section 4(2) further provides that:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation.⁸

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

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

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

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

- (a) must consider all the information, material and evidence before the original decision maker;⁹ and
- (b) may consider further information, material or evidence.¹⁰

22. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of an uncontested application is ultimately

⁸ See further *Kordister Pty Ltd v Director of Liquor Licensing* (2012) 39 VR 92; [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

⁹ LCR Act, section 157(2).

¹⁰ LCR Act, section 157(3).

to be made pursuant to sections 44(1) and 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.

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

Conduct of an inquiry

24. Section 44(4) provides that the Commission may have regard to any matter it considers relevant and make any enquiries it considers appropriate. The Commission is not required to give any person an opportunity to be heard concerning the application.
25. Section 172W(3) provides that the Commission is not bound by the rules of evidence but may inform itself in any way it thinks fit, and is bound by the rules of natural justice.

Other sections of the LCR Act relevant to this matter

Renewable limited licences

26. A limited licence may be a temporary limited licence or a renewable limited licence.¹¹ Pursuant to section 14(1B), a renewable limited licence authorises the licensee to supply liquor at the times determined by the Commission and specified in the licence, and it may be renewed in accordance with the LCR Act. A limited licence may further be subject to any conditions determined by the Commission and specified in the licence.¹²
27. Section 26(1) provides that the Commission may grant a limited licence only if it is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature (**Scale and Scope Requirement**).

Material before the Commission

28. The Commission on review had before it, and considered, all the materials before the Delegate. The Commission also received and considered the following materials:
 - (a) Original Decision of the Delegate dated 19 May 2023;
 - (b) Review Application received on 21 May 2023;
 - (c) submissions received from the Applicant on 26 July 2023;

¹¹ LCR Act, section 14(1).

¹² LCR Act, section 14(2)(c).

- (d) maximum patron capacity report received from the Applicant on 3 August 2023;
and
 - (e) email communication received from the Applicant on 17 August 2023.
29. The Commissioners viewed the Premises on 6 July 2023.

Issues for determination on review

30. In deciding whether to exercise its discretion to affirm, vary or set aside the Original Decision and in turn grant or refuse the Original Application that is the subject of the Review Application, the Commission must determine the following key issues:
- (a) whether the Scale and Scope Requirement is met;¹³ and
 - (b) whether the grant of the Review Application would be conducive to or encourage harm,¹⁴ or be contrary to the objects of the LCR Act, in particular the object of harm minimisation.¹⁵

Whether the Scale and Scope Requirement is met

31. As stated above, the Commission may grant a renewable limited licence only if satisfied that the Scale and Scope Requirement is met — that is, that the scale and scope of the supply of liquor the subject of the licence is limited in nature.¹⁶
32. There are no statutory signposts which prescribe specific factors for the Commission to consider in determining whether the Scale and Scope Requirement is met. On previous occasions, the Commission has considered “the nature, location, duration or frequency of hours of operation of the licence in question” as relevant to the Scale and Scope Requirement.¹⁷
33. The Commission considers that the nature of the licence sought by the Applicant is limited. The Commission notes that the supply of liquor is limited to patrons who are participating in a pre-booked painting or creative class. In the submissions received on 26 July 2023, the Applicant proposed to offer 10 lines of liquor produced in Victoria,

¹³ LCR Act, section 26(1). See [27] above.

¹⁴ LCR Act, section 44(2)(b)(ii).

¹⁵ LCR Act, sections 4 and 172D(3). The Commission notes that, in determining this matter, it has also considered each of the grounds set out in section 44(2).

¹⁶ LCR Act, section 26(1).

¹⁷ See decision of *Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-Internal Review)* [2016] VCGLR 19, [61].

comprising three types of beer, three types of wines and four types of pre-made cocktails in a can.

34. The Commission also considers that the frequency of hours of operation for the supply of liquor sought by the Applicant is limited, being a maximum of seven class times per week.
35. Lastly, the Commission considers that the duration of hours of operation sought by the Applicant is limited. In particular, the duration of a class supplying liquor must not exceed three hours. Further, the trading hours for the Premises are shorter than the ordinary trading hours specified in the LCR Act for other licence types.¹⁸
36. Consequently, the Commission is satisfied that the Scale and Scope Requirement is met.

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

37. An application may be refused if granting the application would be conducive to or encourage harm.¹⁹ In addition, the Commission must exercise its discretion whether or not to grant a licence with regard to the objects of the LCR Act, particularly the primary object of harm minimisation.²⁰
38. The Commission notes that Victoria Police did not raise any concerns in relation to harm.
39. In the submissions received on 26 July 2023, the Applicant stated that it will have an RSA responsible person for all events where alcohol is supplied.
40. In an email dated 17 August 2023, the Applicant stated that it was possible however very unlikely that unaccompanied minors would be on the Premises at any time when alcohol is available. That was said to be because children's workshops without adults are weekdays during the day finishing by 4pm, whereas adults' events are usually weekends and nights. The Applicant also stated that, during children's birthday parties on the weekend, they have parents attending in the space. In any event, the Applicant said that the different classes would be in separate studios such that there would not be any crossover and the minors would not have access to alcohol.

¹⁸ See LCR Act, section 3(1) (definition of 'ordinary trading hours'), which specifies the ordinary trading hours for a general licence, a late night (general) licence, an on-premises licence, a late night (on-premises) licence, a restaurant and cafe licence, a club licence, a packaged liquor licence, a late night (packaged liquor) licence, a remote seller's packaged liquor licence and a producer's licence.

¹⁹ LCR Act, section 44(2)(b)(ii).

²⁰ LCR Act, sections 4 and 172D(3).

41. With the imposition of the conditions in Appendix A, the Commission is satisfied that adequate controls exist over the supply and consumption of liquor at the Premises and that any harm should be minimised. Accordingly, the Commission considers that the grant of a licence in this instance would not be conducive to or encourage harm and would not be contrary to the LCR Act's object concerning harm minimisation.

Decision on review

42. The Commission is satisfied that the Review Application meets all legislative requirements set out above. Accordingly, based on the reasons set out above, the Commission is satisfied that granting the licence the subject of the Review Application is appropriate in the circumstances.
43. The Commission has therefore determined to set aside the Original Decision and grant the licence the subject of the Review Application subject to the conditions set out in Appendix A.

The preceding 43 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chair), Mr James O'Halloran (Deputy Chair) and Ms Susan Timbs (Commissioner).

Appendix A

Type of licence

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

Amenity

The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

Responsible service of alcohol

At least one person in each class involved in the service of liquor on the licensed premises must have completed an approved Responsible Service of Alcohol course within the preceding three years. All copies of the RSA certificate for each member of staff must be at one central place within the licensed area for inspection if requested by a member of Victoria Police or a Liquor Inspector.

Special conditions

The supply of liquor is limited to patrons who are participating in a pre-booked painting or creative class.

The duration of a class supplying liquor must not exceed three hours.

The supply of liquor is limited to a maximum of seven class times per week. A maximum of three classes may run at the same time.

The supply of liquor is limited to a maximum of 10 lines of beer, wine or pre-mixed cocktails produced in Victoria.

All liquor is to be pre-ordered by persons who confirm at the time of ordering that they are 18 years or older.

The licensee must verify the age of any person being supplied liquor by requiring the person to produce an evidence of age document.

Any time liquor is being supplied in a class, persons under the age of 18 are required to be accompanied by a responsible adult.

Maximum capacities

95 patrons

Trading hours

| | |
|-------------------------|---------------------------|
| Sunday | Between 10am and 9.30pm |
| Good Friday & ANZAC Day | Between 12noon and 9.30pm |
| On any other day | Between 9am and 9.30pm |