



Victorian Commission for Gambling and Liquor Regulation

REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Rachelle Watson for the internal review of a decision to grant a major event licence in respect of a business trading as St Jerome's Laneway Festival 2019, located at Footscray Park, 40 Maribyrnong Boulevard, Footscray 3011.

Commission on review: Ms Deirdre O'Donnell, Deputy Chair
Mr Des Powell AM, Commissioner
Dr Dina McMillan, Commissioner

Date of hearing: 31 January 2019

Date of decision 1 February 2019

Date of reasons: 24 April 2019

Appearances: Mr John Larkins, Counsel for the Licensee
(instructed by Ms Anthea Thermos of Ryan
Commercial Lawyers)
Mr Lee Konstantinidis, Counsel Assisting the
Commission

Decision: The Commission has determined to affirm the
decision of the delegate.

Signed:

A handwritten signature in blue ink, appearing to read 'Deirdre O'Donnell'.

Deirdre O'Donnell
Deputy Chair



REASONS FOR DECISION

BACKGROUND

Original Application

1. On 12 December 2018, Ms Rachele Watson (**the Licensee**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for a major event licence (**the Original Application**) under section 14A of the *Liquor Control Reform Act 1998* (**the LCR Act**) for an event known as *St Jerome's Laneway Festival* (**the Event**) to be held at the premises located at Footscray Park, 40 Maribyrnong Boulevard, Footscray 3011 (**the Premises**).
2. The Original Application sought to supply liquor at a live music event on Saturday 9 February 2019 involving multiple artists performing across several stages, which expected to attract up to 20,000 patrons. The Original Application sought to licence most of the area of Footscray Park for the supply and consumption of liquor between 11:00 am and 10:30 pm on Saturday 9 February 2019.
3. Additionally, the Original Application sought the Commission's approval to permit patrons aged 16 and 17 to attend the Premises whether or not they are in the company of a responsible adult, in accordance with section 120(2) of the LCR Act.
4. The Original Application consisted of:
 - (a) an application for a major event licence;
 - (b) a red line plan for the Premises;
 - (c) a document titled 'Draft Alcohol Management Plan 2019';
 - (d) a document titled 'Under 18 (16+) Patron Management Plan'; and
 - (e) a document titled 'Event Plan & Preliminary POPE Application'.



5. On 13 December 2018, a copy of the Original Application was provided to Maribyrnong City Council (**the Council**) pursuant to section 33 of the LCR Act.¹ No response was received from Council
6. Also on 13 December 2018, a copy of the Original Application was given to the Chief Commissioner of Police and the Licensing Inspector for Victoria Police (together, **Victoria Police**).² On 21 January 2019, Victoria Police informed the Commission that it did not object to the grant of the Original Application.
7. Section 120(1) of the LCR Act relevantly provides that if a person under the age of 18 years is on licensed premises when not in the company of a responsible adult, the licensee or permittee is liable to a criminal penalty. Subsection 120(2) of the LCR Act allows the Commission to endorse a licence with the Commission's approval for unaccompanied minors to be on licensed premises, in which case the licensee or permittee is not subject to a criminal penalty.
8. On 23 January 2019, a delegate of the Commission (**the Delegate**) granted the Original Application in part (**the Original Decision**). While major event licence No 80000879 (**the Licence**) was granted, the Delegate did not endorse the Licence with approval pursuant to subsection 120(2), as referred to in paragraph 7 above.
9. The Delegate explained why section 120(2) approval was not provided in the reasons for the decision. Summarised, while the Delegate was not concerned by the risk that the Licensee might supply liquor directly to patrons aged 16 and 17 (**primary supply**), the Delegate considered that there was an unacceptable risk of liquor being supplied by overage patrons to patrons aged 16 and 17 also attending the Event (**secondary supply**). In the Delegate's view, insufficient measures were in place to manage this risk given the size of the Premises which the Original Application sought to licence and the large number of patrons expected to attend the Event. The Delegate considered that the Event was 'high-risk' in terms of alcohol-related harm, and that the presence of minors would serve to emphasise this risk even further.
10. Upon granting the Licence, the Delegate imposed conditions upon the licence. These are paraphrased as follows:

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

² LCR Act, section 33(3), paraphrased, provides that the Commission is not required to give a copy of the application to the Chief Commissioner of Police or the relevant municipal Council in applications for major event licences but the Commission may do so if it thinks fit.



- (a) that BYO liquor not be permitted anywhere on the Premises;
- (b) that glassware be allowed in the VIP area only, but must not be removed from that area;
- (c) that spirits and liqueurs supplied must be mixed with a non-alcoholic mixer and have a maximum volume of 30ml of spirit/liqueur per drink;
- (d) that the Licensee must not supply 'shots' (drinks designed to be consumed rapidly);
- (e) that all drinks must have a maximum alcohol content of 5% by volume (except wine);
- (f) that between 11.00 am and 8.30 pm, the Licensee shall not serve more than four (4) containers of liquor per customer, per customer per time; and
- (g) that between 8.30 pm and 10.30 pm, the Licensee shall not serve more than two (2) containers of liquor per customer, per time.

Application for Internal Review

11. On 23 January 2019, the Licensee applied for the internal review of the Original Decision (**the Review Application**). The Review Application again sought approval for patrons aged 16 and 17 to be unaccompanied by an adult on the Premises, pursuant to section 120(2) of the LCR Act.
12. In the Review Application, the Licensee submitted that the Delegate gave insufficient weight to the documents referred to in paragraphs 4(c), 4(d), and 4(e) in making the Original Decision. The Licensee also submitted that insufficient weight was given to her experience in the hospitality industry, in particular to her experience in managing events of a similar nature to the Event and to the success of the previous iterations of the Event. The Licensee stated that the Original Application was supported by the Council and by the local branch of Victoria Police.
13. As the Council did not object or provide information with respect to the Original Application it was not notified of the Review Application.
14. On 30 January 2019, the Commission served Victoria Police with a copy of the Review Application. Victoria Police informed the Commission that it did not object to the Review Application.



LEGISLATION AND THE TASK BEFORE THE COMMISSION

15. The Review Application is made pursuant to section 153 of the LCR Act. The Original Decision of the Delegate is a reviewable decision under section 152 of the LCR Act and the Licensee is an eligible person under Division 2 of Part 9 of the LCR Act.

16. Pursuant to section 157(1) of the LCR Act the specific task for the Commission with respect to the Review Application is to make a fresh decision that either:

- (a) affirms or varies the reviewable decision; or
- (b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.³

17. In effect, on internal review, the Commission stands in the shoes of the original decision maker and makes a fresh decision with respect to the Review Application. In doing so, it must consider all information, material and evidence before the Delegate.⁴ It may also consider further information, material or evidence in making its decision.⁵

Conduct of an inquiry

18. Section 34 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**VCGLR Act**) provides that the Commission may conduct an inquiry in any manner it considers appropriate. Relevant provisions governing the conduct of an inquiry by the Commission in this matter include:

- (a) section 33 of the VCGLR Act, which provides, *inter alia*:

“(1) The Commission may conduct an inquiry for the purposes of performing its functions or duties, or exercising its powers under this Act, gambling legislation or liquor legislation.

...

- (3) *When conducting an inquiry for the purposes of performing its functions under section 9(1)(a), (b), (c) or (d) the Commission is taken to be a board appointed*

³ Sub-sections 157(2) to (5) of the Act further prescribe the manner in which the Commission is to undertake internal reviews.



by the Governor in Council and Division 5 of Part I (including section 21A) of the Evidence (Miscellaneous Provisions) Act 1958, as in force immediately before the repeal of that Division, applies accordingly.”

and;

(b) section 25(3) of the VCGLR Act, which provides:

“In performing a function or duty the Commission—

(a) except when exercising a power under Division 5 of Part I of the Evidence (Miscellaneous Provisions) Act 1958, is not bound by the rules of evidence but may inform itself in any way it thinks fit;

(b) is bound by the rules of natural justice.”

Determination of an uncontested application

19. Where an application is uncontested pursuant to section 44(1) of the LCR Act:

“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).”

20. Section 44(4) provides that, before exercising its discretion to grant or refuse an uncontested application under subsection (1), the Commission:

“(a) in respect of an uncontested application, may have regard to any matter the Commission considers relevant; and

(b) may make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.”

Exercising the internal review power

21. Section 9(3) of the VCGLR Act provides that:

“The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003, the Liquor Control Reform Act



1998, the Casino Control Act 1991, the Racing Act 1958 or any other Act, have regard to the objects of the Act conferring functions on the Commission.”⁶

22. Section 9(4) of the VCGLR Act further provides that:

“The Commission must, when performing functions or duties or exercising its powers under gambling legislation or liquor legislation, have regard to any decision-making guidelines issued by the Minister under section 5.”

23. Accordingly, in exercising its discretion to either grant or refuse an uncontested application under section 44(1) of the LCR Act, the Commission must have regard to the objects of the LCR Act.

24. The objects of the LCR Act are set out in section 4(1) as follows:

“(1) The objects of this Act are—

- (a) to contribute to minimising harm arising from the misuse and abuse of alcohol, 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*

⁶ There are no objects specified by the VCGLR Act itself.



- (d) *to regulate licensed premises that provide sexually explicit entertainment.*"

25. Further to this, section 4(2) of the LCR Act 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 and the risks associated with the misuse and abuse of alcohol."

26. The Court of Appeal of the Victorian Supreme Court determined that harm minimisation primary regulatory object of the LCR Act in the case of *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325 (**Kordister**), and therefore the primary consideration in liquor licensing decisions'.⁷ However, as was also noted by the Court of Appeal, 'this is not to say ... that it [harm minimisation] is to be taken into account, or given such weight, to the exclusion of the other objects'.⁸

27. Pursuant to section 44(2) of the LCR Act, the Commission may refuse to grant the Original Application on the grounds, *inter alia*:

- (a) that the Licensee for the grant of a licence is not a suitable person to hold or carry on business under the licence (section 44(2)(a) of the LCR Act);
- (b) that the grant 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 (section 44(2)(b)(i) of the LCR Act); or
- (c) that the grant of the application would be conducive to or encourage the misuse or abuse of alcohol (section 44(2)(b)(ii) of the LCR Act).

28. Section 3AA of the LCR Act lists factors that may be taken into account in determining whether a proposed variation would detract from or be detrimental to the amenity of an area.

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

⁷ See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

⁸ See *Kordister* [2012] VSCA 325, at [188] per Tate JA.



Major event licences

30. The grant of a major event licence is subject to sections 14A, 14B and 26A of the LCR Act.

31. Section 14A of the LCR Act provides that:

(1) A major event licence authorises the licensee to supply liquor in relation to a major event at the times determined by the Commission subject to section 15A and specified in the licence.

(2) A major event licence is subject to—

(a) if the licensee is a body corporate, the condition set out in section 18 (approval of directors); and

(b) any other conditions determined by the Commission and specified in the licence.

32. Under the LCR Act, a major event means ‘an event determined or taken under s14B of the LCR Act to be a major event.’ Relevant to this application, section 14B(3) of the LCR Act states that an event is taken to be a major event if the Commission determines that the event is likely to attract more than 5000 patrons, which the Commission may determine by considering the range of factors in section 14B(5). For the purposes of the Review Application, the Commission was informed on the date of the Hearing that the Event was expected to sell 17,000 tickets.

33. Section 26A of the LCR Act states that the Commission may only grant a major event licence if satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature (see paragraph 60 below). Further, in accordance with section 14A of the LCR Act, a major event licence is subject to any other condition determined by the Commission and specified in the licence.

Allowing minors on licensed or authorised premises

34. Section 120(1) of the LCR Act provides that:

(1) If a person under the age of 18 years—

(a) is on licensed premises or any authorised premises; and

(b) is not—

(i) in the company of a responsible adult; or



- (ii) *on the premises for the purpose of partaking of a meal; or*
- (iii) *in the case of a licence under which accommodation is provided, a resident of those premises—*

the licensee or permittee is guilty of an offence.

35. Subsection 120(2) provides that 120(1) of the LCR Act does not apply, inter alia:

(a) *to the presence on any part of the licensed premises or authorised premises of a person under the age of 18 years at any time at which—*

(i) *entertainment for or mainly for people under the age of 18 years is provided on that part of the premises in accordance with the approval of the Commission and any conditions to which that approval is subject; and*

(ii) *liquor is not supplied, consumed or made available on that part of the premises; or*

.....

(e) *to the presence on licensed premises or authorised premises of a person under the age of 18 years in accordance with the approval of the Commission and any conditions to which that approval is subject.*

MATERIAL BEFORE THE COMMISSION

36. The Commission on review had before it, and considered, all the material before the Delegate as referred to in paragraph 4.

37. The Commission also considered the following documents:

- (a) the Original Decision and reasons of the Delegate dated 23 January 2019;
- (b) the application for internal review dated 23 January 2019;
- (c) correspondence from Paul Ryan of Ryan Commercial Lawyers dated 23 January 2019, attaching the application for internal review form and requesting a hearing before the Commission;
- (d) written submissions of the Licensee;



- (e) a series of documents provided to the Commission on 29 January 2019, including:
 - (i) the Curriculum Vitae of the Licensee;
 - (ii) a document titled *St Jerome's Laneway Festival Melbourne Youth Policy*;
 - (iii) a document titled *Crowd Care Brief*;
 - (iv) a document titled *Laneway Festival Melbourne 16+ Mitigation strategies*;
- (f) documents received by the Commission on 30 January 2019, including:
 - (i) an updated Alcohol Management Plan to replace the version submitted with the Original Application;
 - (ii) a document titled *Appendix A - Laneway Festival Melbourne 16+ Mitigating Strategies* to replace the version submitted on 29 January 2019;
 - (iii) a letter from Russell Steele of Russell Steele & Associates Pty Ltd;
 - (iv) a site plan with the lighting overlay marked;
 - (v) an email from Senior Sergeant Ely Reynolds of the Footscray Police Station, dated Friday 7 December 2018;
 - (vi) an updated Site Plan with a Responsible Service of Alcohol Overlay;
 - (vii) documentation regarding 'Mojo Kombucha' and 'Girls Rock' programs;
 - (viii) a summary of the oral evidence of Mr Jerome Borazio; and
- (g) correspondence from the Applicant dated 31 January 2019 enclosing conditions proposed by the Licensee to apply if the Review Application were granted.

38. As the Event was scheduled to occur on 9 February 2019, the Commission heard the matter at urgent notice. Accordingly, on 31 January 2019, the Commission conducted a public hearing in relation to the Review Application (**the Hearing**). At the Hearing, the Licensee was represented by Mr John Larkins of Counsel, instructed by Ms Anthea Thermos of Ryan Commercial Lawyers.



39. At the Hearing, Mr Jerome Borazio and the Licensee gave evidence in support of the Review Application. Mr Larkins of Counsel made submissions during the Hearing.

Licensee's Submissions

40. At the Hearing, the Licensee submitted that she was the Event Manager and General Manager for the Event as well as the Licensee. She also submitted that she was experienced as a licensee of large music festivals, some of which catered to underage patrons. She referred to 'Lost Picnic', and 'Big Day Out' as examples of underage music events where she was the licensee.

41. The Licensee submitted that while there would be a zone within the licensed area, measuring approximately 40m², designated for the exclusive use of patrons aged 16 and 17, that this was intended to be a respite area rather than an area from which underage patrons could enjoy the Event's various performances.

42. The Licensee informed the Commission that as a condition of the grant of the Licence the subject of the Review Application, the Event organisers effectively proposed to double the number of RSA staff at the Event, compared to previous iterations of the Event, in order to mitigate the possible risks of harm associated with the presence of unaccompanied minors on licensed premises.

43. The Licensee submitted that several managerial and operational measures would be in place for the Event, which mitigated the risks associated with the Event and the proposed section 120 approval, the subject of the Review Application. These included proposed conditions which are referred to in paragraph 47, as well as documents detailing the proposed management of the Event referred to in paragraphs 37(e)(ii), 37(e)(iii), 37(e)(iv), 37(f)(i) and 37(f)(ii).

44. The Licensee submitted that she was strongly against the assignment of 'dry' and 'non-dry' areas at festivals as she believed that this could create an incentive for patrons to stockpile alcohol and drink in an irresponsible manner prior to moving to alcohol-free areas. The Licensee did not propose to make any area of the Premises alcohol-free aside from the '16+ Zone' identified in the Alcohol Management Plan and referred to in paragraph 37(f)(i) above.

45. While the Licensee intended for the Event to cater for up to 20,000 patrons, she informed the Commission that based on the number of ticket sales as at the date of the Hearing, the number of attendees was expected to be closer to 17,000. The Licensee indicated that of



this number, approximately 15 per cent of the Event's ticket sales were to patrons aged 16 and 17.

46. At the Hearing, the Licensee proposed that, if the Commission were not minded to endorse a section 120 approval on the Licence, then it should consider imposing a condition on the grant of the Licence that *"persons under the age of 18 years are not permitted to be on the licensed premises unless they are in the company of a parent, legal guardian or responsible adult, and are wearing a wristband that indicates their underage status."* In effect, this would have been a restatement of the prohibition relating to unaccompanied minors on licensed premises as contained in section 120.⁹

47. Following the Hearing, Counsel for the Licensee provided draft conditions (**the Proposed Conditions**) to the Commission for its consideration in determining the Review Application. The Proposed Conditions were as follows:

"1. All bar areas will have present at least two (2) crowd controllers, licensed under the Private Security Act and trained in responsible service of alcohol, to monitor patrons, check the wristbands of patrons attempting to enter the bar area and ensure that liquor is not supplied in any way contrary to the Liquor Control Reform Act 1998.

2. All bar areas will have present two (2) roving crowd controllers to monitor the secondary supply of alcohol. Those crowd controllers are to wear high visibility reflective vests that state "RSA Officer", no less than 10cm in height.

3. All bar areas will have present one (1) static crowd controller to monitor and supervise the potential secondary supply of alcohol.

4. A minimum of 20 Crowd Care officers to be in attendance during the licensed hours of the event.

5. Free bottled water will be distributed to all 16+ patrons on arrival to the event.

6. The 16+ Crowd Care Area will not be licensed and will be increased to commence at Grid Reference N 13 to Grid N 15.

7. A Compulsory 16+ Guardian Register will be maintained within the 16+ Crowd Care Area.

⁹ The Section 120 prohibition is referred to in paragraph 7.



8. *A bar supplying only non-alcoholic product is to be available for 16+ patrons.*
9. *1800 - Laneway Hotline number is to be operational and monitored for the duration of the event.*
10. *At all times the Licensee will adhere to the following plans:*
 - (i) *Alcohol Management Plan and in particular to the commitments set out under the heading PATRON/ LIQUOR MANAGEMENT 18 (16+) Additional Measures p.6; and*
 - (ii) *16+ Zone p7.*
11. *All patrons to be made aware at entry via prominent signage that the event is 16+ and include minors on the event site.*
12. *"Under 18? No Supply" signage to be added to entry to Bar Exclusion Zones."*

48. In summary, the Licensee proposed the following staffing arrangements to manage the risks associated with the Event:

- (a) 60 staff involved in the responsible service of alcohol spread over 10 bars;
- (b) a total of 12 "user pays" police working two shifts;
- (c) a minimum of two roving crowd controllers at all bar areas checking for the secondary supply of liquor;
- (d) a minimum of two crowd controllers trained in the responsible service of alcohol to monitor compliance with the LCR Act at each bar; and
- (e) a minimum of 20 Crowd Care officers in attendance at all times.



DETERMINATION OF THE REVIEW APPLICATION

Issues for determination on review

49. In making its decision on review, the Commission must determine the following issues:

- (a) whether the Event is a major event for the purpose of sections 14A and 26A of the LCR Act as referred to in paragraph 32;
- (b) whether the grant of the licence would detract from or be detrimental to the amenity of the area in which the Premises are located;¹⁰
- (c) whether the grant of a major event licence would be conducive to or encourage the misuse or abuse of alcohol;¹¹
- (d) whether the scale and scope of the supply of liquor the subject of the licence is limited in nature as required by section 26A of the LCR Act and as referred to in paragraph 33; and
- (e) finally, whether a major event licence should be granted or refused, having regard to the objects of the LCR Act, with particular regard to the object of harm minimisation.¹²

Each of these issues are discussed in paragraphs 50 to 60.

Whether the Event is a major event

50. The Commission notes the Licensee's submission above that approximately 17,000 patrons will attend the Event. Accordingly, the Commission considers that the Event is a major event in accordance with section 14B(3) of the LCR Act, for the purpose of sections 14A and 26A.

51. The Commission also notes that the Event would be classified as a major event in accordance with section 14(B)(4) of the LCR Act. The Commission finds that based upon the materials considered in paragraphs 4 and 37, the location of the Event and the Licensee's submission that approximately 17,000 patrons will be present, these all indicate that the Event is likely to have a significant impact upon local transport and the amenity of the area and will require significant oversight by the Council, Victoria Police and Ambulance

¹⁰ See LCR Act, ss 44(2)(b)(i) and s3A.

¹¹ *Ibid.*

¹² The Commission notes in determining this matter, it has also considered each of the other grounds set out in section 44(2) of the LCR Act.



Victoria.¹³ The Commission's view is that this exemplifies a high level of oversight which is necessary for the Event to take place.

52. Having considered the Licensee's submissions, the Commission determines that the Event is a major event under the LCR Act.

Amenity

53. The Commission has considered whether the grant of the Licence would be detrimental to the amenity of the area in which the Premises are located.

54. Section 3A of the LCR Act lists the factors which may be considered in determining whether the grant of the licence would detract from or be detrimental to the amenity of the area in which the premises are located. Of those factors, a relevant factor is whether the Event is likely to impact the harmony and coherence of the environment in which it is located on account of 17,000 patrons occupying a public area.

55. The Commission considers that the Event will occur in a public park which is fenced off to the south and the west and which is bordered by the Maribyrnong River to the north. The Commission considers that the location of the Event is likely to mitigate its impact upon the harmony and coherence of the environment in which it is located.

56. The Licensee submitted an Alcohol Management Plan referred to in paragraph 37(f)(i) which contains strategies to minimise the possible amenity impacts of the Event. One of the protective features proposed by the Alcohol Management Plan is the operation of an 'Event Control Centre' which consists of representatives from Victoria Police, Ambulance Victoria and the Council and which is likely to reduce the possibility that the amenity of the area will be substantially and negatively impacted. The Event Control Centre also indicates that the Event is supported by the Council and the Commission notes that no objection to the Review Application was received by any party on amenity grounds.

57. The Commission therefore considers that the potential amenity impact associated with the Event is not such that it alone would warrant the refusal of the Licence.

¹³ The Alcohol Management Plan referred to in paragraph 37(f)(i) makes provision for an "Event Control Centre", to be in operation for the entire Event and to include representatives from Ambulance Victoria, the Council and Victoria Police.



Misuse and abuse of alcohol

58. As stated at paragraph 27(c), the Commission can refuse the grant of an application for a licence where it would be conducive to or encourage the misuse or abuse of alcohol.¹⁴ The minimisation of harm arising from the misuse and abuse of alcohol is the primary regulatory object of the LCR Act.¹⁵

59. With respect to the possible misuse or abuse of alcohol, the Commission has concerns with respect to possible risk of harm to minors on the Premises were the Review Application to be granted. These concerns include the possibility that patrons aged 16 and 17 will obtain alcohol from adult patrons and that patrons aged 16 and 17 will be exposed to risks associated with being unsupervised in an adult environment. These concerns are discussed in detail in paragraph 61.

Other

Scale and scope

60. The Commission notes that the Premises are only accessible to patrons who have purchased a ticket, that the Event is limited to a single day in duration and that the Licensee will only supply liquor at bars situated on the Premises. Accordingly, the Commission is satisfied that the scale and scope of the supply of liquor would be limited in nature as required by section 26A of the LCR Act.

Harm minimisation

61. As referred to in paragraph 26, minimising harm is the principal regulatory object of the LCR Act, and this includes '*providing adequate controls over the supply and consumption of liquor*'. Sections 119 to 125 at Division 2 of Part 8 of the LCR Act contain penal provisions with respect to underage drinking, and these reflect the importance of protecting minors from the risks of harm associated with the supply of liquor. Accordingly, a key consideration for the Commission in this Review Application is minimising the risk of harm to any minors attending the Event.

62. The Commission is satisfied that the Licensee has proposed sufficient measures to mitigate the risks associated with the primary supply of alcohol to minors at the Event. These

¹⁴ See section 44(2)(b)(ii) of the LCR Act.

¹⁵ Refer to paragraphs 24 to 26 of these Reasons.



measures include the Proposed Conditions which are referred to in paragraph 47 and the Alcohol Management Plan referred to in paragraph 37(f)(i). Further, the Commission notes that the Licensee has proposed measures to mitigate the likelihood of secondary supply. However, due to the size of the Premises and the number of patrons attending the Event, the Commission is concerned that it will be difficult for the Licensee to sufficiently and effectively manage the risks of secondary supply and the Commission is not satisfied that the Licensee will be able to manage those risks.

63. Despite the Licensee's submission that approximately 15 per cent of the Event's audience is expected to consist of patrons aged 16 and 17, the Licensee's submissions (in paragraph 44) do not propose to make any section of the Event a 'dry area' from which minors can enjoy the Event. Without such an area, the Commission is concerned that minors may not be effectively monitored in an adult environment consisting of 19,077m² where approximately 17,000 patrons are expected to attend.
64. As referred to in paragraph 41, the '16+ area' is simply intended by the Licensee to be a respite area. While the Licensee proposed to expand this area in item 6 of the Proposed Conditions referred to in paragraph 47, the Commission does not consider it likely that this area can accommodate (and nor is it intended to accommodate) the expected number of underage patrons. Further, it is unlikely that minors would wish to remain confined to this area which would prevent them from enjoying performances at the Event.
65. The plans submitted by the Licensee indicate that there will be 10 separate bars spread across the Premises. In light of this, the supply of liquor appears to be a prominent feature of the Event. With alcohol promoted visibly, patrons aged 16 and 17 will be in contact with adult patrons consuming liquor and may possibly attempt to obtain liquor for their own consumption. The Commission's view is that an Event where liquor is a prominent feature is not an appropriate venue for minors to remain unaccompanied, as doing so may place them at risk of harm associated with the misuse and abuse of alcohol.
66. The Review Application effectively seeks that minors be free to mingle with adults in a licensed area consisting of 19,077m², where liquor is readily available and promoted to adults. In the Commission's view, this presents a risk of harm which cannot be mitigated to an acceptable level by adopting the Proposed Conditions referred to in paragraph 47.
67. Additionally, the Commission considers that the risk of harm associated with the Review Application is not limited to the risk of secondary supply of liquor to 16 and 17 year-old



patrons. Underage patrons may be subject to predatory or inappropriate behaviour from patrons aged 18 and over and may not have yet developed the resources to respond to potentially harmful situations in an appropriate manner. The Commission therefore considers that the best protective measure is to ensure that minors attending the Event are in the company of a responsible adult at all times as required by the provisions of the LCR Act and not to endorse a section 120 approval.

68. Having considered the Licensee's proposals, particularly regarding the size of the Premises, the proposed staffing arrangements, the number of patrons expected to attend the Event, the prominence of alcohol and the lack of dry zones, the Commission does not consider that the Proposed Conditions adequately mitigate the risk of alcohol-related harm presented by the Review Application.

General discretion

69. In addition to the harm minimisation object contained in section 4(1)(a), the objects of the LCR Act also aim '*to facilitate the development of a diversity of licensed facilities reflecting community expectations*'¹⁶ and '*to contribute to the responsible development of the liquor, licensed hospitality and live music industries.*'¹⁷

70. While the Commission accepts that the development of licensed events should occur to allow for a diversity of licensed facilities, the default position set out by the LCR Act is that persons under the age of 18 years are only permitted on licensed premises in limited circumstances.

71. While the Commission is open to considering proposals for all-ages licensed events resulting in a diversity of licensed facilities, the object of harm minimisation should be given priority as a general principle, as indicated by paragraph 26. The circumstances proposed by the Review Application are such that the potential risks associated with the supply of liquor on licensed premises where underage patrons are not accompanied by responsible adults lead the Commission to consider it would not be appropriate in the circumstances to permit minors on the Premises without adult supervision.

72. Further, in determining the Review Application, the Commission does not feel it is necessary to repeat the wording of section 120 of the LCR Act containing the general prohibition of

¹⁶ LCR Act section 4(1)(b).

¹⁷ LCA Act, section 4(1)(c).



minors who are not supervised on licensed premises, as sought by the Applicant and as referred to in paragraph 46. The Commission does not determine it appropriate to grant a licence with the condition proposed at paragraph 46 endorsed upon it, as the section 120 prohibition is clear and need not be restated upon the Licence.

73. Having considered all the matters set out above and having regard to the objects of the LCR Act, the Commission has determined to affirm the reviewable decision.

DECISION AND REASONS FOR DECISION

74. The Commission has determined to affirm the decision of the Delegate.

The preceding seventy-four (74) paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, Mr Des Powell AM, Commissioner and Dr Dina McMillan, Commissioner.