Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a decision made to partially grant an application made by Victoria Police to vary and impose two new conditions on a Late Night (On Premises) Liquor Licence for the premises known as Alumbra, located at 161 Harbour Esplanade, Docklands.

Commission on review: Miss Gail Owen, Deputy Chairman

Ms Kate Hamond, Commissioner

Mr Robert Kerr, Commissioner

Date of decision: 6 August 2014

Decision: The Commission has determined to:

- vary the decision of the Delegate and impose an identification scanning condition in the terms outlined in paragraph 20; and
- affirm the decision of the Delegate with respect to the imposition of a crowd controller condition.

Signed:

Gail Owen

Deputy Chairman

REASONS FOR DECISION

BACKGROUND

1. On 18 July 2013, Acting Licensing Inspector Dallas Normington (the **Applicant**) lodged an application under section 29 of the *Liquor Control Reform Act 1998* (the **Act**) to vary the Late Night (On Premises) Liquor Licence (No. 31822950) (the **Licence**) of Alumbra Pty Ltd (the **Licensee**) for the premises trading as Alumbra, at Shed 9, 161 Harbour Esplanade, Docklands (the **Premises**).

2. The application sought to impose two conditions on the Licence under section 29(2)(d) of the Act. The first proposed condition concerned the installation and operation of identification (**ID**) scanners at the Premises during certain times (the **ID scanner condition**). The second proposed condition required the Licensee to employ crowd controllers on Friday and Saturday evenings and on the eve of public holidays (the **crowd controller condition**).

3. Annexed to the application was a copy of a letter from a director of the Licensee indicating that the Licensee was "willing to agree" to the variation sought by the Applicant.

4. The Commission's delegate (the **Delegate**) requested further information from the Applicant in support of the application. In response, the Applicant provided a list of twenty-five incidents which allegedly occurred at or near the Premises between August 2009 and July 2013 including assaults inside the venue, drunken patrons in and outside the Premises, criminal damage caused by patrons leaving the Premises and patrons seeking to enter the Premises blocking the footpath and access to the pier.

5. As required by the Act, the Delegate served the application on the Licensee, which confirmed that it consented to the imposition of the two conditions.

Decision of the Delegate

6. On 21 March 2014, the Delegate determined the application and provided reasons for his decision on 31 March 2014.

7. The Delegate decided:

   7.1. to impose the Crowd Controller Condition on the Licence on the basis that it would improve the amenity of the area and reduce the likelihood of the misuse or abuse of alcohol; and

7.2. not to impose the ID scanner condition on the Licence as he considered the wording of the proposed exemption for "high profile persons" to be unclear.

Internal Review Application

8. On 7 April 2014, the Applicant applied for Internal Review of the Delegate's decision.

Legislative Framework

9. Section 157 of the Act sets out the powers and obligations of the Commission in relation to decisions on internal review.

10. The Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision. This matter, being an uncontested application to vary a liquor licence, must be determined in accordance with section 44 of the Act.

11. Section 47(3) permits the Commission to have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate.

Material before the Commission

12. The Commission on review had before it and considered all of the information, material and evidence before the Delegate as well as correspondence subsequent to the Delegate's decision between the Commission and the Licensee and the Commission and the Applicant.

Negotiation between the parties

13. After referral of the matter to internal review, the Applicant provided the Commission with a copy of a letter dated 14 April 2014 from the Licensee supporting the addition of an ID scanner condition, provided that an exemption for VIPs was included.

14. The Commission liaised with the Applicant and the Licensee with a view to agree suitable wording for the ID scanner condition.

15. In the course of these discussions Mr Simon Digby, a director of the Licensee, advised the Commission that a major part of the venue's business involved functions and corporate events and an ID scanning condition without an exemption for VIPs would put his business at a competitive disadvantage.

16. Ultimately, the Applicant and Licensee agreed wording for the ID scanner condition which was acceptable to the Commission.

Decision and reasons for decision

17. The information provided by the Applicant, in the form of a list of incidents said to have occurred at or near the premises, indicates that the current operation of the Licence is impacting adversely on the amenity of the surrounding area.

18. The Commission is not generally in favour of exemptions to conditions of this kind. However, in the current circumstances the Commission is prepared to include this exemption, which is framed so as to limit the number of patrons who qualify as VIPs, and the Commission expects the Licensee to exercise its discretion in determining who is a VIP with restraint and will ensure the VIP register is properly maintained.

19. In coming to its decision, the Commission notes that a similar exemption has been accepted previously.[1]

Variation to Licence

20. The Commission is satisfied that the requested variation to the Licence will assist in reducing the number of alcohol-related incidents occurring at or near the venue. The Commission has therefore determined to vary the decision of the Delegate by imposing the following condition on the Licence:

IDENTIFICATION SCANNERS

Identification (**ID**) scanners must operate at all entrances to the premises open to the public after 9pm on Friday and Saturday evenings and on the eve of public holidays, except when a private function occupying the entire premises is occurring.

During the above times, the Licensee must scan the ID of all patrons (other than VIP Patrons) prior to entering the premises. A copy of the scanned data must be made available upon request for immediate viewing or removal by Victoria Police, or a person authorised in writing by the Victorian Commission for Gambling and Liquor Regulation, or otherwise retained for at least one month.

If ID scanners cease to operate for reasons outside the Licensee's control, the Licensee must notify the relevant Licensing Inspector as soon as practicable and take all reasonable 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 maintain a register of VIP Patrons (**the Register**) admitted to the premises whose ID has not been scanned. The Register must contain:

- the date and time of entry to the premises;
- the name of the VIP Patron;
- a brief description of the reason why the Licensee considered the patron was a VIP Patron;
- telephone contact details of the VIP Patron; and
- the name and position of the staff member who determined that the patron was a VIP Patron.

[1] See, Liquor Decision – Amenity – Celebrity Holdings Pty Ltd (Home House), Reasons for Decision 3 February 2014 (http://www.vcglr.vic.gov.au/utility/about+us/meetings+and+hearings/liquor+decision+-+amenity+-+celebrity+holdings+pty+ltd)

The Licensee must keep the Register on the premises and, upon request, make it available for inspection by a member of Victoria Police or any person authorised in writing by the Victorian Commission for Gambling and Liquor Regulation.

In this condition, **VIP Patron** means a person who the Licensee reasonably believes in good faith to be a person whose status is such that it would be inappropriate to request that person to undergo ID scanning, but does not include a person accompanying a VIP Patron.

21. In all other respects (particularly with respect to the imposition of a crowd controller condition), the Commission affirms the decision of the Delegate.

The preceding document is a true copy of the Reason for Decision of Miss Gail Owen (Deputy Chairman), Ms Kate Hamond (Commissioner) and Mr Robert Kerr (Commissioner).