

**Liquor Commission of Western Australia
(Liquor Control Act 1988)**

- Complainant:** Commissioner of Police
(represented by Ms Leanne Atkins of WA Police)
- Respondent:** Circuit Niteclub Pty Ltd trading as Up Nightclub
(represented by Mr John Prior, instructed by
Mr Peter Fraser of Dwyer Durak)
- Commission:** Mr Eddie Watling (Deputy Chairperson)
Mr Greg Joyce
Dr Eric Isaachsen
- Matter:** Complaint for disciplinary action pursuant to Section 95 of
the *Liquor Control Act 1988*
- Date of Hearing:** 15 June 2011
- Date of Determination:** 9 August 2011

Determination:

- 1 The decision of the Director of Liquor Licensing (number A218073) suspending the operations of the licence is quashed.
- 2 Pursuant to section 96(1)(m) of the *Liquor Control Act 1988*, Circuit Niteclub Pty Ltd is to pay a monetary penalty of \$7,500.

The licensee is to lodge with the Commission, within 28 days, evidence of payment of penalty.

- 3 Pursuant to sections 96(1)(f) of the *Liquor Control Act 1988*, Mr Shane Gerald Van Styn is disqualified from being the holder of a position of authority in a body corporate that holds a licence or otherwise being interested in, or in the profits or proceeds of a business carried on under a licence for a period of one year.
- 4 The following conditions are imposed on the licence:
 - The Licensee is to install signage clearly displayed at every entrance to the premises stating:

"Management reserves the right to refuse admission or service to any person or persons failing to comply with the following dress requirements:

- Neat casual dress is to be worn at all times;
- Footwear is to be worn at all times;
- Jackets, or any other clothing accessory, bearing patches or insignia of any Outlaw Motor Cycle Gangs, are not permitted to be worn on these premises.”

In accordance with Policy - *Dress Standards for Licensed Premise* – 9 February 2010.

- The trading conditions of Licence 6070025114 in relation to 2 (a), (b) and (d) are varied as follows:
 - a) on a Monday, Tuesday, Wednesday or Thursday – from 6 p.m. to 12 midnight and then continuing to 4 a.m. the next day;
 - b) on a Friday or Saturday – from 6 p.m. to 12 midnight and then continuing to 4 a.m. the next day;
 - d) on a Sunday that is New Year’s Eve – from 8 p.m. to 12 midnight and then continuing on to 4 a.m. the next day.
- The following additional conditions are imposed on the licence:
 - 1 No liquor is to be supplied or sold for consumption on the premises in any of the following ways:
 - a) In any vessels with a measurement capacity exceeding 750ml, except vessels containing premixed drinks (e.g. RTD’s) which shall not exceed 375ml;
 - b) In non-standard measures of spirits (i.e. no more than 50ml of spirits is permitted in any vessel).
 - 2 The sale and supply of beverages in such a way that would encourage rapid consumption of liquor (e.g. but not limited to unadulterated spirits or liqueur in a shot glass); drinks known as ‘laybacks’, ‘shots’, ‘shooters’, ‘test tubes’, ‘jelly shots’, ‘blaster’, or ‘bombs’ or any other emotive title, is prohibited.
 - 3 No liquor is to be supplied mixed with energy drinks. For the purposes of this condition energy drinks has the same meaning as formulated caffeinated beverage within Australian New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater).
 - 4 From 3 a.m. to 4 a.m. persons (other than “authorised persons”) are prohibited from entering or re-entering the licensed premises.
 - 5 No liquor is to be consumed on the licensed premises after the end of the permitted hours.
 - 6 Crowd controllers are to be employed at a ratio of two (2) crowd controllers per 100 patrons or part thereof.

- 7 If there is an inconsistency between these conditions and any other condition to which the license is subject, the condition that is more onerous for the licensee prevails.

Introduction

- 1 On 2 March 2011 the Commissioner of Police lodged a complaint pursuant to section 95 of the *Liquor Control Act 1988* (the Act) against Circuit Niteclub Pty Ltd, the licensee of the Up Nightclub, situated at 60 Fitzgerald Street, Geraldton (Licence Number 6070025114).
- 2 Disciplinary action was sought on the following grounds:
 - i The business conducted under the licence is not properly conducted in accordance with the licence [s95(4)(a)];
 - ii The licensed premises are not properly managed in accordance with the Act [s95(4)(b)];
 - iii The licensee has contravened a condition of the licence [s95(4)(e)(i)];
 - iv The licensee has been given an infringement notice under s165 (sic s167) and the modified penalty has been paid [s95(4)(fa)];
 - v A person holding a position of authority in a body corporate that holds the licence is not a fit and proper person to hold the licence [s95(4)(h)];
 - vi The safety, health or welfare of persons who resort to the premises is endangered by an act or negligence of the licensee [s95(4)(k)].

Hearing

- 3 A hearing before the Commission, constituted in accordance with section 95(7a) of the Act was held on 15 June 2011.

Submissions on behalf of the applicant

- 4 In support of grounds ii and vi, the applicant submitted that the Western Australian Police Incident Management System (IMS) has 57 relevant offences linked to the Up Nightclub from January 2010 until January 2011. These offences have been reported as occurring inside the premises and its immediate surroundings.
- 5 The offences include, but are not limited to assault, assault occasioning bodily harm and disorderly behaviour, with drunkenness being a factor and police reports linking such intoxication to the Up Nightclub.
- 6 The Computer Aided Dispatch System ("CAD") evidences excessive police attendances with 56 calls for police assistance between 1 January 2010 and 22 January 2011.

- 7 It was further submitted that the premises were not being managed in accordance with the objects of the Act in that the management obligations to track and make a record of incidents at the premises were not being met. A review of the incident register identifies a very small number of incidents being reported by the licensee from January 2010 to August 2010 compared to the IMS and CAD data.
- 8 The number of incidents recorded following a regional visit by the Western Australian Police Liquor Enforcement Unit over the period Friday, 7 and Saturday, 8 August 2010 substantially increased as a result of the licensee taking a more compliant approach. However, this served to demonstrate the extreme level of incidents occurring, evidencing that the licensee is significantly failing in his duty to ensure that the safety, health or welfare of persons resorting to the licensed premises and its surroundings are not at risk.
- 9 The IMS, Cad and Incident Register documents show an almost identical number of incidents prior to 2 a.m. and after 2 a.m. with the majority being for drunkenness, fighting and assaults.
- 10 In support of grounds i, ii, iii, and iv it was submitted that from October 2005 to September 2010 the licensee and approved managers of the venue have received nineteen (19) liquor infringements for breaches of the Act. All infringements having been paid.
- 11 In further support of grounds i and iii five specific incidents were detailed including trading beyond 3 a.m. on ANZAC Day 2010, a breach of the conditions of the licence.
- 12 The Applicant submitted that, in determining whether there is proper cause for disciplinary action, all that is required to be proved, on the balance of probabilities, is that one of the subsections in section 95(4) of the Act has been contravened.
13. A licensee's responsibilities under the Act can be broadly categorised as follows:
 - Ensuring the licensed premises are properly licensed;
 - Ensuring the licensed premises are managed by a natural person in accordance with the Act;
 - Ensuring the conduct of the business is carried out in accordance with the Act;
 - Ensuring that liquor sold at the licensed premises is done in accordance with the Act and any terms and conditions on the licence; and
 - Ensuring that persons on the licensed premises are entitled to be on the licensed premises and sold liquor.
- 14 The number and type of interactions a licensed premise has with Police may indicate that the licensed premises are not properly managed in accordance with the Act. In this regard the Hearing was referred to the number of interactions that the Police have had with Up Nightclub, as outlined in the complaint – 57 IMS reports and 56 CAD calls for Police attendance between January 2010 and January 2011.

- 15 It was submitted at the Hearing that the incidents that occurred outside of the Up Nightclub should be considered as they took place within the immediate locality of the premises with patrons of the Up Nightclub being identified on 35 occasions.
- 16 The penalties sought in the complaint include a request for an order against Mr Van Styn, who as well as being an approved manager is one of two Directors of the licensee and also acts as a crowd controller for the premises to the extent that Mr Van Styn and Circuit Niteclub Pty Ltd (the Licensee) are so intrinsically and inextricably linked as to be one and the same.
- 17 The number of breaches of the Act, the prevalence of infringement notices, the number of incident reports where patrons have been assaulted and the number of call outs to the premises indicates that Mr Van Styn, as a physical embodiment of the Licensee, is failing to ensure compliance with the terms of the Licence and the provision of the Act. He has therefore shown that he is not fit and proper to remain as a person in authority or to be interested in the business carried on under the Licence.
- 18 In considering whether My Van Styn is a fit and proper person to hold a licence or occupy a position of authority in a body corporate that holds a licence in accordance with section 33(6) of the Act, the Applicant invited the Commission to disregard the evidence in support of the Complaint referring to the issue of a barring notice against Mr Van Styn (quashed by the Commission on 17 May 2011) and to disregard information provided in paragraph 8 of the Complaint referring to Mr Van Styn socialising with members of an outlaw motor cycle gang.
- 19 In conclusion, it was submitted that, on the balance of probabilities, the Commission can be satisfied that there is proper cause for disciplinary action against the Licensee and to make orders against Mr Van Styn in the terms sought in the complaint.
- 20 The following disciplinary actions were sought by the Complainant:
 - Disqualify Mr Shane Van Styn from being a holder of a position of authority in a body corporate that holds a licence, for a period of five (5) years, or as the Commission sees fit [s96(1)(g)(i)];
 - Disqualify Mr Shane Van Styn from being interested in the business carried on under a licence for a period of five (5) years, or as the Commission sees fit [s96(1)(g)(ii)];
 - Order the licensee to pay out to the Crown a monetary penalty of \$30,000, or as the Commission sees fit [s96(1)(m)];
 - Suspend the operation of the licence for a period of 3 months, or as the Commission sees fit [s96(1)(d)(ii)];
 - Give directions that the licensee is to impose, and enforce a minimum dress standard at the venue at all times, or as the Commission sees fit [s96(1)(j)]

As a minimum, the standard is to be clearly displayed at every entrance to the premises, and is to include the following:

- Management reserves the right to refuse admission to any person failing to comply with the following requirements
- Jackets, or any other clothing or accessory, bearing patches or insignia of any Outlaw Motor Cycle Gang not limited to, but including the listed Outlaw Motor Cycle gangs, are not permitted to be worn on these premises at any time:-
 - Coffin Cheaters
 - Comancheros
 - Club Deroes
 - Finks
 - Gods Garbage
 - Gypsy Jokers
 - Outlaws
 - Rebels
 - Rock Machine
- Impose a lock-out condition upon the licence, being:
 - Patrons are prohibited from entering or re-entering the licensed premises after 2 a.m. on any day, or as the Commission sees fit [s96(1)(b)]
- Vary the trading hours (a), (b) and (d) of the licence as follows:
 - a) On a Monday, Tuesday, Wednesday or Thursday – from 6 p.m. to 12 midnight and then continuing to 4 a.m. the next day;
 - b) On a Friday or Saturday – from 6 p.m. to 12 midnight and then continuing on to 4 a.m. the next day;
 - d) On a Sunday that is New Year’s eve – from 8 p.m. to 12 midnight and then continuing on to 4 a.m. the next day;

or as the Commission sees fit [s96(1)(c)]

Submission on behalf of the respondent

- 21 The respondent’s written submission conceded that there is a proper course for disciplinary action in relation to grounds 3 and 4 of the Complaint. The evidence upon which this concession is made is outlined at paragraph 6 of the Complaint and attachment 6, namely the summary of infringements issued and paid by the Licensee.
- 22 Legal interpretations were submitted in relation to the definition of permits (as in “to permit”), drunkenness and fit and proper, with a number of case studies referred to.
- 23 The respondent provided a breakdown of the 57 offences linked to the venue showing that when those incidents which occurred outside the venue, i.e. on Fitzgerald Street, are excluded, there were only 14 incidents which occurred inside the venue.
- 24 Given the nature of the trading of the venue from Thursday to Saturday it was submitted that the rate of incidents should not be considered to be unduly high.

- 25 Of the 57 reports, only 25 contain sufficient information to identify the alleged offender as a patron of the venue and of these only 7 identifying the alleged offender as being intoxicated – indicating a relatively low level of alcohol related offences.
- 26 With regard to the 56 CAD reports of calls for police assistance, when excluding those dispatches which relate to incidents outside the venue, there are only 12 reports relating to incidents inside the licensed premises. Of the 56 CAD calls only 14 contain sufficient identification to identify the incident as being in relation to a patron of Up Nightclub, of which 4 were in relation to patrons refusing to the venue and 6 were made by crowd controllers.
- 27 The accusation that the level of incidents at the venue is at “an extreme level” is disputed when considering that the capacity of the venue is 500 persons and at the time of the complaint was trading on a Wednesday, Thursday, Friday, Saturday nights and Sunday until 6 p.m. - a total of 108 occasions between 7 August 2010 and 7 January 2011.
- 28 It was submitted that, rather than demonstrating that the premises are problematic, the CAD reports demonstrate nothing further than the venue is located in an area which may well be considered problematic, but this may be unsurprising, given the location of the venue within the CBD in close proximity to other licensed premises.
- 29 The close proximity of the Vibe Nightclub and the fact that the only taxi rank in the area is opposite the Up Nightclub are contributing factors to the incidents that have occurred out side of the premises.
- 30 It is acknowledged that the number of incidents recorded increased since the employment of a person solely responsible for recording such incidents. While this does demonstrate that record-keeping at the venue was lacking prior to 7 August 2010 this does not lead to the conclusion that the licensee is significantly failing in his duty to ensure that the safety, health and welfare of persons resorting to the licensed premises and its surroundings are not at risk or a combination of both.
- 31 While it is recognised that record-keeping is an important obligation under the Act it was submitted that it has no bearing on the actions of the licensee in relation to the management of the venue.
- 32 It was submitted that with respect to the number of incidents recorded on the venue register, the majority are in relation to refusals of entry. Therefore a licensee should not be penalised for refusing an intoxicated person entry to the licensed premises and such a refusal only reflects well upon the management of the venue. The Police have not made any direct criticism of the management practices of the licensee.
- 33 The licensee Mr Van Styn is a responsible person and serves on the Geraldton Liquor Accord.
- 34 With regard to the grounds of complaint the respondent denies the basis of ground i, ii and vi, concedes ground iii and iv and submits that the evidence relied upon by the Police to substantiate ground v does not satisfy this ground of complaint.
- 35 With regard to the penalties being sought, it was submitted that:

- the imposition of a maximum fine of \$30,000 would be an extreme penalty and would represent placing the respondent in a higher category of offending than previous licensees brought before the Commission where a suspension has been sought and refused;
- The disqualification being sought of Mr Van Styn is inappropriate, given the lack of evidence that has been presented;
- The suspension of the license over the period 12 to 21 April, 2011 was in itself a severe penalty and resulted in a substantial loss of trade and further suspension would be a very serious outcome and not warranted under the circumstances;
- There is no objection to the standard dress condition;
- The lock-out condition requested is opposed, however there is no objection to a 4 a.m. lock-out;
- The variation of the trading hours sought are opposed, except for the 4 a.m. lock-out.

Reasons for the Determination

- 36 On 21 April 2011 the Commission determined that a suspension of the Up Nightclub liquor licence by the Director on 12 April 2011, be itself suspended until the hearing of this complaint (*refer LC 16/2011*).
- 37 As this complaint hearing has now concluded the Commission's determination (*LC 16/2011*) now lapses which in effect would re-activate the Director's determination to suspend the Up Nightclub licence unless addressed in this determination.
- 38 In order to impose the determination of this hearing it is therefore necessary to quash the 12 April 2011 decision of the Director (A218073) to suspend the Up Nightclub licence.
- 39 In reaching its determination in relation to the complaint the Commission has had no regard to the issue of a barring notice to Mr. Shane Van Styne (notice later quashed *LC 19/2011*), nor has any regard been taken of references to any alleged association between Mr Van Styne and members of any Outlawed Motor Cycle Gang.
- 40 In the written submission and at the Hearing, the respondent conceded grounds iii and iv of the complaint relating to a number of infringement notices issued and paid by the licensee.
- 41 The fact that there has continued to be a high level of incidents subsequent to the paid infringement notices is of concern to the Commission and indicates that the business, and management of that business, is not being conducted in accordance with the licence.
- 42 While the respondent has submitted that there is insufficient evidence to link patrons of the Up Nightclub with many of the recorded incidents, the fact remains that these

incidents occurred in the locality of the licensed premises over an extended period of time.

- 43 The nearby proximity of the Vibe nightclub and the fact that the patrons of both premises are reportedly using the same taxi rank situated near the Up Nightclub may be a contributing factor to some of the incidents in the vicinity of the licensed premises. However, these factors do not absolve the licensee from managerial responsibilities as prescribed by section 100 of the "Act" and the Commission is persuaded that, on the balance of probabilities, the operation of the Up Nightclub is a major contributor to the anti-social behaviour that has been recorded in and around the licensed premises.
- 44 The fact that the licensee failed to comply with the requirements under the 'Act' for the completion of incident reports, despite being issued with an infringement notice, and the trading infringement on ANZAC Day 2010, is a further indication of a disregard for, or breakdown in, the discharge of responsibilities associated with the liquor licence.
- 45 Accordingly, the Commission is satisfied from the material presented, that on the balance of probabilities there is cause to take disciplinary action against the licensee and Mr Van Styn who as an approved manager and a director of the licensee, has shown, over a considerable period of time during which there were numerous infringements and a range of additional incidents involving interaction with the Police, to have not discharged his responsibilities under the 'Act'.
- 46 The Commission is therefore satisfied that grounds i, ii, v and vi of the complaint have been made and that it is in the public interest to impose disciplinary action to remedy the currently unacceptable situation in the operation and management of the Up Nightclub.
- 47 The following determination is made:
 - 1) The decision of the Director of Liquor Licensing (number A218073) suspending the operations of the licence is quashed.
 - 2) Pursuant to section 96(1)(m) of the *Liquor Control Act 1988*, Circuit Niteclub Pty Ltd is to pay a monetary penalty of \$7,500.

The licensee is to lodge with the Commission, within 28 days, evidence of payment of penalty.

- 3) Pursuant to sections 96(1)(f) of the *Liquor Control Act 1988*, Mr Shane Gerald Van Styn is disqualified from being the holder of a position of authority in a body corporate that holds a licence or otherwise being interested in, or in the profits or proceeds of a business carried on under a licence for a period of one year.
- 4) The following conditions are imposed on the licence:
 - The Licensee is to install signage clearly displayed at every entrance to the premises stating;

“Management reserves the right to refuse admission or service to any person or persons failing to comply with the following dress requirements:

- Neat casual dress is to be worn at all times.
- Footwear is to be worn at all times.
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In accordance with Policy - *Dress Standards for Licensed Premise* – 9 February 2010.

- The trading conditions of Licence 6070025114 in relation to 2 (a), (b) and (d) are varied as follows:
 - a) on a Monday, Tuesday, Wednesday or Thursday – from 6 p.m. to 12 midnight and then continuing to 4 a.m. the next day;
 - b) on a Friday or Saturday – from 6 p.m. to midnight and then continuing to 4 a.m. the next day;
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 - The following additional conditions are imposed on the licence;
- 8 No liquor is to be supplied or sold for consumption on the premises in any of the following ways:
 - a) In any vessels with a measurement capacity exceeding 750ml, except vessels containing premixed drinks (e.g. RTD’s) which shall not exceed 375ml;
 - b) In non-standard measures of spirits (i.e. no more than 50ml of spirits is permitted in any vessel.
 - 9 The sale and supply of beverages in such a way that would encourage rapid consumption of liquor (e.g. but not limited to unadulterated spirits or liqueur in a shot glass); drinks known as ‘laybacks’, ‘shots’, ‘shooters’, ‘test tubes’, ‘jelly shots’, ‘blaster’, or ‘bombs’ or any other emotive title, is prohibited.
 - 10 No liquor is to be supplied mixed with energy drinks. For the purposes of this condition energy drinks has the same meaning as formulated caffeinated beverage within Australian New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater).
 - 11 From 3 a.m. to 4 a.m. persons (other than “authorised persons”) are prohibited from entering or re-entering the licensed premises.
 - 12 No liquor is to be consumed on the licensed premises after the end of the permitted hours.
 - 13 Crowd controllers are to be employed at a ratio of two (2) crowd controllers per 100 patrons or part thereof.

- 14 If there is an inconsistency between these conditions and any other condition to which the license is subject, the condition that is more onerous for the licensee prevails.
- 48 The conditions imposed are directed at addressing deficiencies in the control of appropriate dress standards in accordance with Policy – *Dress Standards for Licensed Premises – 9 February 2010* and a reduction in early morning trading hours from 5 a.m. close to 4 a.m. close. A 3 a.m. lock-out prohibiting patrons from entering or re-entering has also been applied in response to the high number of recorded incidents in the early morning trading period.
- 49 In reaching this determination, the Commission does make the observation that the public interest might also be better served if the licensee approached the relevant authorities to examine the situation of the location of the taxi rank that is reportedly situated to serve a mix of patrons from both the Up Nightclub and the Vibe Nightclub.



EDDIE WATLING
DEPUTY CHAIRPERSON