

Nightclubs & security :

A newly emerging area of law involves the litigation surrounding nightclubs, where large numbers of patrons, alcohol and inexperienced security staff sometimes produce unfortunate and violent results. This article considers the legal and policy issues involved and presents some case studies for consideration.

Introduction

Over the last 10 years, there have been unprecedented developments within the liquor and hospitality industry in Australia. Highlights have included dramatic growth in the number of bars and restaurants, diversity of styles within licensed premises and the emergence of the “café society.” With industry expansion comes higher level competition. Venues competing for patrons are not isolated to the city areas and this tends to occur throughout regional Australia.

If there was an “achilles heel” within the liquor and hospitality industry, it most probably is the nightclub.¹ Like other licensed premises, nightclubs operate under a licensing system that is administered by the various State and Territory regulatory authorities.² These venues will hold a category of liquor licence specific to the area of operation and can be subject to any number of conditions.³ Conditions might include limitations on hours of trading, patron capacity and amenity issues. Recently, a number of venues have also been required to implement a range of security and alcohol service standards.⁴ What makes these nightclubs a higher risk than other licensed premises is a combination of factors including the age and relative life experience of patrons and venue staff. Inexperience can also lead to alcohol abuse and therefore incidents.

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The purpose of this paper is not to discuss the law as it may apply but rather to examine the evolution of litigation involving hospitality venues. Since the landmark “Chevron Case” in Queensland relating to server liability,⁵ there has been a number of similar actions against hotels trading as nightclubs or nightclubs themselves.

In the majority of cases, incidents usually involve the acts or omissions of security staff, and/or patron intoxication.

Security – Crowd Control

Prior to 1990, there were no regulatory controls for security staff operating in hospitality venues including nightclubs within Australia. This effectively meant venues could determine their own security measures and, in a large number of cases, employed “bouncers” for their physical rather than interpersonal or customer service abilities. Hence, many situations that could have been strategically managed became violent and resulted in complaints of assault and injuries to patrons.

In 1989, the *Victorian Community Council Against Violence* (VCCAV) was formed by the state government. The Chair was Judith Dixon, a former politician with considerable expertise in community-based projects. The Council also comprised police, employer and union groups, and other interested members of the community. The VCCAV was given the task of investigating and making recommendations to the Victorian Government about strategies to reduce levels of violence.⁶

bouncing into a new era!

Their first report was published in 1990 and entitled "Violence - In and Around Licensed Premises."⁷ Although the VCCAV investigation focused initially on patron violence, it was soon discovered that a substantial number of assaults were committed by "bouncers."⁸ During submissions to the VCCAV some members of the hospitality and security industries confirmed that "there are blokes who just use violence as a means to an end" and "many a time problems have arisen from irresponsible, aggressive and uncooperative bouncers".⁹

Based upon its work, the Victorian Community Council Against Violence recommended regulation of crowd controllers. Key recommendations were:

- 1 All crowd controllers should be licensed;
- 2 Persons with assault and drug trafficking prior convictions be disqualified;
- 3 The wearing of proper identification to ascertain staff identity after an incident;
- 4 Signing on and off duty in an Incident Register; and
- 5 Accredited training.¹⁰

The Victorian government moved swiftly and introduced amendments to the *Private Agents Act 1966 (Vic)* which came into effect on 15 August, 1990 and required licensing for all crowd controllers in Victoria.¹¹ Since that time, every other Australian jurisdiction has introduced similar legislative controls.¹²

Training was identified as an important element within the regulatory process and today is provided through a series of nationally accredited courses.¹³ Within each jurisdiction, legislation prohibits persons with a serious criminal history from licensing.¹⁴ In Victoria, the legislation initially disqualified around 30% of existing King Street nightclub "bouncers."¹⁵ Research at that time also revealed a dramatic decline in violent incidents in the King Street area.¹⁶

Liquor and Hospitality Venues

Although venues are subject to licensing and planning requirements, the activities of hospitality staff are generally unregulated. There is no compulsory licensing or training although training is provided on an *ad hoc* basis.¹⁷

Some liquor regulatory authorities have also introduced a voluntary system of staff training in Responsible Serving of Alcohol. The program is conducted over a three to four hour period and basically introduces participants to legal and operational concepts in responsible serving.¹⁸ A licensee's course

has also been available through TAFE with varying levels of attendance.¹⁹

The hospitality industry attracts persons from a range of diverse backgrounds. Some are promoted to positions of management with little experience in the field and, more likely, without formal qualifications. From this, management and operational practices between similar venues can vary dramatically. In many cases, venues consistently experiencing incidents will be required to defend their right to trade. Alleged breaches can range from permitting drunks on the premises and unlawfully serving minors, through to trading outside the terms and conditions of a licence.²⁰

When one considers proceedings are only instituted after all other reasonable avenues have been exhausted, this of itself raises serious concerns as to the suitability of some managers to operate within the industry. The number and range of breaches within all jurisdictions indicates widespread disregard or non-observance of statutory requirements. Further, few managers or licensees have attended any training course relating to venue security.²¹

Potential for Incidents

An examination of nightclub activity over the last ten years reveals two primary areas of concern:

- 1 Intoxication; and
- 2 Security operations.

Intoxication

Over the last 20 years there have been significant developments in the attempts to understand alcohol and violence, although the correlation between both has long been known.²² Clearly, persons experienced in venue operations, bar work, and security would only be too aware of the inherent risks associated with intoxication in some persons. A review of the literature also discloses a large number of articles on alcohol and violence.²³

The Victorian Community Council Against Violence reported:

"A great deal has been written about the link between alcohol and violence. Research undertaken in this area suggests a strong association between crimes of violence and alcohol consumption. For example, the 1977 Senate Standing Committee on Social Welfare reported that, in a study of 644 violent



assaults, 73 per cent of offenders had consumed alcohol before committing the offence.²⁴

The National Injury Surveillance and Prevention Project reported in 1989-

“intentional violence is predominantly a male phenomenon, and overwhelmingly of adolescent and young adult males”²⁵

Some studies suggest that whilst alcohol has different effects on different people, aggressive people are likely to become more aggressive when intoxicated. The literature suggests that alcohol facilitates rather than causes violence.

Other studies also suggest that a number of contributing factors are frequently present at venues where violence occurs:

“The situational variables which characterise them include an interaction of several variables. Chief among these are groups of male strangers, low comfort, high boredom, high drunkenness, and aggressive and unreasonable bouncers.”²⁶

Based upon the above and the general knowledge available to the industry, one would expect the reasonable venue operator to have policies in place to ensure;

- Responsible serving of alcohol;
- Limitation of service of alcohol to underage persons or the ability of underage persons obtaining alcohol;
- Intoxicated persons are not served or provided more alcohol;
- Effective intervention by bar and/or security staff when intoxication, unacceptable behaviour or any other licensing law breach has been detected or anticipated; and
- An appropriate ratio of crowd controllers to patrons to ensure adequate observations and supervision of venue operations.

Security Operations

To provide security in any late night venue is a difficult task. There are any number of factors that impede effective interactions between patrons and security staff including noise, crowd activity, alcohol or other drug, peer pressure, fatigue and specifics such as multiculturalism in some environments.

As crowd controllers are also selected to blend with mainstream patrons, there is normally no more life experience within the base level security staff than the majority of patrons. This in itself can lead to overreaction by inexperienced security staff and also a lack of patron rapport. The result may be a distinct lack of cooperation between patrons and security.²⁷

Key factors venue operators should address regarding security include:

- Developing a plan to reduce the potential for incidents occurring in or around the venue;
- Engaging appropriate staff who are able to interact with

the majority of patrons and comply fully with the plan;

- Ensuring staff are able to objectively assess potential danger, whether involving persons or the condition of the venue;
- Developing a venue preventative supervision strategy to reduce the potential for incidents and/or injuries;
- Planning and training for intervention when a problem or potential problem is identified to ensure minimal disruption to the environment and limiting the potential for injury to those who may be present or involved; and
- Ensuring staff are able to assist in re-establishing a positive venue atmosphere and safe environment for patrons after an incident.

Where there is violence, security staff should strategically remove aggressive persons from the venue whilst being mindful of the potential danger to either party outside. In addition any number of other actions might be taken depending on the seriousness of the incident. Actions might also involve calling for police assistance.



“aggressive people are likely to become more aggressive when intoxicated.”

Case Studies

To further illustrate developments in this area, some recent cases will provide a basis for the assertions outlined above. In each case, I have provided an expert report and/or given expert evidence. The information provided in these studies is not a complete overview of all relevant facts and issues but rather a discussion that focuses on security and intoxication where appropriate.

Charlton’s nightclub, Melbourne Facts

On 22 December, 1995 the plaintiff, a male aged 32 years attended Charlton’s Nightclub. He arrived with four other work friends at around 10.30 pm and some time later was standing alone when he was approached, without any prior warning, and head-butted by a crowd controller. The impact caused the plaintiff to hit his head against a brick wall and a ringing developed in his ears. The plaintiff was then physically dragged by the crowd controller down the stairs to the front entrance and ejected. Shortly after, the plaintiff’s friends found him sitting in the gutter outside the venue in a stunned state. The plaintiff was driven home by a friend however an ambulance was called some hours later and he was conveyed to hospital for treatment. His injuries included substantial hearing loss, facial lacerations and a black right eye. He spent two days in hospital. The security staff were employed in-house and the alleged offender was working whilst unlicensed. The plaintiff alleged assault and negligence against the venue. The matter was contested and heard at Melbourne Country Court before Judge Dove. The court found for the plaintiff and awarded a total of \$206,000.

Issues

Tested during the trial were issues of trespass and the fact that the plaintiff's right of entry had not been revoked, the disproportionate amount of force used and deficient training and supervision of venue staff.

Three Faces, Prahran Facts

On 25 March, 1994 the plaintiff, a male aged 36 years attended the Three Faces Nightclub. He arrived with two friends at around 11.30 pm and noticed the venue was trading to capacity at around 400 patrons. Two crowd controllers were positioned at the front door however there were no crowd controllers inside monitoring patrons. A short time later and without warning, the plaintiff was attacked by an unknown patron with a broken bottle. The attack caused serious injuries to the plaintiff's wrist requiring two operations. The security staff were employed as sub-contracted sole traders and when

the plaintiff went to the front door area to seek assistance, he was told they were both on a coffee break. The plaintiff alleged negligence against the venue and its agents. The matter was contested and heard at Melbourne County Court. The court found for the plaintiff and awarded an undisclosed sum.

Issues

The issues tested during the trial included a deficient "span of control" or ratio of security staff to patrons, poor positioning of staff to monitor or intervene, deficient training and supervision and concerns regarding the time delay for security response.

Italian Club, Geelong Facts

On 28 October, 1995 the plaintiff, a male police officer aged 34 years was performing uniformed divisional van duties in Geelong with a junior partner when he attended the Italian Club. An independent operator "Connections

International" was conducting a debutante ball and utilised five security staff for the occasion. The police were called to show a presence as there had been violence and other acts of aggression between rival groups during the evening. The plaintiff and his partner arrived around 11.30 pm and intervened on an incident inside. The police noticed a large number of people were present and that a lot of them appeared drunk or intoxicated to some extent. The police had a discussion with security staff about the amount of alcohol available, the apparent young age of some drunk patrons and also that security should take some action to remove trouble-makers. The police were requested to return at 1am by security staff. Upon return at 1am the police were asked by security staff to enter the club. They intervened on a fight involving around 30 patrons and decided to retreat as the junior constable had his baton taken by patrons. When heading outside they were told there were more ►



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brawls in the car park and observed a drunk male "king hit" by another patron who then ran away. The police assisted the injured patron and called an ambulance before a group of males attacked the two police officers. The plaintiff was knocked to the ground and punched and kicked. Someone was attempting to remove his revolver as he started to lose consciousness. The junior constable called for assistance and other police arrived a short time later. The plaintiff returned to work infrequently and eventually left the police department.

The plaintiff alleged negligence against the venue and the State of Victoria. The matter was contested and proceeded by way of trial before Judge Gebhardt at the Country Court sitting at Geelong. His Honour dismissed the action against the State of Victoria but found for the plaintiff regarding the Italian Club and awarded a total of \$476,274. This matter is now subject to appeal.

Issues

The issues raised during the trial included training and

supervision, a lack positive intervention when violence first occurred including a failure to removal aggressors, and irresponsible serving of alcohol.

Conclusion

The issues raised in this paper provide a basic insight into recent trends involving hospitality and security operations. It has now been some ten years since the regulation of security staff and a greater period since the education of venue operators regarding alcohol, yet similar incidents occur almost nightly. Currently, students from the Australian Institute for Public Safety are researching the higher level operational needs of venue operators including licensees and the supervisors of security and other venue staff to identify and perhaps reduce the potential for incidents.

It has been argued that good practices lead to profitability. Sadly, not all practices of venue operators align with this ideal which inevitably results in damaged patrons seeking the assistance of APLA members for relief. **PL**

Footnotes:

¹ Nightclubs are defined as late night venues providing live entertainment such as a disco or band.

² Formerly the Liquor Licensing Commission.

³ General licences allow sale of liquor on or off the premises and on-premises licences permit consumption on the premises where a venue is providing live entertainment.

⁴ For example, as a condition of its liquor licence, the former Tunnel Nightclub was required to maintain on-going training for staff in crowd control, first aid and responsible service of alcohol. Other venues such as Ice Nightclub in Moe were obliged to utilise minimum numbers of security staff and install a CCTV system.

⁵ *Johns v Cosgrove & Ors* (Qld) unreported 12 December, 1997. Marcus Hoyne provides an excellent overview of this case and its implications in *LJ* April, 1997 pp 46-50.

⁶ The VCCAV Terms of Reference were to enquire, consider and report to the Government on violence in and around licensed premises, clubs, hotels and venues for young people's entertainment; collect, analyse and verify current methods for measuring violence related to these areas; and develop and recommend practicable strategies which will reduce or eliminate such problems.



⁷ Victorian Community Council Against Violence *Violence In and Around Licensed Premises* (1990 Government Printer, Melbourne)

⁸ *Ibid* at 56 where the Liquor Licensing Bureau reported 47% and the Ministry for Police and Emergency Services asserted around 21%.

⁹ *Ibid* at 57.

¹⁰ *Ibid* at xi and xii.

¹¹ *Private Agents (Amendment) Act 1990*

¹² Including the *Security Industry Act 1997 (NSW)*, *Security Providers Act 1993 (Qld)*, *Security and Investigations Act 1995 (SA)*, *Security and Related Activities (Control) Act 1996 (WA)*, and corresponding legislation in the remaining jurisdictions.

¹³ Duration and content varies between jurisdictions. For example, Queensland has a 5 day program whereas New South Wales and Victoria require a 12 day course.

¹⁴ In general terms, prior convictions for assault, serious drugs and dishonesty.

¹⁵ This was reported by Inspector Steve Frost, Deputy Registrar, Victoria Police Private Agents Registry in 1990.

¹⁶ This is not to say disqualification was the sole reason for a reduction in violence however it was seen as a primary influence.

¹⁷ The AHA is the peak industry association for liquor and hospitality venues throughout Australia and has introduced a "voluntary" industry licensing system.

¹⁸ The course forms one module within

the nationally accredited Hospitality Training Package and is offered in varying degrees throughout Australia.

¹⁹ Liquor Licensing Victoria reported only around 10 programs were conducted up to 1995.

²⁰ Under the *Liquor Control Act 1987* (the former Act) proceedings were initiated pursuant to s. 101. They are now brought under Part 6 of the *Liquor Control Reform Act 1998*.

²¹ Advanced Techniques (Training), the major Victorian provider of security training, report they have trained in excess of 22,000 crowd controllers and yet only 27 licensees have attended crowd control or similar training in the last ten years.

²² For example, the Australian Institute of Criminology has published a number of working papers since 1977 on alcohol abuse, violence and crime including a "Trends and Issues" paper in April, 1989.

²³ The Australian Drug Foundation have extensive resources in this area.

²⁴ Victorian Community Council Against Violence, *Violence In and Around Licensed Premises* (1990 Government Printer, Melbourne) pp 31-32

²⁵ G. Vimpani, *National Injury Surveillance and Prevention Project*, S.A., October, 1989, p 7.

²⁶ S Tomsen, *Causes of Public Violence: Situational Versus Other Factors*. Paper presented at the National Conference on Violence, Canberra (October, 1989).

²⁷ This has been noted by both security firm operators and licensees as a major contributing factor in many incidents that have turned violent throughout in major nightclub precincts.