TRIM ID: CF/19/526

Decision and reasons for decision

In the matter of whether there are grounds to take disciplinary action against Aparo Management Enterprises Pty Ltd, the Licensee of the premises trading as Dreams Gentlemen's Club, operating late night licence no. 319807140, and whether to take disciplinary action under Part 6 of the *Liquor Control Reform Act 1998* if there are such grounds.

Commission:	Ms Deirdre O'Donnell, Deputy Chair Ms Danielle Huntersmith, Commissioner Mr Andrew Scott, Commissioner
Date of Hearing:	25 May 2022
Date of Decision:	29 June 2022
Date of Reasons:	29 June 2022
Appearances:	Mr John Larkins of Counsel (instructed by LGS Legal), on behalf of the Licensee and the Director Mr Richard A. Harris of Counsel (instructed by Lawcorp Lawyers), on behalf of Mr Kyriacou Mr Crupi for himself Mr Chris Jensen, Counsel Assisting the Commission
Decision:	The Commission determines that there are grounds for disciplinary action against the Licensee in accordance with section 93(1) of the *Liquor Control Reform Act 1998* and has determined to: (a) Impose a fine of $28,000 against the Licensee, to be paid within three months of the date of this decision. (In imposing a fine the Commission has had regard to the fact that the maximum penalty is 250 penalty units, which in 2016 would have been $38,865 and is now $45,435); and (b) Vary the Licence by imposing the following additional conditions • The licensee must at all times have in place and maintain an operational independently monitored 24-hour alarm system that notifies the director of the licensee if the alarm to the licensed premises has not been set within a two-hour period of the conclusion of the licensee's permitted trading hours on any day; and • For a period commencing 14 days from the date of notification of this decision and expiring on 30 June 2025, the licensee must engage an independent risk management consultant to conduct a quarterly written review of the licensee's systems, practices and procedures to assure compliance by the licensee with its obligations under the *Liquor Control Reform Act 1998* and the licensee must implement any recommendations made as soon as possible. The Commission has determined to take action against the following related persons in accordance with section 93D of the *Liquor Control Reform Act 1998* as follows: (a) Mr Steven Kyriacou – the Commission disqualifies Mr Kyriacou from in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club for a period of 12 months from 1 July 2022 to 30 June 2023 (s 93D(e));

(b) Mr Joseph Crupi – the Commission disqualifies Mr Crupi from in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club for a period of 3 months from 1 July 2022 to 30 September 2022 (s 93D(e));

(c) Mr Tomas Mesfun – the Commission disqualifies Mr Mesfun from in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club for a period of 12 months from 1 July 2022 to 30 June 2023 (s 93D(e)).

Signed:	
	Deirdre O'Donnell
	Deputy Chair

Background

1. Aparo Management Enterprises Pty Ltd (**the Licensee**) holds late night (general) licence no. 319807140 (**the Licence**) in relation to the premises trading as Dreams Gentlemen's Club, situated at 1 Elizabeth Street Melbourne 3000 (**the Premises**).

2. The Licence permits the supply of liquor for consumption on the Premises during permitted trading hours. At all relevant times, the Licence was also subject to standard conditions for the provision of sexually explicit entertainment (**SEE Conditions**).

3. The Licensee has been the holder of the Licence since 22 January 2008. Mr Salvatore Aparo (**the Director**) has been the sole director of the Licensee since 22 January 2008.

4. In November 2016, Stacey Michelle Tierney **(Ms Tierney)** was contracted by the Licensee as a dancer at the Premises. On 19 December 2016, Ms Tierney was found dead in a sub-basement area of the premises, otherwise known as the 'manager's lounge'. This room is part of the redline area of the licensed premises. A post-mortem examination was conducted, and it was reported that the cause of death was "Multidrug Toxicity".

5. Due to the circumstances around Ms Tierney's death, the Commission considered that there might have been breaches of the Licence and / or the *Liquor Control Reform Act 1998* (**LCR Act**), and consequently that there may be grounds for disciplinary action.

6. There are two steps involved in a disciplinary inquiry by the Commission under Division 1 of Part 6 of the LCR Act. The Commission must first determine whether one or more grounds for disciplinary action against the Licensee exists. If so, the Commission must decide what, if any, disciplinary action to take against the Licensee and / or a related person.

Pre-inquiry

7. On 12 May 2021, the Commission served a notice dated 12 May 2021 upon the Licensee pursuant to section 92(1) of the LCR Act (**the Notice**). The Notice stated that the Commission proposed to inquire into whether there were grounds to take disciplinary action against the Licensee.

8. The Commission considered that there were two broad grounds for disciplinary action with respect to the conduct of the Licensee and the operation of the Premises, as follows:

   (a) the Licensee had contravened a provision of the LCR Act, the regulations, the Licence or a condition of the Licence; and

   (b) the Licensee was otherwise not a suitable person to hold a licence.

9. The Notice set out the particulars which gave rise to each of the possible grounds of disciplinary action.

10. The Commission identified four individuals who may be subject to a determination under section 93D of the LCR Act, which relates to disqualification of related persons. Those individuals were the Director, the former General Manager, Mr Stephen Kyriacou, the former duty manager, Mr Giuseppe Crupi and the former promoter, Mr Tomas Mesfun. Copies of the Notice were sent to the Licensee as well as to the related persons (other than Mr Mesfun, for whom the Commission was unable to obtain contact details).

11. As required by section 92A(1)(b) of the LCR Act, the Commission also published notice of the disciplinary action inquiry in a newspaper circulating generally throughout Victoria (the Herald Sun) on 17 June 2021 and on 29 May 2022 and on the Commission's website, inviting any persons whose commercial or financial interests may be detrimentally affected by the inquiry to attend and/or make submissions regarding the inquiry. The Commission did not receive any submissions from such persons in response to either notice.

Legislation and the Commission's task

12. In conducting an inquiry under Division 1 of Part 6 of the LCR Act,[1] the Commission must have regard to the objects of the LCR Act as set out in section 4(1).[2] The objects that are relevant to this inquiry 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

        …

        (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community;

    …

    (c) to contribute to the responsible development of the liquor, licensed hospitality and live music industries ...

13. Section 4(2) of the LCR Act requires that the Commission, in the conduct of an inquiry, exercise its powers "with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol".

What are the grounds for disciplinary action?

14. Section 90(1) of the LCR Act defines "grounds for disciplinary action" to mean, relevantly in this matter:

    (a) that the licensee or permittee has contravened a provision of this Act, the regulations, the licence or BYO permit or a condition of the licence or BYO permit (as the case may be);

    …

    (q) that the licensee or permittee is otherwise not a suitable person to hold a licence or BYO permit.

    …

15. There are some circumstances under the LCR Act where a person is considered not suitable to hold a licence[3] but these circumstances are not exhaustive. Therefore, it is necessary to consider the concept of suitability in the context of the relevant legislation.[4] It was recognised in *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 that the purpose of Division 1 of Part 6 of the LCR Act is "*the protection of the public, the upholding of industry standards, and the maintenance of public confidence in the liquor industry*".[5] It is not "*for the punishment of particular individuals or corporations*".[6]

16. Further, the Commission considers that protection of the public and the object of harm minimisation are paramount. Therefore, in assessing suitability, the Commission "*must look at what is in accordance with the public interest which embrace matters, amongst others, of standards of human conduct acknowledged to be necessary for the good order and well-being of the public…*" and *"take into account that the Act…was*

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[1] All references to legislation are references to the LCR Act unless stated otherwise.
[2] See *Victorian Gambling and Casino Control Commission Act 2011* (formerly the *Victorian Commission for Gambling and Liquor Regulation Act 2011),* s 9(3).
[3] See LCR Act, s 44(3): "…*a person is not a suitable person to hold, or carry on business under, a licence or BYO permit if the person or, if the person is a body corporate, any director of the person has, within the preceding 3 years— … been convicted (a) of an offence of supplying liquor without a licence or of supplying adulterated liquor or of an offence against any law relating to customs or excise; or (b) engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of this Act.*"
[4] *West Heidelberg RSL Sub-Branch Inc v Director of Liquor Licensing* [2006] VCAT 347; *Egan v Director of Liquor Licensing* [2007] VCAT 806.
[5] *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 at [16] (Kaye J).
[6] Ibid.

designed to protect the interest of the community…and the issue of protection of the public remains an important consideration”.[7]

What disciplinary action can the Commission take?

17. Section 90 of the LCR Act defines “disciplinary action” against a licensee to mean any one, or a combination, of the following:

    (a) the cancellation, or suspension for a specified period, of the licensee's licence;

    (b) the variation of the licensee's licence;

    (c) the endorsement of the licensee's licence;

    (d) the issuing of a letter of censure to the licensee; and/or

    (e) the imposition of a fine not exceeding an amount that is 250 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the *Monetary Units Act 2004* on the licensee.[8]

18. If the Commission finds that a ground for taking disciplinary action under section 90 of the LCR Act is made out, the Commission may also determine, pursuant to section 93D of the LCR Act, that the licensee or a related person be disqualified –

    (a) from holding a licence or BYO permit;

    (b) from being a director in any body corporate that holds a licence or BYO permit;

    (c) from being a partner in any partnership that holds a licence or BYO permit;

    (d) from having a beneficial interest (whether directly or indirectly) in the shares of any body corporate that holds a licence or BYO permit;

    (e) from in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club; or

    (f) from being employed by any licensed club or any person that holds a licence or BYO permit.

19. Sections 93D(2) and (3) of the LCR Act state that the Commission may disqualify a person in all or any of the ways listed above even if it determines not to take disciplinary action under section 93, and that it must specify a period for which the disqualification is to apply.

20. Section 93D(5) further states that a ‘related person’ in relation to a licensee or permittee relevantly means –

    (a) any director or nominee of the licensee or permittee (if it is a body corporate); or;

    …

    (c) any person who, whether directly or indirectly, is concerned in or takes part in the management of licensed premises or club of the licensee or permittee.

[7] *Whiting v AMC Investments (Occupational and Business Regulation)* [2005] VCAT 1830, [21]; See also *Raz Pty Ltd & Anor v Director of Liquor Licensing (Occupational and Business Regulation)* [2008] VCAT 857, [11], [28].
[8] The relevant value of a penalty unit at the time of this decision is $181.74, which provides for a maximum fine of $45,435. (At the time of the offence it was $155.46, which equated to a maximum fine of $38,865).

The Inquiry

Preliminary meeting

21. On 23 June 2021, the Commission conducted a preliminary meeting to determine what arrangements would need to be made for the conduct of an inquiry. At that time, the Licensee and the Director were represented by Mr Larkins of Counsel, Mr Kyriacou represented himself, and Mr Crupi was represented by Mr Galimberti.

22. Following the preliminary meeting, the Commission provided administrative directions with respect to provision of documents, the scheduling of a second preliminary meeting, and the filing of any written submissions and witness lists.

23. On 16 July 2021, a second preliminary meeting was held. The Licensee and the Director were represented by Mr Larkins of Counsel, Mr Kyriacou was then represented by Mr Harris of Counsel, and Mr Crupi was represented by Mr Galimberti.

24. Following the second preliminary meeting, the Commission provided updated administrative directions with respect to provision of documents, and the filing of any written submissions and witness lists.

25. On 6 October 2021, the Commission issued further administrative directions, which included listing a hearing for a date to be fixed, and further directions about the exchange of documents, as well as revised grounds and particulars.

Material before the Commission

Pre-Hearing Evidence

26. The Commission had before it and has had regard to the following evidence, which was provided to the Licensee and the Director and each of the related persons prior to the hearing (**Hearing**):

    - Late night (general) licence no. 319807140 and authorised premises
    - Current and historical Australian Securities and Investment Commission extract for Aparo Management Enterprises Pty Ltd
    - 2008 Late night (general) liquor licence no. 31907140
    - VCGLR Intoxication Guidelines (April 2016)
    - Late night (general) licence no. 319807140 – dated 2 February 2017
    - 2019 Late night (general) liquor licence no. 319807140
    - 2016 Late night (general) liquor licence no. 319807140 – dated 15 April 2016
    - Authorised Premises Plan for Dreams Gentlemen's Club
    - Letter from Sue McLellan (Director of Liquor Licensing) to Aparo Management Enterprises Pty Ltd dated 7 January 2010 and attached Liquor Licence 31907140
    - Letter from Sue McLellan (Director of Liquor Licensing) to Aparo Management Enterprises Pty Ltd dated 15 March 2010
    - House Rules as received by Responsible Alcohol Victoria on 18 March 2010
    - Letter from Aparo Management Enterprises Pty Ltd to RAV dated 22 November 2011
    - Section 130(1)(a) Liquor Control Reform Act request letter from Tim Bryant to Aparo Management Enterprises Pty Ltd dated 8 March 2019
    - Response from LGS Legal acting on behalf of Aparo Management Enterprises Pty Ltd dated 31 March 2019
    - Standard Operating Procedures Dreams Gentlemen's Club dated 8 March 2019
    - Dreams Gentlemen's Club Dancer Rules "Alexis" with handwritten date of 23 January 2017
    - Dreams Gentlemen's Club Management Plan & Duties (undated)
    - Dreams Employee Handbook (undated)
    - Master disc of record of interview between the VCGLR and Salvatore Aparo conducted on 13 June 2019

- Transcript of record of interview between the VCGLR and Salvatore Aparo conducted on 13 June 2019
- Master disc of record of interview between the VCGLR and Stephen Kyriacou conducted on 30 August 2019
- Transcript of record of interview between the VCGLR and Stephen Kyriacou conducted on 30 August 2019
- Dreams Gentlemen's Club Dancer Rules dated 8 March 2019 (handwritten date)
- House Rules for Dreams Gentlemen's Club dated 2016 (handwritten date)
- House Rules for Dreams Gentlemen's Club dated 2019 (handwritten date)
- Payroll advice for Stephen Kyriacou (dated 1-31 December 2016)
- Payroll advice for Tomas Mesfun (dated 1-31 December 2016)
- Payroll advice for Ilyas Adem (dated 1-31 December 2016)
- Dreams Gentlemen's Club - security SOPs (dated 2017)
- House Rules as inspected at Dreams Gentlemen's Club in 2018
- Warning Letter (WAR-4475) to the Licensee dated 30 August 2018
- Statement of Kyriacou, dated 19 December 2016
- Additional statement of Kyriacou, dated 19 December 2016
- Statement of Berhe, dated 19 December 2016
- Additional statement of Berhe, dated 19 December 2016
- Statement of Mesfun, dated 19 December 2016
- Additional statement of Mesfun, dated 19 December 2016
- Statement of Crupi, dated 7 February 2017
- Statement of Insp Dwyer dated 17 August 2018
- Victoria Police Coronial Brief
- Compliance history for the Licensee
- Statement of Aparo dated 9 February 2017.

Oral Evidence at the Hearing

27. In addition, the Commission has had regard to the oral evidence given at the hearing on 25 May 2022, of:

    - Dr Zalewski, expert witness for the Licensee and his two reports of April 2019 and November 2021; and
    - Mr Aparo, sole director of the Licensee.

28. The Commission acknowledges that much of the evidence before the Commission (as set out above) was constituted by untested statements or records of interview and that only the witnesses who appeared and gave evidence at the Hearing were able to have their evidence tested at the Hearing. The Commission has taken this into account in assessing the probative value of the evidence.

Submissions

29. In addition, the Commission has had regard to the various submissions it has received in relation to this matter (both before and after the Hearing) from the Licensee and Director (combined), Mr Kyriacou and Mr Crupi. The Commission notes that it was unable to obtain any contact details for Mr Tomas Mesfun and he has not contacted the Commission at all (although the Commission invited submissions and/or an appearance in its advertising of the Disciplinary Action and the Hearing).

The Hearing

30. An in-person hearing took place on 25 May 2022, at which the Director was present, and the Licensee and the Director were again represented by Mr Larkins.

31. Also present were Mr Kyriacou, represented by Mr Harris, and Mr Crupi, representing himself. Neither Mr Kyriacou nor Mr Crupi gave evidence.

32. At the hearing, the Commission heard evidence from two witnesses for the Licensee: Dr Zalewski, an expert engaged by the Licensee, and the Director.

Dr Zalewski's Evidence

33. Dr Zalewski advised the Commission that he is an independent risk management consultant. His CV states he possesses specialised knowledge in the field of security and safety systems, particularly with respect to licensed venues. Dr Zalewski is an experienced independent witness and has appeared previously before the Commission in other matters.

34. In relation to this matter, Dr Zalewski had prepared two reports, one in April 2019 and a more recent report in November 2021.

35. He said he had first had brief involvement with the Licensee in 2008 when it took over the business. He explained that he had been working with various similar venues back then and had one meeting with Mr Aparo and one other male and gave them a basic management plan. "It wasn't formalised – it wasn't a system… you know it was a basic plan"[9]. . He said he went back three nights close to the first meeting and then had no contact at all until 2019.

36. According to Dr Zalewski, the weakest part of an operating system is a lack of procedures, because human discretion then comes in and the exercise of discretion leads to human error. Dr Zalewski explained that he works with venues to develop management plans and operating procedures.

37. Dr Zalewski stated that where there is delegation to a manager then a licensee needs to have checks and balances in place to ensure compliance. "I think the difficulty is – in the context of this case, the difficulty is if you have high reliance on someone to do the right thing while you're away, and something goes wrong, that's a difficult circumstance for every licensee in the country around the world, because they're not all there all night every night, so, you know, what needs to happen from time to time is checks, balances, ensuring that the compliance issues are being addressed correctly"[10].

38. Dr Zalewski confirmed that he would have no idea how things were operating in 2016 (some eight years later as he did not have any contact between 2008 for 11 years until 2019). "No. No. The only way I would know if a venue was getting into trouble was my policing colleagues… or the venue contacting me and said, 'We've hit the wall'".[11]

39. Dr Zalewski confirmed that he had made no enquiry as to whether all the checks and balances that he thought would be best practice for someone who was delegating down the line were in place in 2016 or not or if there was appropriate training of staff or assessment of staff or ongoing reviews.[12]

40. Dr Zalewski was asked what he thought about senior staff drinking at the venue after-hours, and said that it's "unexpected", and that "there's a liquor licence. There are rules. There are expectations and I would expect those rules and expectations to be met".[13]

41. With respect to staff drinking at a venue at any time, including while off duty, Dr Zalewski said:

> Well, my – my view is – and this'll be reflected in hundreds and hundreds of procedures is staff who are off duty are not to come on – well, you can't physically prevent them but you can certainly encourage them not to come back or they mightn't have a job or shift next week. But the realities are staff should not be coming on to the premises if they're not working. It leads to a whole lot of problems, intoxication, favouritism, free drinks given by other staff who feel obliged to be involved. It leads to all sorts of problems. So that's a standard approach across the industry. You know, there wouldn't be too many licensed premises out there that would say, "Yes. Bring all the staff in and, you know, come in on a – on a Saturday or whatever," and – and, you know, staff helping themselves or be – be supplied free alcohol so – or free liquor. So – so the – the realities are that's a no-no and I think it's pretty fair to say most staff, most venues that I interact with rigidly enforce that requirement. They don't – they don't like that at all. Occasionally, you'll get a you know, a

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[9] Transcript p.44, line 22.
[10] Transcript p.37, line 27.
[11] Transcript p.48, line 10.
[12] Transcript pp 48 and 50.
[13] Transcript p.33 line 28.

> breach and occasionally someone will lose their job but it – but it's a real no-no for those reasons … [14]

42. With respect to closing up procedure, Dr Zalewski said:

> There's always a closing procedure. The closing procedure is step by step in all my – in all my SOPs, but certainly the – you know, you would not expect the most senior person to leave the venue until it was secured, because at the end of the day the most senior person that's there at the time is responsible for the venue, responsible to the director of the company, the licensee.[15]

43. When he was asked if the owner should have known that after hours drinking was going on, Dr Zalewski said he would expect the person in charge would have taken control and passed it on, and "that person has to stand up as well", and then added "I always say don't blame someone else if the system is wrong because you're going to be held accountable for it, and that's why we're here".[16]

44. Dr Zalewski said his next involvement with the venue was in 2019, when he was engaged to review the system, and ask questions including 'does the training need to be changed?' and 'does the management need to be changed?'

45. Dr Zalewski developed a checklist for the venue about all of the compliance and operational considerations and helped with the implementation of new procedures including new house rules.

46. Dr Zalewski's opinion was that the venue is currently running alright and the management doing well: "okay. I mean it's still – it's still low level as far as incidents go from – from what I've seen and from what I've heard from – from others who have been in the premises … it's running like – like a normal adult entertainment venue… management seems to mbe operating the venue reasonably well ".[17]

47. He also stated that he would be going back to the venue in three months and six months' time to check how it is going.

Mr Aparo, the Director's, Evidence

48. The Director gave evidence that he is the sole director of the Licensee, and he currently manages the venue himself, with the assistance of his fiancée, Ms Colecchia, who serves as the floor manager.

49. He said he had previously worked in the construction industry, from the age of 17 until 2017, and had his own concreting business. He completely closed down his concreting business by 2017, by which time he was working in a hands-on capacity with Dreams Gentlemen's Club. Prior to 2017 he said he had a "hands-off" role, which meant "overseeing everything from basically the outside of the operation, not so much being there day to day. Having the general manager working for you…..and a duty manager under him". [18]

50. Throughout the "hands-off" period, the Director said he would go to the venue "probably once or twice a week over the years" and that he would have "weekly conference meetings all the time" which were mainly over the phone but sometimes in person. He said the "day-to-day business was left up to the general manager", being Mr Kyriacou, and "back then, everything was done through delegation".[19]

51. The Director gave conflicting evidence as to how much time he was spending in the business in the months leading up to the incident. On the one hand he said that in the months leading up to December 2016 he was at the venue more often, as he was taking steps to wind down his construction business and move more into the hospitality business "before the incident, I was there for a few months. Well you know, maybe the last six months before the incident, I was there quite a lot because of the fact that you know I was already starting to wind down my other business… I .. had already started seeing glitches in the system in relations to – you know a dancer may have been there and she shouldn't have been there or just

[14] Transcript p.34.

[15] Transcript p.38 lines 29-33.

[16] Transcript p.55 lines 29-33.

[17] Transcript p.27 line 34.

[18] Transcript p.64 lines 43-45.

[19] Transcript p.104 line 42.

bits and pieces…”.[20] On the other hand he also gave contradictory evidence that in the months before the incident he was not there a lot at all “for months before this incident, I was spending less and less time there. I was in a relationship”.[21] When asked again as to whether around the time of December 2016 that he wasn’t there much the Director said “I was in and out.. I was there but not a lot no. It was not a lot”.[22] When it was put to the Director that Mr Kyriacou in his interview had said that the Director had been there “all the time” around the time of Ms Tierney’s death, the Director replied “That’s not – that’s not – I disagree with that”.[23]

52. The Director said he had known Mr Kyriacou on a personal level for many years prior to their involvement together in relation to this venue, and he engaged Mr Kyriacou because of his prior experience with sexually explicit entertainment premises.

53. The Director also confirmed that Mr Crupi was employed as a duty manager and was the duty manager on 17 December 2016, making him responsible for locking up on the morning of 18 December 2016.

54. The Director’s evidence at the hearing was that he was never there having a drink after hours and if he was there at all he would not have been drinking. He stated he would only drink on the premises during the licensed hours.

55. Regarding other staff drinking on the premises in the time before the death of Ms Tierney, the Director said he was not there at the time of Ms Tierney’s death but he did not allow after hours drinking nor allow anyone to be on the premises after closing time (allowing for a grace period). He was not aware of any after-hours drinking by staff and if it was occurring it was an abuse of power.

56. Regarding staff coming to the premises to drink while off duty (during licensed hours) the Director stated that senior staff would come in on their nights off and have drinks, and sometimes they would bring friends, but this did not mean they were allowed to go downstairs and drink, certainly not to “go wild”. [24]

57. When asked about the fridge that was inside the manager’s lounge, the Director stated:

> I might have had a few beers in there. That was my fridge. It’s – I’m not going to lie about the fridge. The fridge is – belonged to me. It was put in there for my own purpose. You know, as a sort of licensee, I roll up to the venue and if I wanted to entertain someone through the licensed hours, or whatever it may be, and I wanted to have a beer with them or something, that’s – I – I used to do that. I wasn’t going to go upstairs and get it, so I’d just sit there and have it. But in relation to was it stocked every night? No. It was – I put a few things in there when I needed them.[25]

58. Although his evidence as to how much was kept in the fridge was inconsistent, Mr Aparo admitted that he did ask for the fridge to be stocked from time to time although he didn’t know how much was in the fridge at any particular time. “I wasn’t encouraging people to stock it. I-I- when I got- required some stock to be put in there, I said to put it in there… it fits quite a lot of stock. So I’m not going to tell the bussie, ‘well just go and pick up a six pack or just go and put one whole slab in there’. Whenever it finishes, it finishes. It’s – it’s there. You know, if I come through there once a while or I come there once a fortnight, what’s the difference?”. [26]

59. The Director also confirmed that there was no lock on the fridge. He also confirmed that there are two entrances to the room with the fridge (variously referred to as the “office” and the “managers’ lounge”) and although it is lockable now, back then the room was only lockable from one side and anyone who was in the building could have got into the room “from the back”.[27]

[20] Transcript p.66 line 41.
[21] Transcript p.83 line 1.
[22] Transcript p.83 line 30.
[23] Transcript p.83 line 39.
[24] Transcript p.70 line 15.
[25] Transcript, p.68 line 15.
[26] Transcript p.79 line 24.
[27] Transcript p.116 lines 28-46.

60. Regarding the possibility that staff could have been taking liquor from the coolroom, the Director said that it would be very hard to trace that.

61. In relation to who had access to the building after hours, the Director confirmed that in 2016 all managers and recruitment coordinators had keys to the venue. He also confirmed that he did not know who else had access passes to get into the building back in 2016. "Well, I wasn't making the access cards back then, so it was – I wasn't supplying them to staff or dancers so I don't know who had them and who didn't have them".[28]

62. With respect to the incident on 18 December 2016[29], the Director gave evidence that he had no direct knowledge of what occurred after that other than what he had been told.

63. The Director seems to have accepted that the duty manager, Mr Crupi, failed to follow procedures on 18 December 2016, as he gave evidence that he reprimanded him for this.

64. When asked about whether he was concerned about the manner in which the premises had been operated on the night Ms Tierney died, the Director replied that:

> I was very concerned, and it's affected me greatly up until now. But I – I think, looking back to the history and looking back to the way it was operating in the past, I couldn't see any faults there. I don't believe there was any faults. There was a lot of delegation. There was a lot. Now, of course, you put your trust into your upper management to fulfil these duties. Now, I don't know how those duties were implemented because I wasn't there to see that first-hand. From what I saw, everything was fine. I didn't see any operational issues.[30]

65. When it was put to him that policies were in place in 2016 but they were not being followed, the Director stated "Yes. But I'm not the one to push those policies through because I'm the licensee. He's the general manager. You're delegating to your staff and so on and so on".[31]

66. When asked if he had any mechanisms or processes in place in 2016 that allowed him to become aware of what was going on, he said he did not because he was not hands-on running the venue.

67. He agreed with propositions put to him that when he was "hands-off" he had no real knowledge of whether particular aspects of policies were actually being implemented unless somebody reported an incident to him and as a director he would "only be as good as the inquiries he makes and the reporting systems he'd set up".[32]

68. When it was suggested to him that he had no way of effectively monitoring whether policies were being followed, the Director replied "Well, how am I going to monitor something if I wasn't there?"[33]

69. Mr Aparo explained that nowadays he reviews everything. "I'm overseeing it. I'm reviewing it every minute of the night, every minute of the day while I'm there, the operations from the security to staff to patrons and to entertainers all the way through".[34]

70. He also explained that he now has a secure safe alarm that is automatically activated two hours after licensed hours and that if the alarm is not activated the security company will call and if no one answers they will come past to make sure all the doors are locked and no one is in the building. He explained that only he had the master code and no one could override this new system.[35]

71. When asked if he were to now put in a manager would he put checks and balances in place that were not previously there he said: "1,000 per cent. I would have to, I must, every check and balance from the

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[28] Transcript p.117 line 18.

[29] Reference to "the incident" includes reference to events that began on Saturday 17 December 2016 and extended into Monday 19 December 2016.

[30] Transcript p.67 lines 40-46.

[31] Transcript p.94 lines 26-28.

[32] Transcript p.114 line 21.

[33] Transcript p.101 line 35.

[34] Transcript p.115 line 28.

[35] Transcript p.98, line 20.

operational checklist from – Zalewski's mentioned right through to every procedure. Everything would have to be signed off to make sure everyone is understanding the policies and that all the procedures are being enforced 100 per cent." And he went on to say that he, as director, would check everything was signed.[36]

72. Mr Aparo admitted that none of this happened back in 2016 and prior, and that looking back now he would have done things differently.[37]

73. When asked what responsibility he takes for the death of Ms Tierney, if any, the Director referred to management breaching his trust, and agreed he had probably placed his trust in the wrong people.

Findings by the Commission in relation to the evidence of Mr Aparo

74. The Commission considers that the Director's evidence in relation to the period prior to 2017 was often inconsistent and vague. The Commission finds the following facts established in relation to the period prior to 2017:

- The Director was, and remains, the sole director of the Licensee;
- The Director kept a fridge in the manager's lounge which had alcohol in it and which was stocked by him or at his direction from time to time;
- The Director himself consumed alcohol in the manager's lounge with friends and staff albeit that they were off duty and it was during the Licensee's hours of operation;
- Management and staff regularly consumed alcohol in the manager's lounge (during and outside of the Licensee's hours of operation);
- There were no proper systems in place to control the consumption of alcohol from the fridge;
- The fridge did not have a lock nor was the alcohol stock in the fridge controlled by any system – that is, the Director did not have any knowledge of what was in, or what was removed from, the fridge at any particular time;
- In addition, the coolroom, which contained a large stock of alcohol, was very close to the manager's lounge and there were similarly no proper systems in place to control the removal and consumption of alcohol from the coolroom;
- The manager's lounge was not able to be properly locked, so anyone in the building had access to the manager's lounge and accordingly to the fridge and the coolroom (there was no evidence to suggest the coolroom was locked);
- The Director did not know who had access passes to the building;
- The Director delegated responsibility to run the business to the manager Mr Kyriacou from 2008 to 2017;
- The Director made little enquiry as to the performance of the manager or the compliance operations of the business more generally and did not have any proper systems in place to ensure that the obligations of the Licensee pursuant to its liquor licence were complied with.

75. Accordingly, the Commission finds that it is clear that the Licensee, through the knowledge, actions or omissions of its sole director, knew or ought to have known, not only that there was a real risk that people would be drinking the Licensee's alcohol in the manager's lounge during and after hours, but that on occasions it was occurring. By stocking the fridge and the coolroom and by failing to implement proper controls - simply appointing a manager and then effectively turning a blind eye - the Licensee permitted the supply of alcohol on the premises after hours on the night in question.

76. The Commission finds that at the time of the incident in December 2016, the Licensee was unsuitable under the LCR Act.

77. The Commission finds that the Director was much more consistent and fulsome in his evidence about the period after 2017 in relation to which the Commission makes the following findings:

- The Director's management style is now hands-on and he has visibility into all operations of the business;

[36] Transcript p.115 line 36.
[37] Transcript p.116 line 5.

- With Dr Zalewski's guidance policies have now been implemented to ensure compliance with the Licensee's obligations and to protect staff, contractors and patrons including revised house rules, codes of conduct, incident registers and paperwork being signed off to evidence proper training has occurred and that proper procedures are followed;
- No alcohol is allowed to be consumed downstairs by anyone;
- No alcohol is kept in the fridge any more;
- The manager's office is now locked;
- An alarm system has been installed to ensure that the Director is notified if the venue is not properly secured at closing;
- There have been no compliance issues since 2017;
- If a manager is appointed and given delegated authorities in the future the Director will ensure that proper controls are present to allow the Licensee full visibility into compliance with obligations as a Licensee.

78. Accordingly, the Commission finds that the Licensee is currently a suitable person to hold a licence under the LCR Act.

Post hearing submissions

79. Following the hearing, the Commission received written submissions on 10 June 2022 on behalf of the Licensee and the Director in relation to whether the grounds should be found proven against the Licensee. No other submissions were received at that stage.

80. The submissions for the Licensee and the Director addressed each of the alleged grounds and submitted they had not been made out, save for one breach of the licence condition requiring a set of House rules to include specified matters, which they say had been remedied promptly.

81. Subsequently, by email on 22 June 2022, the Commission provided the parties with its findings that a number of grounds on which to take disciplinary action against the Licensee were proven. In that email the Commission invited the parties to provide submissions by 27 June 2022 as to what disciplinary action each party considered ought to be taken.

82. Submissions in response were provided on 27 June by LGS Legal on behalf of the Licensee and Mr Aparo; by Mr Crupi providing further information and also confirming that he relied on his previous submission dated 15 November 2021; and on 27 and 28 June by Lawcorp Lawyers on behalf of Mr Kyriacou. Those submissions were all considered in the Commission's determination of what disciplinary action to take in respect of the Licensee and the related persons.

The Commission's findings

Ground 1

83. It was alleged that on 18 December 2016 the Licensee supplied liquor, and / or permitted liquor to be supplied and / or consumed in the licensed premises outside of the trading hours authorised by the Licence and / or in a manner in breach of the Licence, in contravention of section 108(1)(a) of the Act.

84. The Licensee has not taken issue with the following points:

    (a) The Licence authorises the Licensee to supply liquor on the licensed premises between the hours of 7:00am and 5:00am the following morning from Monday to Saturday and between 10:00am and 1:00am the following morning on Sunday.

    (b) Between the hours of 5:00 am and 10:00 am on Sunday 18 December 2016, several people were present in the basement level manager's lounge, within the licensed premises.

    (c) These people included Ms Tierney, Mr Kyriacou, Mr Luke Darmanin, Mr Mesfun, and Mr Berhe.

    (d) During those hours Ms Tierney, Mr Kyriacou, Mr Mesfun, and Mr Berhe, and possibly Mr Darmanin, consumed liquor in the manager's lounge.

85. The Commission accepts the Director's evidence that he was not present at the venue during the time that Ms Tierney was drinking in the manager's lounge in the evening of Sunday 18 December 2016 or on Monday 19 December 2016.[38]

86. The issues in dispute are whether it was the Licensee who supplied and / or permitted the liquor to be supplied at the relevant time, and whether the Licensee permitted that liquor to be consumed.

87. In relation to the supply of liquor, the Director acknowledged that he kept the fridge in the manager's lounge stocked with alcohol. There was also alcohol in the coolroom which is adjacent to the manager's lounge and both were kept unlocked. The Director's evidence was that he had no way of monitoring if any liquor was being consumed from the coolroom or the under-bar fridge in the manager's lounge.

88. This was despite the fact that the Director would drink in the manager's lounge himself, although he says this was during the authorised hours, and he would invite others to drink there with him, including his friends, some of which were staff members who were not on duty.

89. The Director has also acknowledged that there were various people who had keys to the venue, including not just management but also the recruitment coordinators, and that he did not know who else had keys back then as he was not in charge of issuing them. This effectively means people were able to come and go as they had access to do so since they had the keys. Whilst accessing the venue these people had free access to the liquor stored in the manager's lounge and the coolroom, since neither were locked nor monitored.

90. In the circumstances the Director is saying that he was "hands-off", but he was still involved. He says he was having meetings with Mr Kyriacou on a not infrequent basis, although his level of enquiry at these meetings was superficial.

91. The Commission finds the Licensee had insufficient controls in place to prevent this type of activity. While Dr Zalewski had been consulted in 2008, he had not been back to the venue in the eight years between this first brief involvement and the time of the incident in December 2016. He was therefore unable to say if any controls were implemented or how the venue was running at that time.

92. It is the Commission's view that the Licensee could have, and should have, done more, and as agreed by Dr Zalewski, "the buck stops with the owner".[39]

93. The Commission has considered the case of *Douglas-Brown v Commissioner of Police*[40] (**Douglas-Brown**) which was cited in the Licensee's post-hearing submissions. It was submitted that Douglas-Brown was authority for the proposition that mere negligence by a person responsible for the acts or omissions of a licensed corporation is insufficient to constitute any such acts or omissions on the part of the corporation. The Commission considers that case is quite different to this matter for a number of reasons.

94. First, the Licensee in that case was a chartered accountant specialising in insolvency, who had been appointed as a receiver/manager of a hotel. By comparison, by December 2016 the Licensee had held the Licence for nearly nine years[41], throughout which entire time the Director had been the sole director.

95. The Director claims that he was "hands-off" prior to December 2016. In his evidence the Director said that "hands-off was overseeing everything from basically outside of the operation, not so much being there day to day"[42] and that the number of his visits were inconsistent, saying he would go to the venue "probably once or twice a week over the years" and have "weekly conference meetings all of the time" which were "over the phone normally" in which he would "go over every part of the business from A to Z; basically from the financial status of the business to staff hiring, if there was any issues with policy changes or there was any problems with customers. Anything it might have been, but it may – that I needed to know of".[43]

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[38] Hearing transcript, page 83.
[39] Transcript p.51.
[40] (1995) 13 WAR 441 (Full Court WASC).
[41] Since 22 January 2008.
[42] Transcript p.64.
[43] Transcript p.64.

96. The Director gave further evidence that in the few months before the incident he had been there "quite a lot" and he had "already started seeing glitches in the system", and "leading up to – up to the incident, I was looking at moving into the hospitality sector, and to do that, I had to spend a lot of time there."[44]

97. On any view, the Licensee was in an entirely different position than the licensee in Douglas-Brown.

98. Additionally, the two second most senior people under the Director, Mr Kyriacou and Mr Crupi, were both present at closing time on 16 December 2016, with Mr Kyriacou remaining in the premises after hours. The Commission does not consider that the failures of Mr Kyriacou and Mr Crupi are so far outside of their role and responsibility such that the Licensee would have no responsibility. Mr Crupi failed to close the venue down as he was required to do. Mr Kyriacou remained on the premises consuming alcohol with other members of staff and other friends. The Licensee cannot wash its hands of the actions of its management team simply by delegating without implementing sufficient controls and governance to ensure compliance with its obligations as licensee.

99. Also distinguishing this matter is the nature of the offence. It was alleged in Douglas-Brown that the Licensee had "suffered a person to be immodestly dressed while performing an entertainment or performing entertainment in a lewd manner". This is a less serious matter than supplying and allowing the consumption of liquor outside of the trading hours, and the other associated contraventions alleged in this matter.

100. Accordingly, the Commission finds that it is clear that the Licensee, through the knowledge, actions or omissions of its sole director, knew or ought to have known that people would be drinking the Licensee's alcohol in the manager's lounge both before and after hours. The Director's actions in stocking the fridge and the coolroom, failing to implement proper controls - simply appointing a manager and then effectively turning a blind eye - constitutes the Licensee supplying or permitting the supply of alcohol on the premises after hours on the night in question.

Ground 2

101. It was alleged that prior to and leading up to 18 December 2016, the Licensee permitted and / or encouraged a culture to develop whereby liquor was regularly supplied and consumed in the licensed premises outside of the trading hours authorised by the Licence and / or in a manner in breach of the Licence and the Licensee's own internal policies, in contravention of section 108(1)(a) of the Act.

102. The Commission has found insufficient evidence to support this ground.

Ground 3

103. It was alleged that on 18 December 2016, the Licensee supplied liquor and / or permitted liquor to be supplied to persons who were in a state of intoxication, in contravention of section 108(4)(a) of the Act.

104. Based on the statements of those who were present in the manager's lounge on the morning of 18 December 2016, including Mr Berhe, Mr Mesfun and Mr Kyriacou, the Commission is satisfied that they were consuming liquor whilst in a state of intoxication. The Commission also notes that the Licensee did not dispute this fact.

105. The Director's actions in stocking the fridge and the coolroom, failing to implement proper controls - simply appointing a manager and then effectively turning a blind eye - constitutes the Licensee supplying or permitting the supply of alcohol on the premises after hours on the night in question to persons who were in a state of intoxication.

Ground 4

106. It was alleged that on 18 December 2016, the Licensee permitted drunken persons to remain on the licensed premises, in contravention of section 108(4)(a) of the LCR Act.

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[44] Transcript p.67.

107. The Licensee has not disputed that drunken persons remained on premises after hours on 18 December 2016, stating that he was not there so he would not know.

108. For the reasons stated under Grounds 1 and 3 and by the actions of Mr Crupi and Mr Kyriacou leaving the premises knowing that drunken persons including Ms Tierney were still present, it follows that the Licensee failed to prevent drunken persons remaining on the premises.

Ground 5

109. It was alleged that on 18 December 2016, the Licensee failed to take all reasonable steps to adequately supervise and manage staff to ensure the responsible service of alcohol, in contravention of a condition of the Licence.

110. Mr Kyriacou and Mr Mesfun were in the manager's lounge, in a state of intoxication, and left to their own devices.

111. Not only were these staff not being supervised or managed directly by another person, for example the Director, they were not being managed by use of appropriate procedures.

112. Mr Crupi had procedures to follow, including the closing down procedure, but for whatever reason, he did not follow it.

113. The Commission heard from Dr Zalewski that the weakest link is when procedures are not followed, and there is room for human error. In this case Mr Crupi was not required to fill out checklists, and the Licensee had taken no steps to ensure after-hours drinking by staff did not occur.

114. The Commission finds that the Licensee did fail to take all reasonable steps to adequately supervise and manage staff to ensure the responsible service of alcohol.

Ground 6

115. It was alleged that on 17 August 2018, the Licensee failed to have developed a set of 'House Rules' that included guidelines on the responsible service of alcohol and the prevention of the use of illicit drugs in the Premises, in contravention of a condition of the Licence.

116. The House Rules also did not include guidelines on 'acceptable photo identification', and 'the prevention of underage drinking' as required by the Licence.

117. These matters have been admitted by the Licensee.

118. On the basis of these admissions the Commission is satisfied that at the time of an inspection on 17 August 2018, the Licensee failed to have developed a set of 'House Rules' that included guidelines on the prevention of the use of illicit drugs in the Premises, as required by the Licence.

Ground 7

119. It was alleged that based on grounds 1 to 6, the Licensee may not be a suitable person to hold a licence.

120. In considering the suitability of the Licensee to continue holding the Licence, the Commission has considered its findings with respect to the allegations and grounds detailed above, as well as the Director's evidence at the hearing.

121. The Commission has also taken into account the factors raised by the Licensee and the Director in post-hearing submissions, namely:

   (a) The Licensee's submission that since the Director took over the day-to-day operation of the premises in 2017 he has been hands-on together with his fiancée and they do not delegate any more to a manager but personally make sure that the business operates well.

   (b) The Licensee has implemented systems to reduce risk including an alarm system and closing procedures and operational checklists and gave detailed evidence about the compliance assurance systems that are now fully implemented, and the regular ongoing interaction and

engagement of Dr Zalewski. The Director also gave evidence that if he ever delegates to a manager in future he will ensure that all checks and balances would be put in place to ensure ongoing compliance with the Licensee's procedures and legal obligations.

(c) The evidence of Dr Zalewski that "management seems to be operating the business reasonably well" and that he now has an ongoing role in the review and implementation of compliance processes at the venue.

(d) The fact that, prior to December 2016, no compliance issues had been raised since 10 March 2012, and that since December 2016, apart from the matter raised in ground 6, and one other matter (which was the subject of a warning letter), no other compliance issues have been raised, despite 13 inspections having taken place in that period.

122. Having considered all of these factors, the Commission has found that while the Licensee was unsuitable in December 2016, the Licensee is now suitable to continue holding the Licence.

Grounds for Disciplinary Action

123. As the Commission is satisfied that there are grounds for disciplinary action, it must proceed to make a determination in accordance with section 93 of the LCR Act. As indicated above, the primary object of the LCR Act is the need to minimise harm arising from the misuse and abuse of alcohol and the protection of the public through encouraging a culture of responsible consumption of alcohol, rather than imposing a sanction as a form of punishment.

124. The Commission may take into account a variety of factors in determining the appropriate disciplinary action, including (but not limited to):

- the paramount need to minimise harm, the risk associated with the misuse and abuse of alcohol[45] and the need to protect the public;[46]
- the nature, extent and seriousness of identified grounds, including the period over which they extended;[47]
- the past compliance history of the licensee and/or similar previous conduct[48] as well as whether evidence suggests that the licensee fosters and encourages a culture of compliance with the LCR Act;[49]
- the level of cooperation with the Commission or other authorities responsible for enforcement under the LCR Act;[50]
- the financial position of the licensee;[51]
- the need to generally deter and discourage similar behaviour from other licensees and specifically deter the licensee in question;[52]
- remorse, contrition and/or corrective actions taken by the licensee to improve management of the premises;[53] and

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[45] See LCR Act, s 4(2), specifically, "[i]t 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".

[46] With respect to public protection, see *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [130]; *Victorian Commission for Gambling and Liquor Regulation v Legend Enterprises Pty Ltd (Review and Regulation)* [2013] VCAT 1412 [112].

[47] *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 [33]-[34]; *Hodgkin v Planet Platinum Ltd (Occupational and Business Regulation)* [2011] VCAT 725 [328].

[48] *Hodgkin v Planet Platinum Ltd (Occupational and Business Regulation)* [2011] VCAT 725 [328]; *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 [29].

[49] *Parr v K Marketing Pty Ltd (Occupational and Business Regulation)* [2010] VCAT 1108 [24].

[50] *Starera PL v Melbourne CC* [2000] VCAT 213 at [114].

[51] *Parr v K Marketing Pty Ltd (Occupational and Business Regulation)* [2010] VCAT 1108 [30].

[52] *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [130]-[132].

[53] *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [134].

- any mitigating circumstances relevant to the matter.

Decision

125. The Commission considers that the primary object of the LCR Act relevant to its determination of this matter is "to contribute to minimising harm arising from the misuse and abuse of alcohol...". This object is achieved in part through the "upholding of industry standards, and the maintenance of public confidence in the liquor industry".[54]

Consideration of Disciplinary Action against the Licensee

126. The Commission notes that this is a serious matter with tragic consequences.

127. The Commission has taken into account many factors in considering the appropriate disciplinary action to take including:

    - the cooperation and remorse shown by the Licensee through the Director;
    - the changes the Licensee has made since 2016 to its operation of the licensed premises;
    - the satisfactory compliance history both before and after the incident, and
    - the significant delay in finalising the matter due to many elements including the need to await the finalization of the Victoria Police investigation and the dislocation arising out of the COVID19 pandemic, and some less significant delays as a result of extensions of time requested on behalf of the Licensee and the Director.

128. In light of all the circumstances, the Commission considers it appropriate to take disciplinary action on the Licensee as set out in the following paragraphs.

129. In relation to grounds 1,3,4 & 5:

    (a) The Commission imposes a fine of $28,000. (In imposing a fine the Commission has had regard to the fact that the maximum penalty is 250 penalty units, which in 2016 would have been $38,865 and now is $45,435); and

    (b) Vary the Licence by imposing the following additional conditions

    - The licensee must at all times have in place and maintain an operational independently monitored 24 hour alarm system that notifies the director of the licensee if the alarm to the licensed premises has not been set within a two hour period of the conclusion of the licensee's permitted trading hours on any day; and
    - For a period commencing 14 days from the date of notification of this decision and expiring on 30 June 2025, the licensee must engage an independent risk management consultant to conduct a quarterly written review of the licensee's systems, practices and procedures to assure compliance by the licensee with its obligations under the *Liquor Control Reform Act 1998* and the licensee must implement any recommendations made as soon as possible.

130. In relation to ground 6, the Commission notes that the VCGLR Inspector determined at that time that no action be taken as it was a relatively minor omission. The Commission has determined that no further disciplinary action should be taken in relation to this ground.

131. In relation to ground 7, for the reasons set out in paragraphs 119 to 122 above, the Commission finds that the Licensee is currently a suitable person to hold a licence.

Consideration of disqualification of related persons under section 93D

Mr Aparo (Director)

132. The Commission finds that the Director placed unjustifiable trust in Mr Kyriacou, in particular, as general manager and failed to adequately oversee his management team leading up to December 2016 by failing to sufficiently enquire into whether the Licensee's policies were being properly implemented. The Director

[54] LCR Act, s 4

admitted on numerous occasions during his evidence at the Hearing that his role had not been any more diligent than appointing managers, informing them of the venue's policies and then trusting them to do their jobs properly. Tellingly, for example, he said, "How am I going to monitor something if I wasn't there?"[55]

133. The Commission accepts that the Director is remorseful, that he is now diligent in his supervision of the operations at the venue and has significantly improved his practices and procedures to ensure compliance by the Licensee with its obligations under the Act.

134. In determining whether or not to disqualify the Director in accordance with section 93D of the Act, the Commission has taken into account all relevant factors including the cooperation and remorse shown by Mr Aparo and the changes that Mr Aparo has made to his management style, supervision practices and procedures, as well as the significant delay in finalising the matter.

135. The Commission is not satisfied in the circumstances that it is appropriate to disqualify Mr Aparo in accordance with section 93D of the Act. The Commission notes that disqualification is the only action that the Commission may take against Mr Aparo as a "related person" of the Licensee. If it were open for the Commission to take some other action against Mr Aparo, such as the imposition of a fine, it may well have done so.

Mr Kyriacou (Former General Manager)

136. Mr Kyriacou is a related person of the Licensee having been General Manager of the Dreams Gentleman's Club at the time of the incidents the subject of this hearing.

137. Mr Kyriacou was the General Manager employed by the Licensee. He was the second most senior person involved at the venue apart from the Director and oversaw all aspects of management for the Licensee.

138. Mr Kyriacou did not give evidence at the hearing. However, Mr Kyriacou's evidence provided in the statement made to Victoria Police dated 19 December 2016 and the Interview under caution with VCGLR Inspectors on 30 August 2019 each concerning his knowledge of the circumstances surrounding the death of Ms Tierney on 19 December 2016 is such as to satisfy the Commission as to the following matters so far as Mr Kyriacou is concerned:

- He was aware of after hours drinking taking place at the venue on more than one occasion prior to 18 December 2016;[56]
- He was aware that Ms Tierney had in the previous month been heavily intoxicated while working at the venue to the extent that she had passed out;
- He was not the duty manager at the venue on Saturday 17 December 2016;
- He was personally involved in the afterhours drinking on 18 December 2016;[57]
- He attended the venue at approximately 1am on Sunday 18 December 2016 in the company of his two brothers and a friend;
- He and his brothers and friend drank alcohol upstairs at the venue for a number of hours at which point his brothers left the venue and he and his friend went to the manager's lounge to continue drinking. They were joined by Tomas Mesfun and his cousin shortly afterwards;
- At about 4.45 am Ms Tierney came into the manager's lounge and she appeared to be intoxicated;
- Ms Tierney lay face down on the tiled floor in a weird position in front of the fridge;
- He and the other men went to sleep on the couches;
- At about 1.30 to 2pm on Sunday he and his friend left the premises. Ms Tierney was still in the same position on the floor however she was snoring and groaning. Her breathing was nothing out of the ordinary in his opinion;
- Mr Mesfun and his cousin were still sleeping in the manager's lounge when he left the venue;
- Commencing from about 5am on Monday 19 December he received a number of text messages and phone calls from Mr Mesfun indicating an increasing level of concern about Ms Tierney's condition;

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[55] Transcript p.101 line 35.

[56] Record of interview of Kyriacou, dated 30 August 2019, page 15-17, 28.

[57] Ibid, page 70-73.

- He indicated to Mr Mesfun that Ms Tierney should be put into a sitting position and given food;
- He was unaware whether or not Ms Tierney ate the food offered to her;
- Ultimately by about 10.45am on 19 December Mr Mesfun's level of concern about Ms Tierney led to Mr Kyriacou indicating that he would attend the premises himself;
- He arrived at the venue at approximately 11.45am on 19 December and went to the manager's lounge where he saw Ms Tierney lying on a couch with a blanket over her and a pillow under her head. She appeared to be deceased. He called 000 and an ambulance arrived at the venue shortly thereafter;
- He was complicit in intoxicated persons remaining on premises and consuming further alcohol after hours on 18 December 2016;[58]
- He left the premises on 18 December 2016 while several people were still inside the manager's lounge, including Ms Tierney, whom he knew was highly intoxicated;[59]
- He failed to render assistance to Ms Tierney whom he knew was highly intoxicated;[60]
- He failed to call an ambulance for Ms Tierney before leaving on 18 December 2016 and whilst she was still alive and highly intoxicated.[61]

139. The Commission is satisfied that Mr Kyriacou's response to Ms Tierney's level of intoxication and collapse in the manager's lounge was completely inconsistent with his obligations as General Manager of the venue. That obligation was unaffected by the fact that he was not acting as manager of the venue when he attended the premises that night. Ms Tierney was entitled to a level of care and Mr Kyriacou was in a position to ensure that she received it. His failure to act was egregious and is heightened if anything by his stated knowledge of her previous recent episodes involving serious intoxication at the venue.

140. Further, the Commission is satisfied that Mr Kyriacou's responses to Mr Mesfun's escalating expressions of concern about Ms Tierney's condition over the succeeding twelve hours were again entirely unsatisfactory and perfunctory. Rather than putting Ms Tierney's apparently deteriorating health at the centre of his concerns he appears to have been prepared to await developments in the hope that all would be well.

141. Whether or not a timely response to Ms Tierney's situation would have led to her recovery must remain a matter for speculation, however it is a matter of the greatest regret that such an opportunity was not afforded to her.

142. The Commission has taken into account all relevant considerations including the significant delay in finalising the matter.

143. The Commission has determined to disqualify Mr Kyriacou from in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club for a period of 12 months from 1 July 2022 to 30 June 2023 (s93D(e)).

Mr Crupi (Duty Manager)

144. Mr Crupi is a related person of the Licensee having been a Manager of the Dreams Gentleman's Club at the time of the incidents the subject of this hearing.

145. Mr Crupi was employed by the Licensee as a Duty Manager at the venue having commenced his employment in or about 2008, and he continued working for some time after 18 December 2016. Mr Crupi is no longer employed by the Licensee and has not been for some time.

146. Mr Crupi was on duty in his capacity as Duty Manager at the Premises on 17 December 2016 and ceased work between 6:00 and 6:30am the following morning on 18 December 2016 when he left the Premises at the conclusion of his shift.[62]

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[58] Ibid.
[59] Ibid, page 70, 91.
[60] Ibid, page 102.
[61] Ibid.
[62] Submissions on behalf of Giuseppe (Joe) Crupi, dated 15 November 2021, page 1.

147. Mr Crupi was, at the time, on the third tier of the management hierarchy at Dreams and reported to the General Manager, Mr Kyriacou who then reported to the Director.[63]

148. According to submissions filed for Mr Crupi, his role was very limited and constrained by the directions, activities and operations of Mr Kyriacou and Mr Aparo. Mr Crupi worked under the direct supervision and direction of mr Kyriacou.

149. With respect to the events of the morning of 18 December 2016, Mr Crupi's submissions state that "Specifically, when Crupi was balancing the tills at the end of his shift, Kyriacou approached him and informed Crupi that Kyriacou was remaining on the Premises and that Crupi could leave the Premises."[64]

150. Mr Crupi's submissions further state that "It was not Crupi's responsibility to ensure that the Premises was empty after its closure. Crupi had previously been instructed by Aparo and Kyriacou that if either were remaining on the Premises after its closure, they would ensure that the staff and patrons had vacated the Premises. Crupi left the Premises on 18 December 2016 in adherence to this practice and based on the instruction of his supervisor, Kyriacou."[65] And, "Crupi, an employee of Dreams who worked under the direct supervision and direction of Kyriacou, responsibilities and duties ceased at the end of his shift between 6:00 and 6:30am on 18 December 2016. Crupi did not have the authority to veto or counter the directions of Kyriacou on 18 December 2016 or any other day."[66]

151. Despite Mr Crupi's claim that he was not responsible for locking up the venue, the Licensee had policy documents that indicated this was his responsibility. In the 'Employee Handbook', under the heading 'Manager's Closing Procedures', managers must "check that all doors are locked – this is the manager's responsibility not the doorman's responsibility" and "check all rooms and closets in building (doorman may do this as well); and set alarm."[67]

152. In a document titled "Dreams Gentleman's Club Management Plans & Duties" it is stipulated that "nobody is to remain in the venue after management has completed its book work for the night and after the staff have finished cleaning. Generally, one hour after closing".[68]

153. At the hearing, when he was asked about who should be responsible for locking up, Dr Zalewski was emphatic that it should be the most senior person on duty. His evidence was "The most senior person has to lock up. That's it. And when I say the most senior person, that's got to be the most senior person on duty."[69]

154. In view of the Licensee's policies, and also of what the Commission understands would be the normal duties and responsibilities of a duty manager in a licensed venue, the Commission is of the view that Mr Crupi was responsible for ensuring the venue was locked up and that no one was left inside the venue. In his statement to Victoria Police from 2017, Mr Crupi said "When I left I believe there would have been some people left in the club. I don't go checking who is in the club. I think if there were people in the club when I left they would have been in the back room".[70]

155. Therefore, by his own admission, Mr Crupi failed to fulfill his duties to ensure no people were left in the club after closing.

156. The consequences that flowed from Mr Crupi's failure to ensure the venue was vacated were that several people, including Mr Kyriacou and Mr Mesfun, were permitted to remain in the venue whilst they continued to consume alcohol to the point of intoxication. Some of those people remained in the venue until Monday 19 December 2016, by which time one of them, Ms Tierney, had passed away.

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[63] Ibid.
[64] Ibid, page 2.
[65] Ibid.
[66] Ibid, page 3.
[67] Dreams Gentlemen's Club Pty Ltd Employee Handbook, page 14.
[68] Dreams Gentleman's Club Management Plans & Duties, undated.
[69] Transcript p.39.
[70] Statement of Giuseppe Crupi, signed 07/02/2017.

157. This constitutes a failure by Mr Crupi, regardless of what he may have been told or directed by Mr Kyriacou. The Commission notes that Mr Kyriacou's submissions state that he did not tell Mr Crupi to leave and that he would lock up.[71] Given that neither Mr Crupi nor Mr Kyriacou gave evidence at the hearing, the Commission is not able to determine whether such a conversation took place or not. If it did, the Commission would accept that Mr Crupi's role was subordinate to Mr Kyriacou's and it would have placed Mr Crupi in a difficult position.

158. The evidence provided by Mr Crupi in the statement he made to Victoria Police dated 7 February 2017 concerning his knowledge of the circumstances surrounding the death of Ms Tierney on 19 December 2016 is such as to satisfy the Commission as to the following matters so far as Mr Crupi is concerned:

- He was the duty manager at the venue on Saturday 17 December 2016;
- He had been employed at the venue since 2008;
- He left the premises between 6am and 6.30am on Sunday 18 December as it normally takes between one and one and a half hours to cash out after the premises closed at 5am;
- He believed that there would have been some people left in the club when he left the premises, however he did not check that as part of his exit procedure;
- Any people left on the premises would have been in the back room (usually referred to as the manager's lounge in this Hearing);
- He did not know Ms Tierney well however about two weeks before her death when he was on duty she had been so intoxicated that she was incoherent and then fell asleep in the little lounge room in the basement where the shower is. She was placed in a cab;
- When he left the venue on 18 December 2016, he was unaware that Ms Tierney was still in the venue.

159. The Commission notes that there is no evidence either way as to whether or not Mr Crupi was told to leave that morning by Mr Kyriacou – both assertions are simply contained in legal submissions and accordingly of no probative value, and the Commission makes no finding on this factual issue.

160. The Commission considers that Mr Crupi failed to adequately discharge his duty to properly manage the venue by exiting the premises without checking that there were no persons still on the premises. He was content to assume that there were persons still present in the manager's lounge however he did not see it as necessary to check that or any other area of the premises.

161. Had Mr Crupi checked the premises he would have seen that Ms Tierney was in an apparent state of collapse on the floor of the manager's lounge and then he would have been in a position to check her state of health and arrange for such assistance as was required.

162. Given his recent exposure to an incident involving Ms Tierney being seriously intoxicated and collapsing in the vicinity of the manager's lounge, the Commission considers that Mr Crupi should have been alert to that possibility recurring.

163. The Commission has taken into account all relevant considerations including the significant delay in finalising the matter.

164. The Commission has determined to disqualify Mr Crupi from in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club for a period of three months from 1 July 2022 to 30 September 2022 (s93D(e)).

Mr Mesfun (Former promoter)

165. Mr Mesfun has been named as a related person for the purposes of this inquiry. Despite attempts to locate Mr Mesfun, the Commission has not been successful and despite the Commission's advertising of the Inquiry and the Hearing date, Mr Mesfun did not appear at the Hearing nor make any submissions to the Commission.

[71] Reply Submissions on Behalf of Mr Kyriacou, dated 19 April 2022, page 7.

166. Mr Mesfun was a promoter employed by the Licensee at the time of the incident in December 2016. His exact role and function is somewhat unclear, although it appears he would source dancers for the Licensee, as well as assist with security and other tasks that may need doing from time to time. It appears that Mr Mesfun would also regularly attend the venue to drink outside of his working hours.

167. On the morning of 18 December 2016, Mr Mesfun was one of the people who were drinking in the manager's lounge after the venue closed.

168. According to Mr Mesfun's statement to police following the death of Ms Tierney, he was aware that Ms Tierney was affected by alcohol when he was in the manager's lounge with her immediately following the venue's closing time: "Stacey was tipsy, she looked happy, was having a good time and I guess she looked a little more than tipsy but she didn't look drunk".[72] Despite this, however, Mr Mesfun personally provided Ms Tierney with alcohol: "I think Stacey would have had five or six drinks downstairs. She was drinking vodka and coke. I poured her one or two drinks downstairs she was the same as she was upstairs, tipsy".[73]

169. Between that time and the next morning, when Ms Tierney was declared dead, Mr Mesfun stayed in the room with her. Despite knowing that Ms Tierney was very unwell, Mr Mesfun did not call an ambulance, or provide any other help apart from trying to contact Mr Kyriacou.

170. It is clear from Mr Mesfun's statement that by the Sunday night, Ms Tierney had reached the point of being unresponsive, the point where Mr Mesfun was checking for a pulse.[74] Instead of calling an ambulance however, Mr Mesfun went to sleep.

171. In addition to supplying an intoxicated person with alcohol, Mr Mesfun showed a total disregard for Ms Tierney's welfare, and failed to render meaningful assistance.

172. While there may be some uncertainty around whether Mr Mesfun was in fact specifically appointed as a manager, the definition of "related person" for the purposes of section 93D of the LCR Act includes, as stated in paragraph 20 above, "any person who, whether directly or indirectly, is concerned in or takes part in the management of licensed premises…of the licensee…". This is to be contrasted with the definition in the LCR Act of, for example, "associate", where a concept of acting "with respect to the management or operation of that business" is used. In the view of the Commission, being "concerned in or (taking) part in the management" captures a wider cohort of people than "associates".

173. The Commission notes Mr Mesfun's statement that "I'm basically a manager when I am there, I make sure mistakes don't get made and everyone is in their spot".[75]

174. In Mr Crupi's submissions, it is submitted that "It was the responsibility of Kyriacou and Mr Tomas Mefsun ("Mefsun"), the Recruitment and Security Manager, to employ staff and source and manage the dancers at Dreams", and "Mesfen [sic] was responsible for managing security and surveillance at the Premises".[76] The Commission notes in Mr Kyriacou's submissions it is asserted Mr Mesfun's role was "to be the promoter and to source potential performers for the venue, he had no managerial responsibility and was not able to employ staff"[77].

175. As against this, the Director gave sworn evidence, stating on several occasions that Mr Mesfun, whilst employed by the business on a base salary, was not a manager that he "never has been, never was"[78].

176. Given that this was sworn evidence, the Commission gives it more weight than the untested statements of Mr Mesfun himself and Mr Crupi.

177. Nevertheless, the Commission is of the opinion that while Mr Mesfun may not have been directly taking part in the management of the licensed premises or described as a manager, he was at the very least playing some small role in, or taking part in its management indirectly. Even at this arguably lower level of

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[72] Additional statement of Tomas Mesfun, dated 19 December 2016, page 3.
[73] Ibid.
[74] Ibid, page 6.
[75] Ibid, page 2.
[76] Submissions on behalf of Giuseppe (Joe) Crupi, dated 15 November 2021, page 1 – 2.
[77] Reply Submissions on behalf of Mr Kyriacou, dated 19 April 2022, page 6.
[78] Transcript p75, line 21.

involvement Mr Mesfun qualifies as a “related person” for the purposes of the LCR Act, and therefore the Commission can make an order to disqualify him.

178. The Commission has taken into account all relevant considerations including the significant delay in finalising the matter.

179. The Commission has determined to disqualify Mr Mesfun from in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club for a period of 12 months commencing from 1 July 2022 to 30 June 2023 (s93D(e)).

The preceding 179 Paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O’Donnell (Deputy Chair), Ms Danielle Huntersmith (Commissioner) and Mr Andrew Scott (Commissioner).