

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Mr B
(represented by Mr Max Crispe, Max Crispe Barrister & Solicitor)
- Respondent:** Commissioner of Police
(represented by Mr David Leigh, State Solicitor's Office)
- Commission:** Mr Eddie Watling (Presiding Member)
- Matter:** Application for review of barring notice, section 115AD of the *Liquor Control Act 1988*
- Date of Determination:** 18 February 2013
- Reasons for Determination:** 25 February 2013
- Determination:** The terms of the barring notice dated 28 September 2012 are varied as follows:
- Mr B is prohibited from entering any licenced premises in Western Australia except those premises licensed hereunder:
- i) A liquor store licence;
 - ii) The Belmont Race Course on the occasion of the Magic Millions Yearling Sales on 19 and 20 February 2013;
 - iii) Metropolitan and country thoroughbred race tracks on occasions when horses owned by Mr B are racing or training;
 - iv) The Broome Turf Club on occasions where Mr B is listed as a major sponsor;

v) No alcohol is to be consumed whilst on these premises.

from the date of this determination until 16 September 2013.

Authorities referred to in determination

- *S V S v Commissioner of Police (LC 19/2011) at [12]*

Background

- 1 On 16 September 2012 an incident occurred in the “Wild West Saloon” bar at the Exchange Hotel Kalgoorlie. The applicant became involved in an altercation over a game of pool and allegedly struck another person several times to the head and upper body with a pool cue. As a result of this incident the applicant was charged with assault occasioning bodily harm.
- 2 A barring notice, dated 18 September 2012, was subsequently issued under section 115AA(2) of the *Liquor Control Act 1988* (“the Act”) prohibiting the applicant from entering any licensed premises in Western Australia, except those premises licensed under a liquor store licence, from the date of the notice until 16 September 2013.
- 3 On 14 December 2012 the applicant lodged an application for review of the barring notice issued by the Commissioner of Police (“the Police”) and requested variances to enable the applicant to attend Perth metropolitan and country race tracks and the Broome Turf Club for the Broome Racing Calendar.
- 4 The applicant advised that he has been involved in owning and racing thoroughbred race horses since the late 1960’s and presently has five horses in training under two different trainers. A number of these horses, (value \$25000-\$45000 each) are due to come up for racing in the first quarter of 2013. The applicant also advised that as a major sponsor of the Broome Turf Club for the last fifteen years he would like to be able to continue that association and be able to attend the Broome races during 2013.
- 5 On 14 February 2013 the applicant lodged a further request to vary the barring notice to allow him to attend the Magic Millions Yearling Sales to be held at Belmont Race Course, a licensed premises, on 19 and 20 February 2013.

Submissions on behalf of the applicant

- 6 On 14 January 2013 the applicant submitted details of his current thoroughbred race horse ownership and their proposed racing commitments scheduled during 2013. The applicant’s long involvement in the thoroughbred racing industry and these current commitments being the basis for the request for variances to the barring notice.
- 7 It was also submitted that the applicant has no prior criminal record and apart from the current matter that is before the court, to which he has pleaded not guilty, he has never been to court before.
- 8 On 17 January 2013 the applicant advised that court proceedings had been listed for 5, 6 and 7 June 2013. The applicant will be pleading not guilty and will be alleging that he acted in self-defence pursuant to section 248 of the *Criminal Code* in that he believed that the act was necessary to defend his friend (the co-accused) and it was a reasonable response based on the size differential between his friend and the complainant.
- 9 On 6 February 2013 the applicant lodged a final submission providing further details of his horse racing commitments and stating that because of his good record and antecedents, the fact that there is a presumption of innocence, the fact that he intends to plead not guilty and the effect of the barring notice on the

substantial business and other interest that he holds, favourable consideration should be given to granting the variations being sought.

- 10 On 14 February 2013 the applicant lodged a further request to be allowed to attend the Magic Millions Yearling Sales to be held at Belmont Race Course on 19 and 20 February 2013.

Submission on behalf of the Commissioner of Police

- 11 The Police made a detailed submission concerning the application of sections 115AA and 115AD of the Act and made reference to the second reading speech by the Hon Terry Waldron, Minister for Racing and Gaming when introducing the *Liquor Control Amendment bill 2010 (WA)* ("Amendment Bill"). The Hon Minister stated:

The bill also contains a number of law and order amendments that are aimed at minimising the incidences of antisocial behaviour in and around licensed premises. The Commissioner of Police will be provided with the power to issue barring notices to patrons of licensed premises who engage in antisocial behaviour. Licensees will be encouraged to request the Commissioner of Police to issue barring notices to patrons engaging in antisocial behaviour on the premises.

and went on to further explain:

The legislation seeks to give protection to the general public from people who have engaged in disorderly or offensive behaviour, who threaten people et cetera and who put people in dangerous situations. The whole idea of the legislation is to protect the general public, the licensee, which is pretty important and also the person.

- 12 It was submitted that the language used by the Hon Minister in the second reading speech indicates that the respondent (and the Commission on review) is not required to separately consider the question of public interest when determining whether a barring notice should be issued. This is because parliament has already determined that it is in the public interest that incidences of antisocial behaviour in and around licensed premises be minimised.
- 13 With regard to relevant considerations by the Commission in determining whether to quash the barring notice, the primary question to be determined on review is whether there are reasonable grounds for believing that the barred person has been violent or disorderly, engaged in indecent behaviour or contravened a provision of a written law on licensed premises. If there are grounds for such a belief, the barring notice should not be quashed.
- 14 It was submitted that in the present circumstances the evidence before the Police clearly established that a reasonable person would have been inclined to assent to, and not reject, the proposition that the applicant had been violent whilst on licensed premises. Incident reports submitted by the Police clearly reveal the circumstances of the incident and the violent role played by the applicant.
- 15 With regard to determining whether to vary the barring notice in respect of which there are reasonable grounds to believe the person has conducted

themselves in the manner set out in section 115AA of the Act, it is pertinent to consider whether the objects and purpose of the Act are served by the terms of the barring notice issued by the Police. The purpose of a barring notice is to protect the general public, a licensee or indeed the perpetrator from his or her own actions.

- 16 Regardless of the factors leading to the applicant's involvement in the incident, it remains the case that he made a deliberate decision to attack the victim with a pool cue rather than (for example) summoning security officers to stop the fight between the victim and the applicant's colleague.
- 17 In determining whether to vary the terms of the barring notice, the issue in question is the likelihood or possibility of the applicant behaving in a similar manner and public safety being jeopardised, if the applicant is faced with similar circumstances. Given that the applicant simply claims to not remember his behaviour, there is no reason to think that the applicant might not react in the same manner if he is confronted with similar circumstances on an occasion when he enters licensed premises in the future.
- 18 It was submitted that there is sufficient material before the Commission to establish that there are reasonable grounds for believing the applicant engaged in an act of violence on licensed premises. Therefore the decision of the respondent should not be quashed and given the aggravating factors that have been identified, it is submitted that there are no grounds to justify the variation of the notice.
- 19 However, if the Commission considers that variation is warranted the respondent submits that the variations should be restricted to:
 - i. Premises licensed under a restaurant licence, other than a restaurant which forms part of hotel premises or a restaurant with an Extended Trading Permit; and/or
 - ii. Sporting clubs,and the applicant should not be allowed to consume alcohol whilst on the premises.

Determination

- 20 The applicant has not contested the barring notice and has sought a variation in its terms to permit attendance at thoroughbred horse racing events at metropolitan and country race tracks where his horses are racing or training and to attend the Broome Turf Club where he is a major sponsor. The applicant has also sought a permit to attend the magic Millions Yearling Sales to be held at Belmont Race Course on 19 and 20 February 2013.
- 21 Section 115AA(2) of the Act authorises the Commissioner of Police to issue a notice to a person prohibiting that person from entering specified licensed premises, or a specified class of licensed premises, for a period of up to 12 months if the Commissioner believes, on reasonable grounds, that the person has, on licensed premises –
 - a) Been violent or disorderly; or

- b) Engaged in indecent behaviour; or
 - c) Contravened a provision of the written law.
- 22 The provision is clearly designed to protect the public from people who engage in disorderly or offensive behaviour on licensed premises and is not focussed on punishing the individual for their actions. As submitted by the respondent, it was stated by the Minister for Racing and Gaming during the parliamentary debate on the amendments to section 115AA of the Act, that “...*the whole idea of this legislation is to protect the general public, the licensee, which is pretty important, and also the person.*”
- 23 In examining the material before me in considering this application I do not have any reason to review the issue of the barring notice and only have to consider whether varying the terms as sought by the applicant, as section 115AD of the Act empowers me to do, will result in the likelihood of the public being endangered.
- 24 I have considered the seriousness of the applicant’s role in the incident and the nature in which he became involved and have also considered to what extent he might behave if confronted with similar circumstances in the future.
- 25 The variance sought to the barring notice are such that if approved, the applicant has the potential to be exposed to similar groups of people albeit in dissimilar environment, to the situation he was in at the time of the incident.
- 26 On the other hand, the applicant has submitted that he has had a long association with the thoroughbred horse racing industry and currently maintains a significant financial investment in race horses and has been a major sponsor of the Broome Turf Club for fifteen years.
- 27 Whilst the applicant’s involvement in the thoroughbred horse racing industry might be classified as a hobby, the level of investment is none-the-less similar to a small or medium size business. However, because of the nature of this investment it cannot be classified as work related and therefore does not satisfy section 115AA(7A) of the Act which specifies:
- A person does not commit an offence under subsection (6) if the person enters the premises solely for the purpose of performing duties relating to the person’s work.*
- 28 Whilst the applicant has not submitted references or other support material from the various turf clubs relevant to his thoroughbred horse racing activities, the fact that he has a long standing association with the industry and has no prior convictions of this nature, indicate that he would be deemed to be a respected member of this fraternity.
- 29 I am of the view that the applicant’s status in the industry and the roles that he plays within it, notably over a long period of time, are such that the prospect of him repeating such behaviour at any thoroughbred horse racing venue would be highly unlikely.
- 30 The purpose of issuing a barring notice is not a penalty but a protective mechanism. This has been decided in several Commission cases including *S V S v Commissioner of Police (LC19/2011) at [12]*.

- 31 Therefore, given my observations at paras 28 and 29, I am therefore prepared to vary the barring notice to enable the applicant to only attend thoroughbred horse racing events in which he has a direct interest.
- 32 Accordingly, the terms of the barring notice dated 28 September 2012 are varied as follows:

Mr B is prohibited from entering any licenced premises in Western Australia except those premises licensed hereunder:

- i.) A liquor store licence;
- ii.) The Belmont Race Course on the occasion of the Magic Millions Yearling Sales on 19 and 20 February, 2013;
- iii.) Metropolitan and country thoroughbred race tracks on occasions when horses owned by Mr B are racing or training;
- iv.) The Broome Turf Club on occasions where Mr B is listed as a major sponsor.
- v.) No alcohol is to be consumed whilst on these premises.

from the date of this determination until 16 September 2013.



EDDIE WATLING
MEMBER