

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

- Applicant:** Ms K R B
(represented by Mr Brian Mahon of Equity Legal)
- Respondent:** Commissioner of Police
(represented by Ms Leanne Atkins of WA Police)
- Commission:** Mr Jim Freemantle
- Matter:** Application seeking review of Barring Notice pursuant to section 115AD of the *Liquor Control Act 1988* (the Act) dated 2 May 2011
- Date of Hearing:** 3 August 2011
- Date of Determination:** 9 August 2011
- Date Reasons Issued:** 26 August 2011
- Determination:** The terms of the Barring Notice dated 2 May 2011 issued to Ms K R B be varied as follows:
- Ms K R B of is prohibited from entering any licensed premises in Western Australia except those premises licensed under:
- (a) a liquor store licence;
 - (b) a restaurant licence other than a restaurant with an Extended Trading Permit issued pursuant to Section 60 (4)(ca) of the Act; and
 - (c) the following sub-classes of premises licensed under a special facility licence:
 - works canteen
 - theatre or cinema
 - sporting arena
 - transport
 - vocational education and training institution
 - foodhall
 - catering
 - bed and breakfast facility
 - room service restaurant and
 - auction

Authorities referred to in Decision:

- *McKinnon & Secretary of Treasury [2005] FCAFC142*
 - *S V S v Commissioner of Police (LC19/2011)*
 - *Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR241*
 - *New South Wales Bar Association v Evatt (1968) 117 CLR 177 at 183-184*
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Background

- 1 An incident involving the Applicant occurred at licensed premises (Liquid Nightclub) in Rockingham on 1 May 2011.
- 2 On 13 May 2011, the Applicant appeared before the Rockingham Magistrates Court on a charge of unlawful wounding to which she pleaded guilty.
- 3 On 26 May 2011, the Applicant was served with a Barring Notice pursuant to section 115AA(2) of the Act prohibiting her from entering any licensed premises in WA for a period of 12 months other than premises operating under liquor store licence.
- 4 A hearing of the application was held on 3 August 2011.

Applicants Submissions

- 5 The Applicant admits that she unlawfully wounded another person on 1 May 2011 whilst in licensed premises and that her actions were violent.
- 6 The Magistrate decided that her case was exceptional such to permit an order pursuant to section 45 of the *Sentencing Act 1995*.
- 7 The Applicant was at the time of committing the offence of previous good character and the attack was an aberration.
- 8 The attack was not a random attack on a stranger but one emanating from a verbal altercation between parties well known to each other.
- 9 The purpose of a Barring Notice issued under Section 115AA(2) is not a punishment but is there "*to protect the public... a Barring Notice is not a penalty... but is a mechanism to protect the general public , a licensee or indeed the perpetrator from his own actions*".

(Refer *S V S v Commissioner of Police (LC 19/2011)* at para 9)
- 10 The Applicant has provided a number of character references of a very positive nature.
- 11 It was submitted that having suffered retaliation in that a bottle was thrown at the Applicant hitting her in the face and causing bruising, she was well aware of

the consequences of her action.

- 12 The decision of the Magistrate is an indication of the fact that he formed the view the Applicant was unlikely to offend again. Thus it follows the public do not need to be protected from her.
- 13 The Applicant was at the time, undergoing psychological treatment and was on medication.
- 14 The Barring Notice is a disproportionate response and amounts to a penalty contrary to the intention of section 115 of the Act.

Respondents Submissions

- 15 On 19 October 2010 Mr TK Waldron, Minister for Racing and Gaming said:

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

(Western Australia, Parliamentary Debates, Legislative Assembly, 19 October 2010)

- 16 A notice pursuant to section 115AA of the Act may be given if the Commissioner of Police believes on reasonable grounds that the person has been violent or disorderly, or engaged in indecent behaviour or contravened a provision of a written law on licensed premises (Section 115AA(2)) barring them from all or specified licensed premises.
- 17 If a person is dissatisfied with a decision of the Commissioner of Police to give a Notice for a period exceeding one month that person may apply to the Commission for review of the decision (section 115AD(3)) and in conducting a review of the decision, the Commission may have regard to:
 - (a) the material before the Commissioner of Police when making the decision; and
 - (b) any information or document provided by the Applicant. The Commission may affirm, vary or quash the decision of the Commissioner of Police (section 115AD (7)).
- 18 The Commissioner of Police is not required to demonstrate (or the Commission to be satisfied regarding) multiple, serial, habitual or repetitious conduct in order to ground the making of a Notice. A single incident is sufficient to establish the belief based on reasonable grounds required by section 115AA(2).
- 19 The purpose of a Notice is to protect the public, rather than to ‘punish’ the individual and the conduct giving rise to this Notice is the very type which the

amendments to the Act were designed to overcome namely violent conduct on licensed premises.

- 20 The Applicant has cited the matter of *S V S v Commissioner of Police* (LC 19/2011) and in particular it is agreed paragraphs 8 and 9 are relevant.
- 21 The Applicant has accepted that she was violent and wounded another person whilst on licensed premises having consumed alcohol whilst on prescription medication for a pre-diagnosed depressive condition.
- 22 The aim of the legislation is the protection of the general public from actions of a violent or disorderly nature. The fact that the Applicant and the victim may have been known to each other as opposed to being strangers does not detract from that aim.
- 23 The penalty imposed by the Magistrate was based principally upon considerations of rehabilitation rather than protection of the public.
- 24 A Barring Notice is a protective mechanism and it can justify a sanction more burdensome than some penalties a criminal court might impose for the same conduct.

(Refer *New South Wales Bar Association v Evatt* (1968) 117 CLR 177 at 183-184).
- 25 Exclusions from taverns and nightclub premises only as proposed by the Applicant is not accepted as sufficient for the purposes of the Act.

Determination

- 26 Section 115 AA of the Act empowers the Commissioner of Police to give notice to the person prohibiting that person from entering all or specified classes of licensed premises if, on reasonable grounds, the person behaved in a violent and disorderly manner.
- 27 Section 115 AD(3) provides for a person subject to a barring notice to seek a review of the Commissioner of Police's decision.
- 28 Section 115 AD(6) prescribes that the Commission may have regard to the material before the Commissioner when he made the decision and any other information provided by the Applicant.
- 29 Section 115 AD(7) provides that the Commission in review can affirm, vary or quash the Commissioner's decision.
- 30 Section 33(1) gives the licensing authority absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest and the discretion being confined only by the scope and purpose of the Act
(Refer *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR241).

- 31 In introducing the legislation to give effect to barring notices in October 2010, the responsible Minister (the Minister for Racing, Gaming and Liquor, Mr Terry Waldron) said... “the whole idea of the legislation is to protect the general public, the licensee..... and also the person”. (*WA Parliamentary Debates Legislative Assembly 19 October, 2010.*)
- 32 This is consistent with the clear public interest theme of the Act in the determination of licensing applications and consistent with the provisions of Section 152E of the Act in respect of prohibition orders where it provides that such an order may only be made if the Licensing Authority is satisfied that it is in the public interest to do so.
- 33 Clearly it is an important matter of public interest that patrons of licensed premises are protected from acts of violence.
- Tamberlin J in M v Secretary Department of Treasures [2005] FCAFC142 stated ... “the expression in the public interest “directs attention to that conclusion and determination which best serves the interest or welfare of the public.... and its content will depend on each particular set of circumstances”.*
- 34 Essentially I had to determine whether given the particular circumstances surrounding the issuing of the barring notice, whether or not there was any probability or indeed the possibility of the Applicant, Ms B, reoffending with consequent danger to the public, the licensee or herself.
- 35 The purpose of a Barring Notice issued under Section 115AA (2) is not to punish the person subject to the Barring Notice (refer *S V S v Commissioner of Police (LC19/2011)*). In this case the Applicant had been charged with assault and dealt with in the Magistrates Court. (This was common ground between the Applicant and Respondent.)
- 36 The sentencing remarks of the Magistrate are instructive. He formed the view that the Applicant was unlikely to reoffend. Whilst I am required to form my own view, on all the evidence before me, I gave substantial weight to the Magistrate’s remarks.
- 37 Although it was submitted that the chances of the Applicant reoffending were very low it was nonetheless a serious and violent offence (already admitted by the applicant as per para 5).
- 38 A number of character references were supplied supporting the view that this was indeed a “one off” out of character occurrence. These references were basically from family and friends hence their objectivity could be questioned. For that reason I did not give them particular weight however I consider it relevant that her family and friends are extremely supportive of her.
- 39 The Respondent contends that the penalty imposed by the Magistrate was based principally on consideration of rehabilitation rather than protection of the public. I agree with this contention, however, the Magistrate made it abundantly clear that he thought the Applicant unlikely to reoffend and it is the likelihood of

reoffending and thus being a danger to herself and others that is the essence of the Application.

- 40 To the extent that the Applicant might reoffend I believe that excluding her from the class of licensed premises where the circumstances of the original incident occurred, the residual risk, low as I consider it, can be further minimised.
- 41 I am therefore prepared to vary the original order to permit the Applicant to enter premises licensed under:
- a) A liquor store licence.
 - b) A restaurant licence other than a restaurant with an Extended Trading Permit issued pursuant to Section 60 (4) (c a) of the Act.
 - c) The following sub classes of premises licensed under a special facility licence
 - i) works canteen;
 - ii) theatre or cinema;
 - iii) sporting arena;
 - iv) transport;
 - v) vocational training and educational institution;
 - vi) foodhall;
 - vii) catering;
 - viii) bed and breakfast facility;
 - ix) room service restaurant; and
 - x) auction.

A handwritten signature in black ink, appearing to read 'Jim Freemantle', written over a horizontal line.

JIM FREEMANTLE
CHAIRPERSON