

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Ms T J G
(represented by Mr Callum Hair of Northern Suburbs
Community Legal Centre)

Respondent: Commissioner of Police
(represented by Ms L A of WA Police)

Commission: Mr Jim Freemantle (Chairperson)

Matter: Application seeking review of Barring Notice issued
pursuant to Section 115AD of the *Liquor Control Act*
1988 ("the Act") dated 28 July 2011

Date of Determination: 15 November 2011
(Determined on papers)

Determination: The application is refused.

Authorities referred to in Decision:

- *McKinnon & Secretary of Treasury [2005] FCAFC 142*
- *S V S v Commissioner of Police (LC19/2011)*
- *Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7 WAR 241*

Background

- 1 On 4 February 2011 an incident involving the applicant occurred at licensed premises (Parkerville Tavern) in Parkerville.
- 2 On 12 September 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, other than premises operating under a liquor store licence, for a period of 6 months.
- 3 On 16 September 2011 the applicant appeared before the Midland Magistrates Court and pleaded guilty to one count of assault occasioning bodily harm.
- 4 Witness statements from the victim B C C and from J A W were supplied.
- 5 The transcript of the proceedings before the Magistrates Court was tendered.

Submissions by the Applicant

- 6 The applicant admits that on the 4 February 2011 she was involved in an incident on licensed premises where assault occasioning bodily harm occurred and she pleaded guilty to the charge in Midland Magistrates Court on 16 September 2011.
- 7 The Magistrate imposed a fine and granted a spent conviction order which indicates that the Magistrate was satisfied that the applicant was unlikely to re-offend.
- 8 Given the circumstances of this application and the incident which gave rise to the Barring Notice, the public interest will not be served by barring the applicant from licensed premises.
- 9 To support this contention the applicant quoted:
 - 1) The Minister's Second Reading Speech when introducing the relevant legislation as to its protective intent.
 - 2) The Liquor Commission's ("the Commission") decision *K R B (LC33/2011)* on the theme of public interest explained in the Act.
 - 3) Tamberlin J in *M v Secretary Dept of Treasury [2005] FCAFC 142* on the determination of public interest depending on each particular set of circumstances.
 - 4) The Liquor Commission in the decision of *S V S v Commissioner of Police (LC 19/2011)* stated that the purpose of a Barring Notice issued pursuant to section 115AA(2) is *'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'*.
- 10 Prior to the incident at the Parkerville Tavern the applicant was of good character.
- 11 The assault was not random but a result of long standing animosity between the applicant and the victim. The applicant has provided character references stating her behaviour on 4 February 2011 was out of character.

- 12 The Barring Notice in the circumstances of this application is a penalty rather than a protective measure.

Submissions by the Respondent

- 13 On 19 October 2010 Mr TK Waldron, Minister for Racing and Gaming said on introducing the Legislation:

“The whole idea of this legislation is to protect the general public, the licensee, which is pretty important and also the person.”

- 14 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.
- 15 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)).
- 16 A single incident is sufficient to establish the belief based on reasonable grounds required by section 115AA(2).
- 17 The purpose of a Notice is to protect the public, rather than to ‘punish’ the individual and the conduct the subject of this Notice is the very type which the amendments to the Act were designed to overcome, namely violent conduct on licensed premises.
- 18 It is agreed that the applicant’s reference to *S V S (LC19/2011)* is relevant to this review process and confirms that the issue of a Notice is not a penalty but a mechanism to protect the public.
- 19 As a Notice is a protective sanction, it can justify a sanction more burdensome than some penalties a criminal court would impose for the same conduct. (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177 at 183-184).
- 20 The applicant’s references from her parents should be given limited weight in view of the familial connection. The reference from her employer does not refer to the circumstances of the incident and this also should be given limited weight as it is unclear whether the employer was aware of the circumstances surrounding the imposition of the Notice.
- 21 The penalty imposed in the Magistrates Court was based more upon considerations of rehabilitation of the applicant than protection of the public.
- 22 Granting a spent conviction order whilst persuasive is not binding upon the

Commission and the Commission may form its own view of the matter.

- 23 The presiding Magistrate placed some weight upon the existence of the Notice as a factor making re-offending unlikely.

Determination

- 24 Section 115AA of the Act empowers the Commissioner of Police to give Notice to any person barring that person from entering all or specified classes of licensed premises if, on reasonable grounds, the person behaved in a violent and disorderly manner.

- 25 Section 115AD(3) provides for a person subject to a Barring Notice to seek a review of the Commissioner of Police's decision.

- 26 Section 115AD(6) provides 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.

- 27 Section 115AD(7) provides that the Commission in its review can affirm, vary or quash the Commissioner's decision.

- 28 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*).

- 29 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.)

- 30 Clearly it is an important matter of public interest that patrons of licensed premises are protected from acts of violence.

Tamberlin J in *McKinnon v Secretary Department of Treasures [2005] FCAFC 142* 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"*.

- 31 In assessing the particular circumstance surrounding the issuing of the Barring Notice, it is necessary to determine the degree of probability or possibility that the applicant might re-offend resulting in danger to the public, the licensee or herself.

- 32 Whether there was animosity between the victim and the applicant is beside the point; the attack took place and the witness statements are consistent that the attack was not provoked by the victim on the night of the incident.

- 33 Whilst it is open to me to vary the terms of the Barring Notice pursuant to section 115 AD(7) and make it less restrictive, given that the attack was vicious I am of the view that the circumstances of the incident were such that I should not exercise this discretion.

- 34 I accept the submission by the respondent that limited weight should be given to the

references from the applicant's parents and employer who may not be aware of the circumstances surrounding the imposition of the Barring Notice. I do note the statement from her parents regarding the rehabilitation program being undertaken by her.

- 35 Overall taking into consideration the compelling evidence including the admittance of violent behaviour by the applicant, the circumstances of the matter and in particular the weight placed by the learned Magistrate upon the existence of the Barring Notice as a factor making reoffending unlikely, I consider it is in the public interest and the interests of the applicant for the Barring Notice to remain in place. The application is therefore refused.

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

**MR JIM FREEMANTLE
CHAIRPERSON**