

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr C R M

Respondent: Commissioner of Police
(represented by Mr David Leigh of State Solicitor's Office)

Commission: Mr Jim Freemantle (Chairperson)

Matter: Application seeking review of a barring notice issued pursuant to section 115AD of the *Liquor Control Act 1988*.

Date of Hearing: 12 February 2013

Date of Determination: 12 February 2013

Reasons for Determination: 25 March 2013

Determination:

The terms of the barring notice dated 30 November 2012 are varied as follows:

Mr C R M is prohibited from entering for a period of 8 months ending 30 July 2013 any licensed premises in Western Australia except those premises licensed hereunder:

- a) a restaurant licence other than a restaurant with an extended trading permit (liquor without a meal) issued pursuant to section 60(4)(ca) of the Act;
- b) sporting clubs;
- c) liquor stores.

Notwithstanding the above, Mr C R M is permitted to attend his brother's wedding to be held on licensed premises on 23 February 2013.

Authorities referred to and considered in the determination:

- *V S v Commissioner of Police (LC19/2011)*
- *K B v Commissioner of Police (LC33/2011)*
- *M P v Commissioner of Police (LC55/2011)*
- *L M C v Commissioner of Police (LC05/2012)*
- *G M L v Commissioner of Police (LC58/2011)*
- *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*

Background

- 1 An incident involving the applicant occurred at licensed premises (the Vibe Nightclub) on 23 November 2012.
- 2 The statement of material facts reveals that the applicant progressively removed his clothes and walked around the dance floor naked and on being removed from the premises walked out of the front door in full view of the public.
- 3 The applicant was subsequently charged with committing indecent acts in public.
- 4 On 30 March 2012 the applicant was served with a barring notice dated 19 July 2012 pursuant to section 115AA(2) of the Act prohibiting him from entering any licensed premises in Western Australia other than those operating under a liquor store licence for a period of 12 months.
- 5 A hearing was held on 12 February 2013.

Submissions on behalf of the applicant

- 6 The applicant admitted the Statement of Material Facts was an accurate record of what occurred in the early hours of 23 November 2012.
- 7 He agreed that a barring notice was appropriate in the circumstances but argued that its terms were unnecessarily restrictive and the period of the barring from licensed premises longer than necessary.
- 8 He admitted he had acted in a stupid manner but that there were only a handful of people left in the nightclub at the time of the incident.
- 9 He was apologetic and stated that he regretted his behaviour.
- 10 He stated that he had learnt his lesson and would not repeat the behaviour.
- 11 The applicant tendered a number of supportive character references.

Submissions on behalf of the Commissioner of Police

- 12 The Commissioner of Police ("the Police") made comprehensive submissions on the intent, content and context of section 115 of the Act particularly and the applicable law generally and I will deal with this as necessary later in the determination.
- 13 The Police relied largely on the statement of material facts which in its view spoke for itself.
- 14 The applicant has not provided any real explanation of his behaviour nor has he

provided sufficient evidence to warrant varying the terms of the barring notice.

- 15 Whilst agreeing that no violence was involved, the Police submitted that the offence was not by any means trivial and could have caused significant distress to sections of or members of the public e.g. a person who previously had experienced unwanted sexual advances or sexual assault.

Determination

- 16 As the respondent points out in its submissions, section 115AA(2) of the Act is not intended to act as a punishment per se, and is there to protect the public and cites *V S v Commissioner of Police* (LC 19/2011); *K B v Commissioner of Police* (LC 33/2011); *M P v Commissioner of Police* (LC 55/2011); *L M C v Commissioner of Police* (LC 05/2012) and *G M L v Commissioner of Police* (LC 58/2011).
- 17 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 the 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.
- 18 Clearly it is an important matter of public interest that patrons of licensed premises are protected from acts of violence or offensive behaviour that detract from their quiet enjoyment of licensed premises.
- 19 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"*.

(See paragraphs 30-32, *K B v Commissioner of Police* (LC 33/2011)).
- 20 This principle is clearly stated by the responsible Minister (Minister for Racing Gaming and Liquor, Hon. Terry Waldron) in introducing the legislation to give effect to barring notices... *"the whole idea of the legislation is to protect the general public, the licensee.. and also the person"*. (WA Parliamentary Debates Legislative Assembly October 2010)
- 21 Section 19 of the *Interpretation Act 1984* provides that regard may be had to extrinsic material, including the Second Reading Speech to a Bill, to construe that the meaning of a provision is the ordinary meaning conveyed by the text.
- 22 The applicant concedes the barring notice is appropriate but submits that by varying it and making it less restrictive the risk to the public is extremely low.
- 23 It therefore remains for me to determine whether the terms of the barring notice issued to the applicant could be varied without defeating the purpose of section 115 of the Act.

- 24 Section 115AA of the Act empowers the Commissioner of Police to give notice to a person prohibiting that person from entering all or specified classes of licensed premises if, on reasonable grounds, it is concluded that the person behaved in a violent or disorderly manner.
- 25 Section 115AD(3) of the Act provides for a person subject to a barring notice to seek a review of the Commissioner of Police's decision before the Liquor Commission ("the Commission").
- 26 Section 115AD(6) of the Act prescribes that the Commission may have regard to the material before the Commissioner of Police when he made the decision and any other information provided by the applicant.
- 27 Section 115AD(7) of the Act provides that the Commission on review can affirm, vary or quash the Commissioner of Police'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) 7 WAR 241.)

- 29 It is the Commission's view that Commissioner's power to issue a barring notice is an original power granted to a decision maker not constituting any part of the licensing authority.

(Refer *K B v Commissioner of Police LC33/2011*)

- 30 The incident which led to the imposition of the barring notice did not involve violence however it was the sort of behaviour which could give offence and in some cases significant distress (see para 15 above).
- 31 I do not view it as a trivial incident. I accept that community standards evolve over time and what was once regarded as offensive may not be today. The sight of a naked man on the dance floor of a nightclub may not cause the shock and outrage that it might have done to our Victorian forbears, however, a night club or any other licensed premises are still not the place for this type of behaviour. It is inappropriate and offensive by any reasonable standard and something patrons of such premises should not have to endure.
- 32 That having been said I believe the applicant has learnt his lesson, has shown genuine remorse and is unlikely to repeat his behaviour. By barring him from those places where the temptation do so is greatest will assist him to this end.

33 In the circumstances I believe it is appropriate to vary the terms of the barring notice and I therefore determine that the conditions of the applicant's barring notice be varied accordingly.

A handwritten signature in black ink, consisting of a cursive 'J' followed by 'F' and 'M' and ending in a long horizontal stroke.

MR JIM FREEMANTLE
CHAIRPERSON