

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Commissioner of Police
(represented by Mr David Anderson of State Solicitor's office)
- Respondent:** Ms Jacqueline Toni Oates *(represented by Mr Tim Monaghan of Dwyer Durack Lawyers)*
- Commission:** Mr Jim Freemantle (Chairperson)
Mr Evan Shackleton (Member)
Dr Eric Isaachsen (Member)
- Matter:** Applications made under section 152B of the *Liquor Control Act 1988* for prohibition orders under sections 152E(2) and 152F of the *Liquor Control Act 1988*, referred to the Liquor Commission by the Director of Liquor Licensing pursuant to section 24 of the *Liquor Control Act 1988*.
- Date of Hearing:** 21 June 2013
- Date of Determination:** 27 August 2013
- Determination:** Pursuant to sections 152E and 152F of the Act Jacqueline Toni Oates is:
- (1) Prohibited from entering any licensed premises for a period of 9 months.
 - (2) Prohibited from being employed by a licensee at any licensed premises for period of 9 months.

Authorities referred to in the determination:

- *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7 WAR 241
- *Re Minister for Resources; ex parte Cazaly Iron Pty Ltd* [2007] WASCA 175
- *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142

Introduction

- 1 On 11 February 2013, the Commissioner of Police (“the Police”) lodged with the Director of Liquor Licensing (“the Director”) an application for a prohibition order against Jacqueline Toni Oates under the provision of section 152B of the *Liquor Control Act of 1988* (“the Act”) seeking to prohibit Ms Oates from entering or being employed by a licensee, of licensed premises for a period of 5 years.
- 2 On 22 February 2013, pursuant to section 24 of the Act, the Director referred the application to the Liquor Commission (“the Commission”) for determination on the basis that *“As the substance of the information nor the information itself that is classified as confidential Police Information can be disclosed to Ms Oates, I consider her interests would be better served if this matter was determined by the Liquor Commission constituted by three members.”*
- 3 A hearing before the Commission was held on 21 June 2013

Submissions on behalf of the Commissioner of Police

- 4 A précis of the nature of the confidential police information relied upon by the Police pursuant to section 30 of the Act has been served on the respondent.
- 5 The application relates to the respondent’s role in facilitating the supply of illicit drugs at licensed premises of which she was an approved manager.
- 6 In facilitating the supply of illicit drugs, Ms Oates abused her position as an approved manager of the licensed premises. The incident occurred whilst Ms Oates was employed in a position of responsibility.
- 7 The sale and distribution of illicit drugs on licensed premises is contrary to the proper development of the liquor industry and in addition to being not in the public interest; it is unlawful (emphasis added).

Submissions on behalf of the respondent

- 8 Confidential police information which it appears is based on anonymous reports should be regarded by the Commission with great caution as to its veracity.
- 9 The amount of cannabis which formed the basis of the offence committed on 28 March 2013 was less than one gram.
- 10 Whilst the respondent admits to pointing someone in the right direction to obtain drugs, she did not supply drugs, or possess with intent to sell and did not benefit financially in any way.
- 11 Ms Oates is of good character (references were provided to this effect) and has no previous record of involvement with drugs.
- 12 The family unit of which she is a part, is heavily dependent on her as a principal breadwinner.

Determination

- 13 The reasons for this determination are necessarily abridged in order to comply with the

requirements of section 30 of the Act.

- 14 Pursuant to section 152E of the Act, the Commission may make a prohibition order only if satisfied that it is in the public interest to do so after giving the relevant person a reasonable opportunity to make submissions and be heard.
- 15 Pursuant to section 33(1) of the Act, the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest; 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*).
- 16 In determining what constitutes the public interest in the context of a prohibition order, the Commission also notes the following precedents –

“The expression “in the public interest”, when used as a criterion for the exercise of a statutory discretion, usually imports a discretionary value judgement confined only by the subject matter and the scope and purpose of the legislation” (re Minister for Resources; ex parte Cazaly Iron Pty Ltd [2007] WASCA 175).

“The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of public interest that confines this expression.

The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.” (McKinnon v Secretary, Department of Treasury [2005] FCAFC 142 per Tamberlin J).

- 17 The Commission accepts that Ms Oates was not directly involved in the sale and supply of illicit drugs. The Commission also accepts that she might have felt pressured to assist the enquirer as to where he might obtain drugs.
- 18 However, as the applicant submits, and the Commission agrees, in addition to being contrary to public interest and proper development of industry, it is a serious matter for a person holding the position of approved manager under the Act to be involved in anyway, however peripherally, in the supply and sale of drugs.
- 19 A person who is employed as an approved manager is required to exhibit high standards of honesty and integrity. He/she must be able to effectively manage the business under a licence and this involves, amongst other things: dealing with difficult situations lawfully and responsively; and conducting the business on behalf of the licensee in accordance with the provisions of the Act.
- 20 It is the Commission’s view that Ms Oates fell well short of the expected standards as a manager at the licensed premises.
- 21 Whilst a prohibition order is primarily designed to protect the public it contains an obvious punitive element. Taking this and all the circumstances into account the

imposition of a prohibition order for a period of 9 months preventing the respondent being employed in, or entering, licensed premises is appropriate and the Commission orders accordingly.

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

MR JIM FREEMANTLE
CHAIRPERSON