

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

Applicant: Ms M R P

Respondent: Commissioner of Police
(represented by Ms Leanne Atkins of WA Police)

Commission: Mr Jim Freemantle (Chairperson)

Matter: Application for review of Barring Notice pursuant to
Section 115 AA(2) of the *Liquor Control Act 1988*
(the Act) dated 21 September 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*
- *T J V S v Commissioner of Police (LC19/2011)*
- *Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7 WAR 24*
- *S V S v Commissioner of Police (LC19/2011)*

Background

- 1 On 17 August 2011 an incident involving the applicant occurred at licensed premises known as the Newport Hotel, Fremantle.
- 2 On 9 September 2011 the applicant appeared before the Fremantle Magistrates Court on a charge of assault.
- 3 On 21 September 2011, a barring notice pursuant to section 115AA(2) of the *Liquor Control Act 1988* ("the Act") was issued prohibiting the applicant from entering any licensed premises in WA, other than premises operating under a liquor store licence, for a period of 6 months.

Submissions by the Applicant

- 4 The applicant admits that she attacked J T P on 17 August 2011 whilst on licensed premises and that her actions were violent. However the attack was an aberration.
- 5 The attack was not a random attack on a stranger but one emanating from previous animosity between parties who were known to each other. There were a number of previous occasions where the victim (J T P) had provoked the applicant and assaulted her.
- 6 The applicant is undergoing counselling to assist her in dealing with a number of emotional problems.

Submissions by the Respondent

- 7 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)
- 8 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.
- 9 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 Liquor Commission ("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)).
- 10 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).

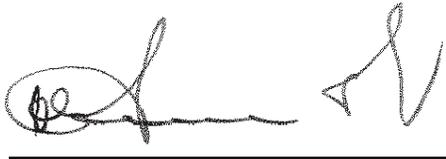
- 11 The purpose of a notice is to protect the public, rather than to 'punish' the individual. The conduct the subject of this notice is the very type which the amendments to the Act were designed to overcome namely violent conduct on licensed premises.
- 12 The applicant has accepted that she was violent and caused harm to another person whilst on licensed premises.
- 13 The aim of the legislation is the protection of the general public from actions of a violent or disorderly nature.

Determination

- 14 Section 115AA of the Act empowers the Commissioner of Police to give notice to any 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.
- 15 Section 115AD(3) provides for a person subject to a barring notice to seek a review of the Commissioner of Police's decision.
- 16 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.
- 17 Section 115AD(7) provides that the Commission in its review can affirm, vary or quash the Commissioner's decision.
- 18 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*).
- 19 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.*)
- 20 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"*.
- 21 Essentially I had to determine whether given the particular circumstances of the application what probability or indeed possibility there is of the applicant, Ms M P, re-offending with consequent danger to the public, the licensee or herself.

- 22 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)*).
- 23 I accept that the applicant was indeed surprised if not shocked (her words) at the amount of physical damage she had inflicted on the victim and has expressed remorse for her actions.
- 24 I also note that Ms M P has sought counselling to assist her in dealing with her emotional problems.
- 25 However, the compelling photographic and other evidence before me indicates that this was quite a vicious assault which was unprovoked on the night of the incident.
- 26 Notwithstanding that it is open to me pursuant to section 115AD(7) to vary the Commissioner's decision and thus to make the barring notice less restrictive, I am of the view that given the nature and circumstances of the incident giving rise to the barring notice that it should not be varied.
- 27 I am not satisfied from the evidence and particularly from the applicant's submission that she would not react in a similar way in the future and accordingly the application must fail.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of loops and a horizontal line extending to the right.

MR JIM FREEMANTLE
CHAIRPERSON