

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicants: Mr K A D V
Mr B T M
(both represented by Mr Steven Shadgett of Shadgett Legal)

Respondent: Commissioner of Police
(represented by Mr Jesse Winton of State Solicitor's Office)

Commission: Mr Jim Freemantle (Chairperson)

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

Date of Hearing: 19 April 2013

Date of Determination: 22 April 2013

Reasons for Determination: 6 May 2013

Determination:

The terms of the barring notices dated 14 November 2012 are varied as follows:

Messrs K A D V of and B T M are prohibited from entering any licensed premises in Western Australia for a period of 6 months ending on 14 May 2013 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) liquor stores;
- c) the premises accommodating the Narembeen Football Club or any other premises accommodating football clubs affiliated with the league or association in which the Narambeen Football Club plays.

Authorities referred to in the determination:

- *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*
- *S V S v Commissioner of Police (LC19/20011)*
- *K R B v Commissioner of Police (LC33/2011)*
- *C R M v Commissioner of Police (LC01/2013)*

Background

- 1 An incident or series of incidents involving the applicants occurred in the Narambeen Hotel on 10 September 2012.
- 2 The incidents were captured on CCTV installed in the hotel from which the applicants were identified and subsequently served with barring notices, dated 14 November 2012.
- 3 A hearing was held in respect of the applications for review of these barring notices on 19 April 2013 at the same time.
- 4 On 20 April 2013, I varied the barring notice and I now publish my reasons for doing so.

Submissions on behalf of the applicants

- 5 The applicants admitted their behaviour was extremely poor and that the barring notices were appropriate.
- 6 The staff of the hotel had not taken any steps to intervene or indeed had, tacitly at least, encouraged the behaviour.
- 7 The impact on the applicants was significant and is particularly severe for the community of Narambeen as the applicants are actively involved in a number of community groups, most of which meet at licensed premises. Furthermore, the football club of which they are members and for which they play is licensed. Hence they are prevented from participating in football to the detriment of the team which is struggling with player numbers and prevented from playing a meaningful role in the community.
- 8 At the hearing, Mr D V's father spoke of the impact of the barring notice on the applicants and the Narambeen community. He submitted that the behaviour of both the boys was out of character and his son for whom he particularly spoke along with Mr M were both extremely contrite over the incident.
- 9 The applicants sought a variation of the terms of the barring notice to permit them to attend meetings of the Narambeen Football Club and East Districts football team for the reasons outlined in paragraph 6 and 7 above.
- 10 A number of character references were submitted.

Submissions on behalf of the Commissioner of Police

- 11 The Commissioner of Police submitted a detailed explanation of their interpretation of the applicable law and I deal with this as far as is necessary in the determination following.

- 12 The behaviour of the applicants was appalling, indecent at best and more realistically obscene.
- 13 No variation of the barring notice was appropriate however if there were to be any variation it should be confined only to a variation in length.

Determination

- 14 This application is brought under section 115AD(3) of the Act which provides for a person barred under section 115AA(2) to have the imposition of the barring notice reviewed.
- 15 Section 33(1) of the Act 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.)

- 16 There was agreement between the parties that section 115AA(2) is not intended as a punishment but a means to protect the public from violence and indecent behaviour or when someone has contravened a provision of any written law. This view of section 115AD(2) has been accepted by the Liquor Commission ("the Commission") (see *S V S v Commissioner of Police (LC19/20011)*; *K R B v Commissioner of Police (LC33/2011)*).
- 17 This accepted view of section 115AA(2) is based largely on the words of the respected Minister for Racing, Gaming and Liquor (the Hon Terry Waldron) when introducing the enabling legislation to give effect to barring notices in October 2010;

"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).

- 18 However, the Commission is cognisant of the fact that by its very nature the imposition of a barring notice has elements of a penalty to the extent that it punishes the individual barred by excluding him or her from the normal enjoyment of licensed premises and activities taking place in licensed premises.
- 19 The incidents which took place in the Narembeen Hotel involving the applicants cannot be dismissed as trivial.
- 20 In *C R M v Commissioner of Police (LC01/2013)* the Commission said;

"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 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."

- 21 I am convinced of the genuineness of the remorse of the applicants. I consider the barring notices were a considerable shock and the applicants are ashamed of their behaviour. The likelihood of the behaviour being repeated is very low.
- 22 In varying the terms of the barring notice as I have, I am conscious that the applicants will be seen to have been shown a considerable degree of leniency.
- 23 However, I have taken into account the specific circumstances of the applicants, particularly Mr D V and his role in this small community and the incidental punitive effect the barring notices have already had.
- 24 Furthermore, whilst the applicants are both adults and must accept the responsibilities that go with the rights of adulthood particularly in this case, the right of access to alcohol and entry to licenses premises; they are both young and the incidents took place in a group where the pressures of older members of the group were also a factor.
- 25 Lastly, the quality of the references supplied by people whose views should carry weight by virtue of their position in the community and knowledge of the character of the applicants also influenced my decision to be rather more lenient than, prima facie, the facts of the matter might otherwise indicate in believing that the possibility of them reoffending and posing a risk to the public of violence and indecent behaviour was extremely low.
- 26 The terms of the barring notice are accordingly varied as follows:

Messrs K A D V and B T M are prohibited from entering any licensed premises in Western Australia for a period of 6 months ending on 14 May 2013 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) liquor stores;
- c) the premises accommodating the Narambeen Football Club or any other premises accommodating football clubs affiliated with the league or association in which the Narambeen Football Club plays.



JIM FREEMANTLE
CHAIRPERSON