

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

**Applicant:** Mr A R Q (*represented by Mr Gerald Yin of DG Price & Co*)

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

**Commission:** Dr Eric Isaachsen (Member)

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

**Date of Determination:** 19 October 2011 (on papers)

**Determination:** The terms of the Barring Notice dated 28 July 2011 issued to Mr A R Q be varied as follows:

Mr A R Q is prohibited from entering any licensed premises in Western Australia except those premises licensed under:

- (a) a liquor store licence; and
- (b) a restaurant licence other than a restaurant with an Extended Trading Permit issued pursuant to Section 60 (4)(ca) of the Act.

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**Authorities considered in the Determination**

- *S V S v Commissioner of Police (LC19/2011)*
- *New South Wales Bar Association v Evatt (1968) 117 CLR 177 at 183-184*
- *Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR241*
- *McKinnon & Secretary of Treasury [2005] FCAFC142*

**Background**

1 An incident involving the Applicant occurred at licensed premises

( Rosy O'Grady's ) in Fremantle on 30 June 2011.

- 2 On 13 September 2011, the Applicant appeared before the Fremantle Magistrates Court on three counts of common assault and one count of assault occasioning bodily harm. He pleaded guilty to each count.
- 3 On 28 July 2011, the Applicant was served with a Barring Notice pursuant to section 115AA(2) of the Act prohibiting him from entering any licensed premises in WA for a period of 6 months other than premises operating under a liquor store licence.
- 4 The application was heard in chambers.

### **Applicants Submissions**

- 5 The Applicant admits that on the 30 June 2011 he was involved in an incident on licensed premises where assault and assault occasioning bodily harm occurred.
- 6 The Magistrate imposed fines totalling \$4,500. It was accepted that Mr Q was extremely remorseful, that the offending was out of character and unlikely to occur again.
- 7 The purpose of a Barring Notice issued under Section 115AA(2) is not a punishment but is there *"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"*.

(Refer *S V S v Commissioner of Police (LC 19/2011)* at para 9)

- 8 It was submitted that at 59 years of age the Applicant has never been involved in a similar type of incident on licensed premises of any type.
- 9 Many references were provided by those with long standing personal and business associations. They attested as to the Applicant's normal behaviour and the uncharacteristic nature of the incident under examination.
- 10 Documentation of the combination of circumstances that led to the Applicant attending the licensed premises was provided to the Magistrate and has been provided to the Liquor Commission ("the Commission). It was submitted that the only explanation for the behaviour may have been the intoxication.
- 11 The Applicant was concerned as to why he may have reacted the way he did and had voluntarily consulted a clinical psychologist following the incident. A letter, dated 8 September 2011, from the treating practitioner was provided and it outlined the nature of the issues for which the Applicant had requested psychological assistance.
- 12 The Barring Notice has impacted on the Applicant's choice of venue to conduct his business, his attendance at his sporting clubs and his involvement as a director of *redacted*. It is submitted that the public does not require protection

from the Applicant in any of these circumstances.

### **Respondents Submissions**

13 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)

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)).

18 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).

19 The purpose of a Notice is to protect the public, rather than to ‘punish’ the individual and the conduct giving rise to this Notice is the very type which the amendments to the Act were designed to overcome namely violent conduct on licensed premises.

20 The aggravating circumstances giving rise to the Applicant’s conduct which form the basis for the Notice included the facts that the incident involved both a violent response which was disproportionate to any perceived or alleged provocation, and also involved verbal threats and assault upon two crowd controllers carrying out their duties at the licensed premises.

21 A Barring Notice is a protective mechanism and it can justify a sanction more

burdensome than some penalties a criminal court might impose for the same conduct.

(Refer *New South Wales Bar Association v Evatt* (1968) 117 CLR 177 at 183-184).

- 22 It was submitted that Commission can be satisfied on reasonable grounds that the Notice should be affirmed.
- 23 Alternately, if the Commission was satisfied that the aim of the legislation in protecting the general public is maintained by a variation of the Notice, it may vary the Notice to allow attendance at restaurants that do not have extended trading permits.

### **Determination**

- 26 Section 115 AA of the Act empowers the Commissioner of Police to give notice to the 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.
- 27 Section 115 AD(3) provides for a person subject to a barring notice to seek a review of the Commissioner of Police's decision.
- 28 Section 115 AD(6) prescribes 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.
- 29 Section 115 AD(7) provides that the Commission in review can affirm, vary or quash the Commissioner's decision.
- 30 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).
- 31 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.*)
- 32 This is consistent with the 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 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.
- 33 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] FCAFC142 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".*

- 34 In assessing the particular circumstances surrounding the issuing of the barring notice, it is necessary to determine the degree of probability or possibility that the Applicant might reoffend with consequent danger to the public, the licensee or himself.
- 35 The bundle of references and materials submitted on behalf of the Applicant provide an insight as to the good standing of the Applicant in the community. However the day to day behaviour is not the key issue rather the likelihood of reoffending through a reoccurrence of the circumstances surrounding the incident coupled with the response of the Applicant to those circumstances.
- 36 Although the evidence suggests that the circumstances are quite unlikely to reoccur I believe that it serves the best interests of the public and the Applicant that he be excluded from the class of licensed premises where the circumstances of the original incident occurred. I do not consider that the public requires protection in areas such as restaurants other than those with an Extended Trading Permit.
- 37 It is not clearly evident to me that were the circumstances to reoccur that the Applicant might not respond as in the incident under consideration. His remorse and consultations with a clinical psychologist at his own behest are mitigating factors however the Barring Notice will remain in relation to attendance at the sub classes of premises as submitted by the Applicant.
- 38 I am therefore prepared to vary the original order to permit the Applicant to enter premises licensed under:
  - a) A liquor store licence, and
  - b) A restaurant licence other than a restaurant with an Extended Trading Permit issued pursuant to Section 60 (4) (c a) of the Act.

  
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**ERIC ISAACHSEN**  
**MEMBER**