

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

- Applicant:** Karen Rose Batty
(*represented by Mr Brian Mahon of Equity Legal*)
- Respondent:** Commissioner of Police
(*represented by Ms Leanne Atkins of WA Police*)
- Commission:** Ms Helen Cogan (Member)
Dr Eric Isaachsen (Member)
Mr Greg Joyce (Member)
- Matter:** Application for review of prohibition order issued on 15 August 2011 pursuant to section 152E(2)(b) and 152F of the *Liquor Control Act 1988* ("the Act")
- Date of Determination:** 1 November 2011 (on papers)
- Determination:** The terms of the prohibition order dated 15 August 2011 be varied to the extent that Ms Karen Rose Batty of 12 La Estrada Way Port Kennedy is prohibited from entering any licensed premises within Western Australia of the following specified classes of licensed premises for a period of 2 years instead of four years:
- i. All hotel licences, however described, issued under section 41;
 - ii. All nightclub licences, however described, issued under section 42;
 - iii. All restaurant licences, however described, issued under section 50 that are subject to an extended trading permit under section 60(4)(ca);
 - iv. Casino licence, however described, issued under section 44; and
 - v. All special facility licences, however described, issued under section 46 (and Regulation 9A of the *Liquor Control Regulations 1989*) except any special facility licence issued for the purpose of: works canteen, theatre

or cinema; reception or function centre; transport; vocational education and training institution; vocational and educational training courses; sports arena; food hall; catering; bed and breakfast facility; room service restaurant or auction.

Background

- 1 On 15 August 2011 a prohibition order ("the order") was made by the Director of Liquor Licensing ("DLL") under sections 152E and 152F of the Act, which prohibits Karen Rose Batty from entering any licensed premises in Western Australia of the particular specified class for a period of four (4) years from the date of the order.
- 2 On 6 September 2011 an application dated 1 September 2011 for review of the order pursuant to section 25 of the Act was lodged with the Liquor Commission ("the Commission") on the basis that the duration of the order was in all the circumstances excessive.

Submissions by the Applicant and the Commissioner of Police

- 3 Submissions were lodged by both the parties to this proceeding in accordance with the directions of the Commission.
- 4 On 21 July 2011 the Commissioner of Police lodged further submissions which included:
 - 4.1 Letter dated 11 October 2011 from the Commissioner of Police to the Commission and copied to the applicant's solicitors stating, inter alia:
 - 4.1.1 The Commissioner of Police had carefully considered the applicant's written submissions and had discussed with the applicant's solicitor the question of duration of the order;
 - 4.1.2 The Commissioner of Police concurred with the applicant's opinion that the public interest aspect of the order may be satisfied by varying the same to reduce the period to two years duration, the particular classes of licensed premises cited in the order are to remain as specified within the body of the order in the public interest;
 - 4.1.3 The Commissioner of Police (without fettering the discretion of the Commission) requested the Commission to consider varying the length of the order to 2 years duration; and
 - 4.1.4 The Commissioner of Police asked whether the Commission was content to determine the matter on papers.
 - 4.2 On 11 October 2011 the applicant's solicitors lodged the following submissions:
 - 4.2.1 that discussion had taken place between the Commissioner of Police and the applicant's solicitors;
 - 4.2.2 the Commissioner of Police and the applicant's solicitors had 'agreed' that the public interest element of the order may be properly satisfied by the reduction of the existing 4 years duration to a duration of 2 years;
 - 4.2.3 the particular classes of licensed premises cited in the order are appropriate to remain in the proposed revised order;
 - 4.2.4 the applicant was hopeful that the Commission would deal with this matter in the absence of the parties.

- 5 On 12 October 2011 the Commission informed the applicant's solicitor and the Commissioner of Police that the matter would be determined on papers and that the hearing date was vacated.

Determination

- 6 The Commission carefully considered all the written submissions made by the applicant and the Commissioner of Police including but not limited to the reference in those submissions to the determination made by the Commission on 9 August 2011 (LC 33/2011) and the contents of that determination, which related to a barring notice issued to the applicant on 2 May 2011.
- 7 The Commission accepts that the primary purpose of a prohibition order is to protect the public.
- 8 In terms of section 25(4) of the Act the Commission may affirm, vary or quash a decision subject to a review application.
- 9 In all the circumstances, including the views expressed in the correspondence referred to in paragraph 7 above the Commission is persuaded that:
- 9.1 the future risk assessment in relation to the applicant can properly be assessed as low;
- 9.2 the duration of the order for a period of 4 years is unnecessary and unreasonable with regard to public protection considerations;
- 9.3 the public interest aspect of the order may be satisfied by varying the same to reduce the period to 2 years duration.
- 10 The Commission determines that the order shall be varied to the extent that the duration of the order be 2 years instead of 4 years.


HELEN COGAN
MEMBER