

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

- Applicant:** The Commissioner of Police
(represented by Mr Peter Slater and Mr Simon Bagley)
- Respondent:** Mr Edward Horace Withnell
(represented by Ms Vesna Amidzic of Amidzic Lawyers)
- Commission:** Mr Jim Freemantle (Chairperson)
- Others Present:** Mr Edward Horace Withnell
- Date of Directions Hearing:** 29 June 2009
- Date of Determination:** 3 July 2009
- Legislation:** *Liquor Control Act 1988* ("the Act")
Sections 24, 30, 152B
- Matter for Directions Hearing:** Application for a Directions Hearing by the Solicitor of the Respondent seeking following Proposed Orders:
1. *The Applicant to file and serve no later than 31 July 2009, in relation to each of the two (2) applications under consideration-*
 - (a) *particulars of the material relied upon in support of the application including a précis of the "confidential police information" referred to in each of the applications (with appropriate undertakings to be given regarding non-disclosure of such material by those representing the Respondent);and*
 - (b) *an outline of the Applicant's submissions.*
 2. *The Respondent to file and serve no later than 28 August 2009, in relation to each of the two (2) applications under consideration-*

(a) particulars of the material replied upon in resisting the application(s); and

(b) an outline of the Respondent's submissions.

3. The applications before the Liquor Commission otherwise be adjourned to a fixed date in September 2009 for hearing.

Determination:

1. Proposed Orders 1(a) and 1(b) are refused.
2. The Respondent is to file and serve no later than 28 August 2009, in relation to each of the two (2) applications under consideration:
 - (a) particulars of the material relied upon in resisting the application(s); and
 - (b) an outline of the Respondent's submissions.
3. The application before the Commission is to be heard at the earliest possible date, but not before 1 September 2009.

Background:

1. On 14 April 2009, the Director of Liquor Licensing exercising his powers pursuant to section 24 of the Act referred to the Liquor Commission, applications made by the Commissioner of Police under section 152B of the Act seeking a prohibition order be made in public interest prohibiting Edward Horace Withnell from being employed by a licensee of any licensed premises and from entering any licensed premises as outlined in the Commissioner's application.
2. On 15 May 2009, Ms Vesna Amidzic, representing Mr Withnell, sought a Directions Hearing in this matter and on 9 June 2009 lodged the proposed Direction Orders sought.
3. On 11 June 2009, Mr Peter Slater, representing the Commissioner of Police, wrote to the Commission:
 - a. *We object to the Proposed Orders numbered 1(a) and 1(b) as they are ultra vires;*
 - b. *We do not object to the Proposed Orders numbered 2(a) and 2(b) in principle, although we object to both the wording and date as detailed;*

- c. *We maintain our objection to a Directions Hearing for want of a proper reason;*
- d. *In the absence of any explanation for such a protracted timetable, we advocate a more compact timeframe.*

Hearing:

4. At the hearing, Ms Amidzic submitted that it was an absolute denial of natural justice in that she was unable to access the material relied on by the Applicant.

It was proposed that in order to comply with the requirements of section 30 of the Act, at least a précis of the material to be relied on should be made available or alternatively she should be granted access to the material under supervision against an undertaking not to disclose the material to her client.

5. Mr Slater submitted that any provision of such material whether in précis form or granting access to such material was contrary to the purpose of section 30 of the Act and was expressly prohibited by it.
6. It was common ground between the Commissioner of Police and the Respondent that there was a denial of natural justice, however, Mr Slater submitted that the general application of the principles of natural justice and procedural fairness were specifically over-ridden by section 30 of the Act and was clearly intended by references to the Minister's Second Reading Speech:

"Essentially, if the Commissioner of Police classifies certain information as being confidential, the licensing authority will be obliged to take all reasonable steps to protect that confidentiality and not disclose it to any person not authorised, including the person about whom the information relates. This confidentiality provision will exclude this information from a fundamental feature of the right to procedural fairness; that is, the right of an individual affected by a decision to know what is said against him or her and to have an opportunity to respond to it. The government has carefully considered this issue and is satisfied that this outcome is in the community's best interests."

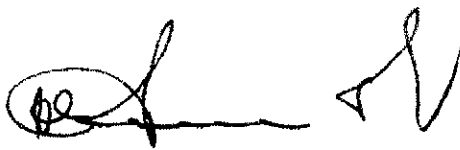
Mr. M McGowan (Rockingham – Minister for Racing and Gaming- in Legislative Assembly-20 September 2006)

Reasons for Determination

7. The Commission agrees with Mr Slater that the prohibition on release of any information classified by the Commissioner of Police as *confidential police information* under section 30 of the Act is absolute and release of a précis of the material or to grant access to it to any person not nominated in section 30(2) would be a breach of the Act.
8. Whilst section 30 overrules the application of natural justice in respect of the material subject to this section, it does not release the Commission from its obligations to accord procedural fairness and natural justice in its processes other than where it is specifically precluded from doing so. Hence, the Commission does not accept the argument that the hearing process is flawed by want of a proper reason for it taking place.
9. Section 16 provides the Commission with considerable discretion in the conduct of its proceedings. Pursuant to section 16(2)(a) of the Act, the Commission may "*sit at such times and such places as it sees fit*".
10. Miss Amidzic submitted that in the circumstances, the time table as submitted before the Commission was reasonable as shortening of the time frame would cause prejudice to her client as he required time to assemble the material on which he would rely in the hearing of the application whereas no prejudice can be shown to the Applicant.

Although Mr Slater disagreed with the proposed time line and argued that the time was excessive, in the circumstances the Commission believes that in the interest of procedural fairness, the time sought by the Respondent should be allowed.

In view of the impact of the provisions of section 30 of the Act on the Respondent, the Commission is prepared to give the time sought (60 days approximately) for the hearing of the application to occur.



Mr Jim Freemantle
CHAIRPERSON