

SUPREME COURT OF QUEENSLAND

CITATION: *Liquorland (Australia) P/L v Treasurer of Queensland* [2002] QSC 154

PARTIES: **LIQUORLAND (AUSTRALIA) PTY LTD**
ACN 007 512 414
(applicant)
v
THE TREASURER OF QUEENSLAND
(substituted for **STATE OF QUEENSLAND** by order by consent made 30 April 2001)
(respondent)

FILE NO/S: 2505 of 2001

DIVISION: Trial

PROCEEDING: Application

DELIVERED ON: 31 May 2002

DELIVERED AT: Brisbane

HEARING DATE: 27 May 2002

JUDGE: Ambrose J

ORDER: **Application dismissed**

CATCHWORDS: JUDICIAL REVIEW – Defective exercise of power – application for review of Minister’s decision – where Minister refused an appeal from a decision of Queensland Gaming Commission on discretionary grounds – whether Minister took into account an irrelevant matter – whether improper exercise of power

JUDICIAL REVIEW – Irrelevant matter, Consideration of

Casino Control Act 1982 (Qld)
Gaming Machine Act 1991 (Qld), s 29, s 29(1), s 30, s 30(1), s 30(1)(a), s 30(1)(b), s 30(1)(c), s 30(2), s 30(3) s 55, s 56(1), s 265(1), s 265(8), s 265(11)
Judicial Review Act 1991 (Qld), s 20(1), s 20(2)(e), s 23(a), s 23(f), s 23(g), s 32

Associated Provincial Picture Houses Limited v Wednesbury Corporation [1948] 1 KB 223, considered

COUNSEL: M D Hinson SC for the plaintiff
J A Logan SC with D Atkinson for the respondent

SOLICITORS: McCullough Robertson for the plaintiff
C W Lohe, Crown Solicitor for the respondent

- [1] This is an application by Liquorland (Australia) Pty Ltd (“Liquorland”) to review the decision of the Minister of Treasury given on 19 December 2000 disallowing Liquorland’s appeal against the decision of the Queensland Gaming Commission (“the Commission”) on 20 September 2000 refusing to grant Liquorland’s application for a gaming machine license in respect of part of its premises in the ANA Hotel Galleria Complex at Elkhorn Avenue in Surfers Paradise.
- [2] On 7 June 2000 Liquorland applied to the Commission for a gaming machine license under the *Gaming Machine Act* 1991.
- [3] On 20 September 2000 the Commission refused Liquorland’s application.
- [4] On 23 October 2000 Liquorland pursuant to s 29 of the *Gaming Machine Act* 1991 appealed to the Minister of Treasury against the Commission’s refusal to grant the license.
- [5] On 20 December 2000 the Minister of Treasury disallowed Liquorland’s appeal.
- [6] On 16 February 2001 the Minister of Treasury gave reasons for his decision.
- [7] Upon the hearing of the application for a statutory order to review brought pursuant s 20(1) of the *Judicial Review Act* 1991 Liquorland relied upon the ground contained in s 20(2)(e) of the act –
- “(e) that the making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made”.
- [8] The improper exercise of power upon which Liquorland relied is expounded in s 23(a) and (f) of the Act which read –
- “(a) taking an irrelevant consideration into account in the exercise of a power”.
- “(f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case”.
- [9] Liquorland did not seek to argue that the improper exercise of power involved under s 23(g) –
- “(g) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power”.
- [10] S 23(g) reflects the principle enunciated in *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223 which has been developed and applied in Australia. It is unnecessary to analyse Australian Case law on this topic.

- [11] There are 2 pieces of legislation in Queensland which control the lawful use of gaming devices.
- [12] The *Casino Control Act* 1982 provides for the granting of casino licenses, which permit games of various kinds to be lawfully played in a casino.
- [13] It also provides for the lawful use of gaming equipment in premises holding a casino license.
- [14] Under the *Casino Control Act* the number and type of gaming machines and other gambling devices and activities may be restricted.
- [15] Under the *Gaming Machine Act* 1991 premises other than casinos (as defined) may be licensed to provide gaming machines only.
- [16] A prerequisite to the obtaining of such a license under s 56(1) of the *Gaming Machine Act* 1991 is that the premises to be licensed also be licensed under the *Liquor Act*.
- [17] Gaming machines in premises with a gaming machine license are or may be of the same kind as those be held and used in a casino. However, other devices and gambling activities lawfully conducted in premises holding a casino license may not be conducted in premises holding only a gaming machine license.
- [18] On 7 June 2000 Liquorland applied for a gaming machine license for part of the ANA Hotel Complex on the Gold Coast for 30 gaming machines to which members of the public might have access.
- [19] On 20 September 2000 the Commission refused the application on a number of grounds including that the proposal was to locate the licensed premises in part of the ANA Hotel Galleria Complex of which the Galleria was a shopping centre, and the Commission expressed the view that the provision of gaming machine operations was not suitable for and should not be located in the vicinity of retail outlets or dining and entertainment outlets which might be considered to be places of “community congregation” and was not a suitable location for “convenience gambling”.
- [20] In notifying Liquorland on 4 October 2000 of its refusal to grant the gaming machine license sought, the Commission advised of its right of appeal to the Minister and advised the terms of ss 29 and 30 of the *Gaming Machine Act* 1991 which dealt with such appeals.
- [21] It is convenient to refer to those sections.
- [22] Under s 29(1) Liquorland was entitled to appeal against the decision of the Commission made under s 55 of the Act refusing to grant a gaming machine license.
- [23] Under s 30(1) of the Act the Minister must consider the matters specified in ss 30(1)(a), (b) and (c) which specifies “such other information or material as the Minister considers relevant”.
- [24] Section 30(1) then continues –

“if the minister is satisfied that the integrity of gaming and the conduct of gaming will not be jeopardised and that the public interest will not be adversely affected, the Minister may direct –

- (d) that the appeal be disallowed; or
- (e) that the decision or determination appealed against be set aside or varied”.

[25] Section 30(2) provides –

“(2) if the minister is not so satisfied, the Minister must direct that the appeal be disallowed”.

[26] Under s 2 “public interest” referred to in s 30(1) is defined to mean –

“public interest having regard to the creation and maintenance of public confidence and trust in the credibility or integrity of” *inter alia* gaming or the conduct of gaming.

It does not connote any interest the public might be thought to have in the effect on the general welfare of the community of the number or location of gaming machines.

[27] Section 30(3) provides –

“(3) The determination of the Minister upon an appeal instituted under section 29 is final”.

[28] Much material was placed before the Minister for consideration of Liquorland’s appeal instituted on 20 October 2000 pursuant to s 29 of the Act.

[29] On 16 December 2000 the Minister disallowed the appeal in accordance with s 30 of the *Gaming Machine Act* 1991.

[30] On 17 January 2001 Liquorland sought a statement of the Minister’s reasons pursuant to s 32 of the *Judicial Review Act* 1991. Those reasons in writing dated 16 February 2001 were provided as requested.

[31] On 10 March 2001 this application for statutory order to review was made.

[32] The written reasons disclosed that detailed consideration was given by the Minister to all matters which were advanced by Liquorland and by the Commission relevant to the refusal of Liquorland’s application.

[33] In particular reference was made to the following concern raised by the Commission

–

“The proposed premises are located in the middle of the Galleria shopping centre. I draw your attention to the following paragraph from the Government’s *Policy Direction for Gambling in Queensland* –

Gaming machine sites will generally be restricted to traditional clubs and hotels. They will not, for example be permitted in ‘convenience gambling’ venues such as shopping centres, bars & grills, ten pin bowling alleys or restaurants”.

“The facility is not a fully integrated traditional hotel.

The proposed premises have an overly high reliance on gaming operations.

Gaming machine statistical information for the financial year 1998/1999 reveals that the Gold Coast had 127 gaming machines per 10,000 adults, similar to the state average of 121 machines. However, these figures do not include the 1,157 machines operating in the Conrad Jupiters Casino as at 30 June 2000, located within 3 kilometres of the proposed site. It would appear that there is an oversupply of gaming activity in the immediate vicinity of the proposed site”.

- [34] The Minister referred to the various submissions from organisations in the Gold Coast area supporting Liquorland’s appeal and to matters relevant to the location of the proposed gaming machine venue in the context of overall planning considerations for that part of the Gold Coast which relies significantly upon the tourist industry.
- [35] On the face of his written reasons the Minister considered all the information provided to him, which is listed at length.
- [36] He rejected the submissions of Liquorland that the proposed premises would not constitute “a convenience gambling facility”, and that the Galleria complex was not a shopping centre in the traditional sense or in the sense of the policy direction, and that gaming facilities preferably not be located within retail shopping environments, and that it would be unreasonable to consider the Jupiter’s Casino game machines as part of the available game machines in the Surfers Paradise area.
- [37] The Minister in his reasons indicated that he was unswayed by objections raised by and on behalf of Liquorland and found specifically that –
- (i) he was satisfied that the integrity of gaming and the conduct of gaming would not be jeopardised by the grant of the license sought by Liquorland; and
 - (ii) he was satisfied that the public interest (*as defined*) would not be adversely affected by the grant of a gaming machine license to Liquorland;
- but he held that he nevertheless had a discretion to direct either that the appeal be disallowed or that it be allowed.
- [38] He stated that in exercising the discretion he had he was not prohibited from having regard to other relevant factors including the number of gaming machines at the Jupiters Casino and concluded that “there was an oversupply of gaming activity in the immediate vicinity”.

- [39] He said that despite the proposals of Liquorland to minimise the impact of problem gambling he had decided to disallow its appeal.
- [40] There was a great deal of material before the Minister demonstrating the number and distribution of electronic gaming machines through various parts of Queensland and calculating the numbers of machines per groups of 10,000 adults.
- [41] It is unnecessary and unhelpful for me to analyse this material on this application.
- [42] Such an analysis may arguably have been relevant had the decision of the Minister been attacked on a *Wednesbury* basis; however, it was not.
- [43] The principal argument advanced on behalf of Liquorland was that having regard to the dual statutory licensing regimes to be found in the *Casino Control Act* 1982 and the *Gaming Machine Act* 1991 it was irrelevant if not indeed impermissible to consider the number or proximity of “gaming machines” as defined in s 4 of the *Casino Control Act* 1982 contained in a casino licensed under that Act when considering an application for a gaming machine license under the *Gaming Machine Act* of 1991.
- [44] Similarly it was said that it would be irrelevant if not indeed impermissible to consider the proximity and number of gaming machines in premises licensed under the *Gaming Machine Act* 1991 when considering any application with respect to the number of gaming machines to be held in premises licensed under the *Casino Control Act* 1982.
- [45] For Liquorland it is contended that the *Casino Control Act* 1982 and the *Gaming Machine Act* 1991 are two quite separate pieces of legislation which although overlapping to the extent that each deals with gaming machines nevertheless “run on parallel tracks”.
- [46] Liquorland contends that the Minister made a mistake of law in giving any consideration to the number of gaming machines available in the nearby casino when determining as a matter of policy whether there were more gaming machines in the vicinity of the ANA site than was desirable under the proper administration of the provisions of the *Gaming Machine Act*.
- [47] It was said that the number of gaming machines in the casino was quite irrelevant to determination under the *Gaming Machine Act* whether the supply of gaming machines within a radius of 3 or 4 kilometres from Liquorland’s proposed site was more or less than sufficient.
- [48] The only legislative provision in either the *Gaming Machine Act* or the *Casino Control Act* to which reference was made in support of this proposition was s 265(11) of the *Gaming Machine Act* 1991.
- [49] That sub-section provides –
- “(11) This Act does not apply so as to affect the lawful obtaining, possession or use of anything referred to in subsection (1) or (8) by a licensed casino operator in accordance with the *Casino Control Act* 1982”.

- [50] Section 265(1) simply prohibits the manufacture sale, supply or possession of a gaming machine except in accordance with the authority of a license authorised under the *Gaming Machine Act* and subsection s 265(8) simply prohibits any person from manufacturing, selling, supplying, obtaining or being in possession of parts of a gaming machine except under license under that Act.
- [51] In determining Liquorland's application for the installation of 30 gaming machines in part of its premises described as Galleria, if it be accepted that it was relevant to consider the number of gaming machines in other premises in proximity to the proposed site licensed under the Act in my view s 265(11) of the *Gaming Machine Act* gives no support to the proposition advanced on behalf of Liquorland that it was irrelevant to consider the number of gaming machines within Jupiters Casino.
- [52] I can find nothing in either the *Casino Control Act* or the *Gaming Machine Act* to support such a proposition.
- [53] In my view to the extent that the Minister did take into account the total number of licensed gaming machines within 3 or 4 kilometres of Liquorland's proposed site, it could not be said that the number of gaming machines contained outside the casino premises was relevant while the number contained within the casino premises was irrelevant.
- [54] I can find nothing upon a proper construction of either the *Gaming Machine Act* or the *Casino Control Act*, which would lead to such a conclusion, which to my mind would be logically insupportable if current availability of gaming machines to the public is a relevant consideration – which in my view it is.
- [55] With respect to the second point argued on behalf of Liquorland I can find nothing in the Minister's reasons for his decision or in any of the material he considered, and in particular in the "*Policy Direction for Gambling in Queensland*" published in April 2000 to support the contention that in arriving at his decision to exercise his discretion against granting the Liquorland application he blindly applied any part of that policy without regard to the merits of Liquorland's application and its submissions upon appeal to him.
- [56] It was suggested in passing that the Galleria part of the ANA Hotel complex should not properly be characterised as a "shopping centre".
- [57] Whether it should or should not be characterised as a "shopping centre" seems to me to be to a question of fact or opinion and to the extent that it was erroneous such error is not reviewable in my view upon this application.
- [58] In any event Liquorland's application is supported by material on a letterhead entitled "Galleria Shopping Plaza Surfers Paradise" and there was ample material to support its characterisation as a "shopping centre".
- [59] There was an enormous amount of material advanced on behalf of Liquorland in support of it's application for a license. In my view in his reasons for disallowing the Liquorland appeal against refusal of its application for a license the Minister made it abundantly clear that he did consider and give weight to the policy direction in arriving at his decision. Indeed it would have been quite wrong for him to have disregarded that policy direction. There is nothing however, to suggest that he treated that policy direction as a binding fetter upon the exercise of his discretion on

the facts before him rather than as merely a guideline to be given due consideration in the exercise of his discretion upon all the material placed before him on Liquorland's appeal.

- [60] I am unpersuaded that there is any merit in the second point argued on behalf of Liquorland.
- [61] In my view no ground has been established to support the making of a statutory order of review under s 20(1) of the *Judicial Review Act* 1991 and in particular no improper exercise of power has been established within the ambit of s 23(a) or (f) of that Act.
- [62] I dismiss the application.
- [63] I order that the applicant pay to the respondent its costs of and incidental to the application (including reserve costs if any) to be assessed on a standard basis.